

## TOBACCO REGION OPPORTUNITY FUND

### LOAN AGREEMENT

This **LOAN AGREEMENT** (“Agreement”) made and entered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Award Date”) by and among \_\_\_\_\_ (the “Company”), a \_\_\_\_\_ [corporation/limited liability company/etc.] [authorized to transact business in the Commonwealth] whose Federal Employer Identification Number is \_\_\_\_\_, the **[INDUSTRIAL / ECONOMIC] DEVELOPMENT AUTHORITY OF \_\_\_\_\_** (the “Authority”), a political subdivision of the Commonwealth of Virginia (the “Commonwealth”), and the **TOBACCO REGION REVITALIZATION COMMISSION** (the “Commission”), a political subdivision of the Commonwealth.

#### WITNESSETH:

**WHEREAS**, the Virginia General Assembly created the Commission to, among other things, stimulate the economic growth and development of tobacco-dependent communities in the Southern and Southwest regions (the “Region”) of the Commonwealth of Virginia (the “Commonwealth”); and

**WHEREAS**, the Commission awarded a loan in the amount of \$ \_\_\_\_\_ to the Authority for the benefit of the Company from the Tobacco Region Opportunity Fund (the “Loan”) for the purpose of inducing the Company to undertake the Project (as defined herein); and

**WHEREAS**, the Commission has determined that the Project will benefit the Region and is consistent with and in furtherance of the Commission’s public purposes; and

**WHEREAS**, the Company will [purchase / construct / expand / equip / improve] and operate a [manufacturing] [warehouse and distribution] [office and headquarters] facility in the Locality (as defined herein) (the “Facility”), thereby making a significant Capital Investment, and creating and Maintaining a significant number of New Jobs, as such capitalized terms are hereinafter defined; and

[**WHEREAS**, in connection with the Project, the parties entered into a Tobacco Region Opportunity Fund Performance Agreement (the “TROF Grant Agreement”) pursuant to which the Commission will provide a grant to induce the Company to undertake the Project; and **NOTE: ONLY APPLICABLE FOR PROJECTS THAT RECEIVE A GRANT AND LOAN – REMOVE IF NO TROF GRANT**]

**WHEREAS**, the Commission will provide the Loan to the Authority with the expectation that the Authority will provide the Loan to or for the use of the Company, provided that the Company meets certain criteria relating to Capital Investment and New Jobs and repay the Loan; and

**WHEREAS**, the parties desire to set forth their understanding and agreement as to the terms and conditions of the Loan, the obligations of the Company regarding Capital Investment

and New Jobs, and the obligations of the Authority and the Company regarding repayment of the Loan; and

**WHEREAS**, the [purchase / construction / expansion / equipping / improvement] and operation of the Facility will entail a capital expenditure by or on behalf of the Company of approximately \$\_\_\_\_\_ and will further entail the creation and Maintenance of \_\_\_ New Jobs at the Facility; and

**WHEREAS**, the Commission has determined that the approval and funding of the Loan to stimulate the generation of additional tax revenue and economic activity in the Region constitutes a valid public purpose for the expenditure of public funds as outlined in Section 3.2-3100, *et seq.* of the *Code of Virginia* of 1950, as amended, and is the animating purpose for the Loan:

**NOW, THEREFORE**, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

**Section 1. Definitions.**

For the purposes of this Agreement, the following terms shall have the following definitions:

“*Capital Investment*” means a capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, or both, at the Facility. The Capital Investment must be in addition to any new investments the Company promised to make under any other agreement with the Commission. The Capital Investment must be in addition to the capital improvements at the Facility, if any, as of the Award Date.

“*Locality*” means the [CITY/COUNTY/TOWN] of \_\_\_\_\_, Virginia.

“*Maintain*” means that the New Jobs will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the Company’s employment levels (so long as there is active recruitment for open positions), (ii) strikes, and (iii) other temporary work stoppages.

“*Minimum Targets*” means the Company’s obligations to make a Capital Investment of at least 50% of the amount set forth in Section 2(a) and to create at least 50% of the number of New Jobs set forth in Section 2(a), all as of the Performance Date.

“*New Job*” means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are provided by the Company for the employee, and for which the Company pays an average annual wage of at least \$\_\_\_\_\_. Average annual wage means the average annual salary of full-time positions at the Facility determined

by dividing total payroll (of a type included in W-2 compensation) provided to full-time positions at the Facility by the number of full-time positions at the Facility. Each New Job must require a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of the Company's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. Net new jobs in the Commonwealth for contractors or employees of contractors who provide dedicated full-time service to the Company may count as New Jobs, even though the Company is not directly paying the wages or providing the fringe benefits, if the other conditions set forth in this paragraph have been satisfied. The New Jobs must be in addition to any new positions the Company promised to make under any other agreement with the Commission. The New Jobs must also be in addition to the full-time jobs at the Facility as of the Award Date, as evidenced by a recent filing with the Virginia Employment Commission.

