

GRANT AND SECURITY AGREEMENT

THIS GRANT AND SECURITY AGREEMENT (this "Agreement") dated as of _____, 2011 is between and among the _____ (the "Grantee"), _____ (the "Beneficiary"), and the Virginia Tobacco Indemnification and Community Revitalization Commission (the "Commission") (collectively the "Parties").

WHEREAS, subject to various conditions, including but not limited to the formation of certain contractual obligations to the satisfaction of the Executive Director of the Commission, the Commission has awarded a grant to the Grantee in the amount of \$ _____ (the "Grant") based on the information provided in the application dated _____, ____ and approved _____, ____ (the "Application"), which by this reference is incorporated herein and made a part of this Agreement, to complete the project entitled _____ (the "Project") described therein, and

WHEREAS, Grantee contemplates providing to the Beneficiary the proceeds of the Grant in exchange for good and valuable consideration described herein and further detailed in the Application and any separate agreement which may be entered into between Grantee and Beneficiary, and

WHEREAS, pursuant to the provisions of Chapter 31 (§§ 3.2-3100 *et seq.*) of the Code of Virginia of 1950 (as amended), the Commission has as one of its purposes to stimulate the economic growth and development of tobacco-dependent communities in the Southside and Southwest regions of the Commonwealth of Virginia (the "Commonwealth") as determined by the Commission (the "Tobacco Region"), and is authorized to award grants to fund projects that the Commission determines to be consistent with and in furtherance of its purposes, and

WHEREAS, the Project has been determined by the Commission to be for the benefit of a tobacco-dependent community within the Tobacco Region, and consistent with and in furtherance of the Commission's purposes, and

WHEREAS the Commission, the Grantee, and the Beneficiary desire to set forth their understanding and agreement as to the use of the Grant and the obligations of the Grantee and the Beneficiary regarding the use of such Grant,

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 hereto hereby covenant and agree as follows:

1. Project and Budget. No portion of the Grant shall be used for any purpose whatsoever other than the Project except as approved in writing by the Executive Director of the Commission. No material changes shall be made in the scope of the Project or to the budget set forth in the Application without the prior written approval of the Executive Director of the Commission, which approval shall not be unreasonably withheld. Any document signed by the Executive Director of the Commission accepting a change in purpose or budget shall set forth with specificity the accepted change. If the Grant exceeds the amount necessary to complete the Project, the excess shall not be provided to the Grantee but shall remain with the Commission or

be returned to the Commission (if previously disbursed) within thirty (30) days of completion of the Project or thirty (30) days of the expiration of the Development Period, whichever is sooner. As used in this Agreement, "Development Period" shall mean the thirty-six (36) months immediately following the earlier of: (a) the date of the last disbursement of Grant proceeds by the Commission, or (b) two years following the date of this Agreement.

2. Payment of Grant Funds. The Grant will, subject to the terms of this Agreement, be disbursed on a reimbursement basis upon submission of a signed payment request form from the Grantee and adequate supporting documentation. Expenses incurred prior to the date of the Commission's approval of the Grant are not eligible for reimbursement. Prior to any disbursement, the Commission shall have on record documentation (resolution or minutes of Grantee appointing designee) from the Grantee designating the person or persons authorized to make a disbursement request. Reimbursement requests shall be submitted not more frequently than on a quarterly basis. Appropriate supporting documentation shall be attached to all reimbursement requests and may include, but is not limited to, invoices from goods purchased or services performed. The Commission may in its sole discretion refuse to make a disbursement if the documentation is not adequate or if it appears not to be within the budget parameters as set forth in the Application or the purposes described herein. The Commission in its sole discretion may refuse to disburse any funds to the Grantee if the Grantee has previously received a grant award and a final grant report for the previous amount received has not been submitted. By written request, the Grantee may request an advance of up to twenty-five percent (25%) of the total Grant if sufficient funds are not available to begin the Project. Approval of the request shall be in the sole discretion of the Commission and shall be available no earlier than ninety (90) days prior to the start of the Project. If the advance request is accepted, then the Grantee may be paid the balance of the Grant on a quarterly basis from adequate supporting documentation submitted for actual expenditures in the previous quarter. Additional requests for advances may be made based on projections of the next quarter's expenses and it shall continue to be within the discretion of the Commission to consider such advances.

