

SECURITY AGREEMENT - MACHINERY AND EQUIPMENT

between

and

U.S. Department of Commerce, Economic Development Administration

This Security Agreement is entered into on _____, by and between the United States Department of Commerce, Economic Development Administration (EDA) (the "Secured Party") whose address is 1401 Constitution Avenue NW., Washington, DC 20230, and _____ (the "Debtor") whose address is _____, collectively the "Parties";

WHEREAS, _____ applied to, received and accepted from Secured Party a grant in the amount of \$ _____ pursuant to a Financial Assistance Award (the "Award"), entered into by _____ and EDA on _____ and bearing EDA Project No. _____;

WHEREAS, on _____, _____ entered into a Sub-Award with Debtor for \$ _____ ("Sub-Award").

WHEREAS, all sub-awards must comply with the terms and conditions of the Award, including the Department of Commerce financial assistance award, including applicable provisions of the OMB Uniform Guidance (2 C.F.R. Part 200), and all associated Terms and Conditions. *See* 2 C.F.R. § 200.101(b)(2) (Applicability to different types of Federal awards), which describes the applicability of 2 C.F.R. Part 200 to various types of Federal awards and §§ 200.331-333 (Subrecipient monitoring and management).

WHEREAS, the Award and Sub-Award included a description of the proposed project (the "Project"); and

WHEREAS, pursuant to the Award certain machinery and equipment has been deemed necessary to carry out the Project and a portion of the Award amount is to be used to purchase the machinery and equipment, which will be located in _____; and

WHEREAS, the Federal interest in the machinery and equipment must be protected in accordance with EDA regulation 13 CFR § 314.9; and

WHEREAS, the Award provides the purposes for which the Award amount may be used and provides inter alia, that Debtor will not sell, mortgage or otherwise use or alienate any right to, or interest in the Project including any machinery and equipment purchased with any of the Award proceeds, or use the Project or the machinery and equipment for purposes other than and different from those purposes set forth in the Award and the application made by Debtor, such alienation or use being prohibited under the Award terms and conditions and applicable regulations; and

NOW THEREFORE, Debtor hereby grants to Secured Party a purchase money security interest in all machinery and equipment purchased with any proceeds of the Award including, but not limited to, the machinery and equipment described in "Exhibit A" attached hereto and made a part hereof and any machinery and equipment acquired by the Debtor, with proceeds from the Award, subsequent to the execution of this Agreement along with all substitutions, replacements, additions and accessions to said machinery and equipment (the "Collateral").

The security interest herein granted shall terminate and be of no further force and effect once the useful life of all portions of the Collateral has expired. The number of years that has been established as the useful life for each piece of Collateral is set forth on Exhibit A

Default in the performance by Debtor of any of its obligations identified in the Award or default under any agreement evidencing any of said obligations is a default under this Agreement which will entitle Secured Party to compensation. The amount of compensation due to Secured Party shall be a percentage of the fair market value of the Collateral at the time of default equal to the percentage of Award funds used to purchase said Collateral, as further described in 13 CFR Part 314, as may be amended from time to time.

Upon such default, Secured Party, its successors or assigns, may declare all obligations herein recited immediately due and payable and Secured Party shall have available all remedies of a Secured Party under applicable law. Secured Party, in its sole discretion, may allow a period of time for curing a default prior to requiring compensation. This cure period is only permitted when stated by the Secured Party in writing.

Debtor further warrants, covenants, represents, and agrees as follows:

- (a) That Debtor is, or is to become, the owner of the Collateral, and has or will have when the Collateral is acquired the right to convey a security interest in it to the Secured Party. The Collateral is, or will be when acquired, free and clear of all liens, claims, charges, encumbrances, taxes, and assessments.
- (b) That the Collateral will not be sold, transferred, rented, leased, pledged, made subject to a security agreement or removed from the location set forth in Exhibit A without the written consent of Secured Party and that Collateral will not be misused, or abused, wasted or allowed to deteriorate, except for ordinary wear and tear from its intended use.
- (c) That the Collateral shall remain in Debtor's possession or control at all times at Debtor's risk of loss and that the Collateral and all books and records relating to the Collateral shall be available at all times for inspection by Secured Party or its authorized representative(s).
- (d) Debtor will not permit or cause the Collateral to become affixed to real estate as fixtures.
- (e) That Debtor will keep and maintain such records as are necessary to reflect and identify the Collateral and will deliver to Secured Party such lists, descriptions and designations of the Collateral as Secured Party may from time to time request.

(f) That Debtor will sign and execute, upon request of Secured Party, any financing statement or other document or procure any documents, and pay all costs necessary to protect the EDA security interest against the rights or interests of third persons.

(g) That Debtor will protect the title and possession of the Collateral and will pay promptly when due and before becoming delinquent, all taxes and assessments now existing or hereafter levied or assessed against the Collateral or any part thereof, and will keep the Collateral insured, if insurable, to its full insurable value, against loss or damage by fire, windstorm and theft and any other hazard(s) reasonably expected to occur in the physical location of the Collateral or any hazard(s) as may be reasonably required from time to time by Secured Party.

(h) Upon the occurrence of a default, the Secured Party may apply to any court of competent jurisdiction for the appointment of a receiver to take charge of the Collateral and to secure the rents, issues and profits from it for the benefit of the Secured Party.

(i) Debtor hereby specifically waives all rights of appraisal and rights of redemption where available by applicable law. Debtor hereby further waives all rights to marshaling of Debtor's assets including the Collateral and if Secured Party elects to sell the Collateral in parts or parcels separately, the EDA security interest shall continue in full force and effect until all portions of the Collateral have been sold by the Secured Party.

(j) Secured Party may, at its option, remedy any default without waiving same, or may waive any default without waiving any prior or subsequent default. No waiver by Secured Party shall be effective unless in writing.

(k) Debtor agrees that any notice given or required to be given pursuant to this Security Agreement by either Party shall be sufficient when mailed, postage prepaid to the respective addresses shown above.

(l) Debtor agrees to execute, perfect and record this security interest in accordance with applicable law and 13 CFR § 314.9 so that a Secured Party first priority lien remains perfected at all times in the Collateral. This is usually accomplished by simultaneously executing this Agreement and a Financial Statement (UCC-1) which is then perfected under state law to create a lien in the Collateral in favor of the Secured Party. Debtor agrees to refile timely continuances, when required. Debtor must submit adequate evidence, acceptable to the Secured Party, that the federal interest has been protected under applicable law. Debtor agrees that if Debtor fails to maintain the first priority lien in the Collateral as required in this paragraph, the Secured Party may do so and Debtor shall reimburse the Secured Party for all costs incurred by the Secured Party.

(m) This Agreement may not be modified or amended except by a written instrument executed by the Parties. If any provision should be held unenforceable or void, then such provision(s) shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Agreement.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seal on _____
for this Security Agreement - Machinery and Equipment associated with EDA Project No.
_____.

DEBTOR: _____

EXECUTED BY: _____

NAME: _____

TITLE: _____

(Notary signature and stamp for Sub-Recipient's signature, if required.)

Attachment:
Exhibit A: Description of Collateral

EXHIBIT A[illegible]

Total Dollar Amount of All Items Listed: \$