

(Large top margin left to accommodate recording information, as necessary)

[[[Insert the “instrument prepared by” clause and contact information as required by local law]]]

AGREEMENT AND MORTGAGE

WHEREAS, the [] (hereinafter called Mortgagor) has applied to, received, and accepted from the United States Department of Commerce, Economic Development Administration (EDA) [*include agency addresses as necessary and appropriate*] a grant under the Public Works and Economic Development Act of 1965 (41 U.S.C. § 3121 *et seq.*) (PWEDA) in the amount of [\$] Dollars (EDA Grant Amount) pursuant to a Financial Assistance Award dated [], and bearing EDA Award No. [] (Award);

WHEREAS, pursuant to the application submitted by Mortgagor requesting said Award, which includes all forms, documentation, and any information submitted to EDA as part and in furtherance of the request for the Award, including any information submitted after the initial application (Grant Application) and pursuant to the Award, the Grant Amount is to be used for the purpose of acquiring or making improvements to the real property described in Exhibit A, attached hereto and made a part hereof (Project Property), consisting of

[

_____] (Project);

WHEREAS, [] years from the [trigger date (e.g., date of award, construction end date, etc.)], as determined by EDA, is the Estimated Useful Life, as defined in 13 C.F.R. § 314.1, of the improvements made to the Project Property pursuant to the Project;

WHEREAS, under government-wide regulations set out at 2 CFR part 200 and EDA’s regulations governing the Award at 13 CFR Chapter III, any transfer or conveyance of Project Property or any portion thereof must have the prior written approval of EDA;

WHEREAS, in accordance with PWEDA, EDA is not authorized to permit transfer or conveyance of Project Property to parties that are not eligible to receive EDA grants unless EDA is repaid the Federal Share as defined at 13 CFR § 314.5 (“Federal Share”) or unless the authorized purpose of the Award is to develop land in order to lease or sell it for a specific use, in which case EDA may authorize a lease or sale of the Project Property or a portion thereof if certain conditions are met;

WHEREAS, the aforesaid Award from EDA provides the purposes for which the Grant Amount may be used and provides, *inter alia*, that Mortgagor will not sell, lease, mortgage, or otherwise use or alienate any right to, or interest in the Project Property, or use the Project Property for purposes other than or different from those purposes set forth in the Award and the Grant Application made by Mortgagor therefor, such alienation or use being prohibited by 13 CFR part 314 and 2 CFR part 200; and

WHEREAS, Mortgagor and EDA desire to establish an obligation for and first priority lien [***or other priority position, as approved by EDA***] on Project Property in favor of EDA in the event that the Project Property is used, transferred, or alienated in violation of the Award, 13 CFR Chapter III, or 2 CFR part 200;

NOW THEREFORE, Mortgagor does hereby grant and convey unto EDA, its successors and assigns, a mortgage and a lien on said Project Property to secure Mortgagor’s obligation (i) to comply with the terms and conditions of the Award and the regulations set forth in 13 CFR Chapter III and 2 CFR part 200, and (ii) to use Project Property only for the purposes set forth therein for the Estimated Useful Life of Project Property. Mortgagor agrees that a debt, with interest thereon at the rate set forth in 31 U.S.C. § 3717, in the amount of the Federal Share, which amount shall be determined at the sole discretion of EDA in accordance with its authorities and regulations, such amount being either EDA’s pro-rata share of the fair market value of the Project Property, as further set forth at 13 CFR § 314.5, as that provision may be amended from time to time, the Grant Amount, or the amount actually disbursed under the Award (Indebtedness), shall be due and payable by Mortgagor to EDA upon the termination of the Award, or any attempt to use, transfer, or alienate any interest in Project Property in violation of the Award or of the regulations set forth in 13 CFR Chapter III or 2 CFR part 200 and does, moreover, agree that such Indebtedness shall be extinguished only through the full payment thereof to the Federal Government.

Mortgagor further covenants and agrees as follows:

1. Lease of Project Property:

If the Grant Application provides for and the Award authorizes Mortgagor to lease Project Property, each lease arrangement shall be subject to the prior written approval of EDA.

EDA must determine that the applicable lease arrangement is consistent with the Grant Application and authorized general and special purpose(s) of the Award; will provide adequate employment and economic benefits for the area in which Project Property is located; is consistent with EDA policies concerning, but not limited to, non-discrimination, non-relocation, and environmental requirements; and that the proposed lessee is providing adequate compensation, as defined in 13 CFR § 314.1, to Mortgagor for said lease. Any lease agreement entered into by Mortgagor of the Project Property shall be subordinate, junior, and inferior to this Agreement and Mortgage, and, at EDA's request, be expressly subordinated in writing and the written subordination recorded in the same manner as this Agreement and Mortgage [*Note that if a Recipient objects to this provision because there's no record notice of the lease, the last sentence of this provision can be modified.*]

2. Charges; Liens:

Mortgagor shall protect the title and possession of all Project Property; pay when due all taxes, assessments, mechanic and/or materialmen liens, and other charges, fines, and impositions now existing or hereafter levied or assessed upon Project Property; and preserve and maintain the priority of the lien hereby created on Project Property, including any improvements hereafter made a part of the realty.

3. Hazard Insurance:

Mortgagor shall insure and keep insured all improvements now or hereafter created upon Project Property against loss or damage by fire and windstorm and any other hazard or hazards included within the term "extended coverage." The amount of insurance shall be the full insurable value of said improvements but in no event less than the full replacement value of the improvements. Any insurance proceeds received by Mortgagor due to loss shall be applied to restoration or repair of any damaged Project Property, provided such restoration or repair is economically feasible and the security of this Agreement and Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Agreement and Mortgage would be impaired, Mortgagor shall use said insurance proceeds to compensate EDA for its Federal Interest. EDA's Federal Interest, as defined at 13 C.F.R. § 314.2 ("Federal Interest") shall be satisfied when amount received is equal to the Federal Share as that term is defined at 13 CFR § 314.5 ("Federal Share").