"*Performance Date*" means the date that is the third anniversary of the Award Date. If the Authority, in consultation with the Commission, deems that the Company is making good faith and reasonable efforts to achieve the Targets, the Authority may request an extension of the Performance Date by up to 12 months. Any extension of the Performance Date shall require the prior written approval of the Commission's Executive Director or his designee. Any further extensions will require the approval of the Commission's governing body. If the Performance Date is extended, the Commission shall send written notice of the extension to the Authority and the Company, and the date to which the Performance Date has been extended shall be the "Performance Date" for the purposes of this Agreement.

"*Project*" means the Company's completion and operation of the Facility and satisfaction of the Targets. ***[CUSTOMIZE IF THERE ARE OTHER THINGS IN ADDITION TO JOBS/CAPEX THAT THE COMPANY MUST ALSO DO. E.G., LOCATE CORPORATE HQ]***

"*Targets*" means the Company's obligations to make Capital Investments at the Facility of at least \$ \_\_\_\_\_ and to create and Maintain at least \_\_\_\_ New Jobs at the Facility, all as of the Performance Date.

"*Virginia Code*" means the Code of Virginia of 1950, as amended.

## **Section 2. Targets.**

(a) *Targets:* The Company will complete the Project, including making a Capital Investment of at least \$ \_\_\_\_\_, and creating and Maintaining at least \_\_\_\_ New Jobs at the Facility, all as of the Performance Date.

[(b)] [*Other Performance Criteria:* IF THE GRANT IS ALSO PREDICATED ON OTHER FACTORS, SUCH AS ESTABLISHING AND MAINTAINING THE COMPANY'S CORPORATE HEADQUARTERS IN THE LOCALITY, ADD HERE LANGUAGE REQUIRING THE COMPANY TO DO THOSE OTHER THINGS.]

**Section 3. Disbursement of the Loan; Conditions Precedent.**

(a) *Disbursement of the Loan:* Within 90 days of full execution and delivery of this Agreement and provided the conditions set forth below have been satisfied, the Authority may request that the Commission disburse the Loan to it. The Commission will promptly arrange for the disbursement of the Loan proceeds to the Authority. Within 30 days of its receipt of the Loan proceeds, the Authority will disburse the Loan proceeds to the Company. If the Authority does not request the Commission to disburse the Loan proceeds within 90 days of full execution and delivery of this Agreement, the Commission may terminate this Agreement and the parties will have no further rights and responsibilities hereunder.

(b) *Conditions Precedent:* The Commission will not disburse the Loan until the following conditions have been satisfied:

- (1) the Authority provides to the Commission an opinion from its legal counsel upon which the Commission may rely that indicates this Agreement constitutes a valid, binding agreement that has been duly authorized and executed in accordance with applicable law;
- (2) the Company has provided the Security as defined and provided in Section 7(e); and
- (3) the Commission, in its sole discretion, has approved the Security.

**Section 4. Company Reporting.**

(a) *Award Date Report:* The Company shall provide a award date report as provided in the TROF Grant Agreement.

(b) *Progress Reporting:* The Company shall provide progress reports as provided in the TROF Grant Agreement.

(c) *Final Report:* The Company shall provide a final report as provided in the TROF Grant Agreement.

**Section 5. Verification of Targets.**

(a) *Verification of Capital Investment:* The Company acknowledges that the Commission or the Authority may verify the Company's Capital Investment as provided in the TROF Grant Agreement.

(b) *Verification of New Jobs and Wages:* The Company acknowledges that the Commission or the Authority may verify the Company's New Jobs as provided in the TROF Grant Agreement.

**Section 6. Responsibility for and Terms of Repayment.**

(a) The Company hereby promises to pay to the order of the Commission, the principal sum of the Loan in the amount of \$ \_\_\_\_\_ pursuant to the terms and conditions set forth herein.

(b) The principal amount of this Loan shall be due and payable in \_\_\_\_\_ equal semi-annual payments due on the first of February and the first of August, respectively. The first payment is due on the first semi-annual due date to arrive six months after the Loan is disbursed. Unless the provisions of Section 7 apply, the Company will make payments in the amount of \$ \_\_\_\_\_.

(c) This Loan shall bear no interest except as provided in Section 7.

(d) The Company shall have the right at any time and from time to time to prepay this Loan in whole or in part without penalty except as provided in Section 7.

(e) Subject to receipt of any necessary appropriations, the Authority shall be jointly and severally liable for the repayment of any amounts the Company fails to pay timely to the Commission hereunder. In the event the Company is 10 or more days late in making any required payment to the Commission, the Commission will notify the Authority and the Authority shall make all outstanding payments to the Commission within 10 additional days.