4. Preservation and Maintenance of the Project Property:

Mortgagor shall keep Project Property in good condition and repair during the Estimated Useful Life and shall not permit or commit any waste, impairment, or deterioration of Project Property, but shall give notice written thereof to EDA without delay.

5. Indemnification

To the extent permitted by law, Recipient agrees to indemnify and hold the Federal Government harmless from and against all liabilities that the Federal Government may incur as a result of providing an award to assist, directly or indirectly, in the preparation of the Project Property or construction, renovation, or repair of any facility on the Project Property, to the extent that such liabilities are incurred because of toxic or hazardous contamination of groundwater, surface water, soil, or other conditions caused by operations of the Recipient or any of its predecessors (other than the Federal Government or its agents) on the Project Property. *See also* 13 C.F.R. § 302.19 (“Indemnification”).

6. Inspection:

EDA may make or cause to be made reasonable entries upon and inspection of Project Property by EDA or an authorized representative of EDA.

7. Condemnation:

The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of Project Property, or any part thereof, or for any conveyance in lieu of condemnation shall be used by Mortgagor to compensate EDA for EDA’s Federal Share. EDA’s Federal Share of said condemnation proceeds shall be equal to that percentage which the Grant Amount bore to the total project costs under the Award for which the condemned property was acquired or improved. *See also* 13 CFR § 314.5 (“Federal Share”).

8. Recording of Agreement and Mortgage – Mortgagor’s Copy:

Mortgagor shall record this Agreement and Mortgage in accordance with the laws and rules of the County where Project Property is located, and shall ensure that the lien hereby granted is a first and prior lien on Project Property senior to all other interests save those which may arise by operation of law [*or other priority position as approved by EDA*]. EDA shall be furnished with the original, recorded Agreement and Mortgage as executed.

9. Notice:

Any notice from EDA to Mortgagor provided for in this Agreement and Mortgage shall be sent by certified mail to Mortgagor’s last known address or at such address as Mortgagor may designate to EDA, except for any notice given to Mortgagor in the manner as may be prescribed by applicable law as provided hereafter in this Mortgage. Likewise, any notice from Mortgagor to EDA shall be sent by certified mail to EDA’s address.

10. Remedies:

Upon Mortgagor's breach of any term or condition of the Award or any provision of this Agreement and Mortgage, then EDA, its designees, successors, or assigns may declare the Indebtedness immediately due and payable, and may enforce any and all remedies available including but not limited to foreclosure by an action brought either in a United States District Court or in any State Court having jurisdiction, but such action shall not be deemed to be a release or waiver of any other right or remedy to recover repayment thereof.

After any breach on the part of Mortgagor, EDA shall, upon bill filed or the proper legal proceedings being commenced for the foreclosure of this Agreement and Mortgage, be entitled, as a matter of right, to the appointment by any competent court, without notice to any party, of a receiver of the rents, issues, and profits of Project Property, with power to lease and control such Property, and with such other powers as may be deemed necessary.

11. Remedies Cumulative:

All remedies provided in this Agreement and Mortgage are distinct and cumulative to any other right or remedy under this Agreement and Mortgage, the Award, or related documents, or afforded by law or equity, and may be exercised concurrently, independently or successively.

12. Forbearance Not a Waiver:

Any forbearance by EDA in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by EDA shall not be a waiver of EDA's rights under this Agreement and Mortgage.

13. Release:

EDA and the Mortgagor agree that, so long as the possession and use of Project Property by Mortgagor has been only for the purposes set forth in the Award and Grant Application, then after the Estimated Useful Life of the improvements to Project Property, Mortgagor may request a release of the Federal Interest in accordance with 13 CFR part 314, which will not be withheld except for good cause, as determined in EDA's sole discretion; provided, however, that in accordance with 13 CFR part 314, restrictions upon the religious use or discriminatory practices in connection with the use of Project Property shall survive this Agreement and Mortgage and any release thereof, which shall be evidenced by a separate recorded covenant.

14. Governing Law; Severability:

This Agreement and Mortgage shall be governed by applicable federal law, if any, and if

there is no applicable federal law by state law, and nothing contained herein shall be construed to limit the rights the EDA, its designees, successors, or assigns are entitled to under applicable federal or state law. In the event that any provision or clause of this instrument conflicts with applicable law, such conflict shall not affect other provisions of this instrument which can be given effect without the conflicting provision, and to this end the provisions of this instrument are declared to be severable.

15. Authority to Execute Agreement and Mortgage:

Recipient represents and warrants to and covenants with EDA that Recipient has been duly authorized by Recipient’s governing body by all necessary action and has received all necessary third party consents to enter into this Agreement and Mortgage.

[Optional: 16. If EDA approves and enters into an Intercreditor Agreement with one or more Creditor under which EDA shares a first priority lien position with said creditors, a default in the shared mortgage shall constitute a default under this Agreement and Mortgage.]

IN WITNESS WHEREOF, Mortgagor has hereunto set its hand and seal on this the ____ day of _____, 20__.

ATTEST:

Mortgagor

By: _____

By: _____

Title: _____

Its: _____

Approved: _____

Attorney for Mortgagor

[Optional depending on RO:

“This approval by Mortgagor’s counsel shall be in addition to and in no way a restriction or limitation of said Attorney’s separate written legal opinion regarding this Agreement and Mortgage.]

this space for acknowledgment

EXHIBIT A
Property Description