**Section 7. Accelerated Repayment Obligation.**

(a) *If Minimum Targets are Not Met:* The Company must satisfy the Minimum Targets in order to be eligible for the Loan. Failure by the Company to meet the Minimum Targets by the Performance Date shall constitute a breach of this Agreement. In such event, the Company must repay the entire outstanding balance of the Loan plus an amount equal to 5% of the outstanding balance of the Loan to the Authority.

(b) *If Minimum Targets are Met:* If as of the Performance Date, the Company has met or exceeded the Minimum Targets but has not met or exceeded both Targets, the Commission will notify the Company and Company must elect one of the following within 30 days of the date of such notice (the "Default Notice"):

(1) Accelerated Repayment: The Company may repay the entire outstanding balance of the Loan. If the Company so elects, it must repay to the Commission the entire outstanding balance within 45 days of the Default Notice; or

(2) Interest: The Company may continue to make periodic payments as provided in Section 6, however, interest at the rate of 5.0% per annum will apply to the outstanding balance until the Loan is fully repaid. In this event, the Commission will prepare and distribute an amortization schedule to the parties and the Company will make payments in the amounts set forth therein.

The Company must notify the Commission and the Authority in writing of its election within 30 days of the Default Notice. If the Company fails to provide such notice, the Commission will apply interest as provided in Subsection (b)(2) above.

(c) *Repayment:* If the Company must make or elects to make an accelerated repayment pursuant to Section 7(b)(1), such repayment shall be due from the Company to the Commission within 45 days of the Default Notice.

(d) *Determination of Inability to Perform:* If the Authority or the Commission determines at any time prior to the Performance Date (a “Determination Date”) that the Company is unable or unwilling to meet and Maintain its Minimum Targets by and through the Performance Date, and if the Authority or the Commission have promptly notified the Company of such determination, the Company must repay to the Commission all of the Loan proceeds previously disbursed to or for the benefit of the Company. Such a determination will be based on objective circumstances such as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company or other similar significant event that would necessarily preclude the Company from being able to satisfy the Minimum Targets.

(e) *Security for Repayment:* Prior to the Commission’s disbursement of the Loan, the Company shall deliver to the Authority and the Commission collateral security reasonably acceptable to the Authority and the Commission that is sufficient to provide a secondary source of repayment in the event the Company is unable or unwilling to make any required repayment (the “Security”). The Security is as listed on **Exhibit A** and may not be changed, substituted or reduced without the written approval of the Commission’s Executive Director. The Company and the Authority will maintain the Security until the Loan is repaid in full. If the Commission has not received any required repayment by the applicable due date, the Authority shall take all necessary action against the Security to obtain the necessary amounts to satisfy the repayment obligation.

**Section 8. Notices.**

Formal notices and communications between the Parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, or (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Such written notices and communications shall be addressed to:

if to the Company, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

if to the Authority, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

if to the Commission, to:

Tobacco Region Revitalization Commission  
701 E. Franklin Street, Suite 501  
Richmond, Virginia 23219  
Attention: Executive Director

with a copy to:

Office of the Attorney General  
202 N. 9<sup>th</sup> Street  
Richmond, Virginia 23219  
Attention: Counsel to the  
Tobacco Region Revitalization Commission

**Section 9. Miscellaneous.**

(a) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the Loan and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Neither the Company nor the Authority may assign its rights and obligations under this Agreement without the prior written consent of the Commission.

(b) *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the City of Richmond, and such litigation shall be brought only in such court, unless the Commission's Executive Director agrees otherwise.

(c) *Counterparts and Electronic Signatures:* This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument. Facsimile signatures or signed copies sent by portable document format (PDF) shall be deemed originals.

(d) *Severability:* If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining

provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

(e) *Attorney's Fees:* Attorney's fees shall be paid by the party incurring such fees in connection with litigation arising out of this Agreement, except that the Company and the Authority (subject to receipt of necessary appropriations) shall be responsible for the Commission's costs of collection, including reasonable attorney's fees.

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**IN WITNESS WHEREOF**, the parties hereto have executed this Loan Agreement as of the date first written above.

**INDUSTRIAL/ECONOMIC  
DEVELOPMENT AUTHORITY OF  
THE \_\_\_\_\_ OF \_\_\_\_\_,  
VIRGINIA**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**[COMPANY]**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**TOBACCO REGION  
REVITALIZATION COMMISSION**

By \_\_\_\_\_  
Name: Evan Feinman  
Title: Executive Director  
Date: \_\_\_\_\_

**Exhibit A: Security**

**Security**

The Company shall provide and the Authority shall hold the following collateral security as provided in Section 7 of the Agreement:

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The Authority hereby acknowledges that the sufficiency of the Security for repayment of the Loan is its sole responsibility and agrees to hold the Security until the Company has fully performed its obligations under this Agreement.

**[AUTHORITY]**

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

Title: \_\_\_\_\_

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