3. Quality of Work. The Commission, its employees and agents shall have the right to inspect the Project from time to time with 10 days advance notice. Upon determination by the Commission that the quality of the work done and the progress toward completion of the Project is unsatisfactory, such determination shall be an "Event of Default" for which the remedy described in Section 8(a) shall apply.

4. Parties' Relationship. In connection with the award or the administration of the Grant, the Commission does not and shall not assume any liability for any financial or other obligations of the Grantee made to the Beneficiary or any other third parties, whether or not related to the Project. In addition to any other liabilities which may exist under this Agreement or pursuant to any agreement between the Grantee and the Beneficiary, the Beneficiary shall be directly liable to the Commission for any reimbursements, fees, penalties, Clawback (as described in Section 14 herein), or other financial obligations of the Grantee of any nature whatsoever which may arise from this Agreement. The Grantee shall provide written notice to all vendors, contractors and any other party retained to work on the Project that the Commission and the Commonwealth shall not be liable for the Project or any payment failure or other obligation related thereto. Said written notice shall provide that by accepting work on the Project, all such vendors, contractors and other parties release and relinquish the Commission, and the Commonwealth from any claim

which might otherwise be asserted, and that each party accepting such work thereby indemnifies and holds the Commission, its members, employees and agents harmless against any and all such obligations; and further, that if any action is brought against the Commission, its members, employees or agents, the party accepting such work shall be liable for all legal expenses and other costs related to such action. The Grantee and Beneficiary are and will be acting as independent contractors in the performance of this work, and they agree to be responsible, where found liable and to the extent covered by insurance or specified by statute, for the payment of those claims for loss, personal injury, death, property damage, or otherwise arising out of any act or omission of their employees or agents in connection with the performance of the Project. Nothing contained herein shall be deemed an express or implied waiver of the sovereign immunity of the Commonwealth of Virginia. The Grantee may elect to require additional consideration from the Beneficiary which shall be described in separate document, enforceable only if agreed to in writing by an authorized representative of the Beneficiary, and not by reference herein. The Grantee shall be responsible for enforcement of any restrictions described in such separate documents.

5. Recordkeeping; Audit. The Grantee shall maintain proper books of record and account in which accurate and timely entries shall be made in accordance with Generally Accepted Accounting Principles, consistently applied, of all their business and affairs for any period in which the Grantee expects to be a recipient of Commission funds. Grant funds received from the Commission shall be held in a segregated fund (the "Fund") and the Fund shall reflect all activity of the moneys received from the Commission for the Project, itemized by category of expenses in the same manner as in the budget as presented in the Application. The Grantee shall retain all invoices, bills, receipts, cancelled checks, and similar documentation to substantiate expenditures of Grant funds. All books of record and account and all records of receipts and expenditures of Grant funds as well as copies of the reports submitted to the Commission and supporting documentation shall be retained for at least four (4) years after the completion of the Project for which the Grant funds were used. The Commission, its employees and its agents shall have the right to make inspections and copies of the books and records of the Grantee and the Fund at any time or from time to time.

6. Intellectual Property. It is the express intention of the Parties to this Agreement that the ownership and benefit of any and all intellectual property generated or created as a result of the Project shall be subject to the conditions enumerated herein. For purposes of this Agreement, "intellectual property" ("IP") shall include all patents, copyrights and income-producing inventions, processes, writings, and other proprietary rights, whether or not patented or patentable or copyrighted or copyrightable, that (a) have an application of value such that its use, licensing, lease or sale generates revenue; and (b) are produced by the Beneficiary its successors, subsidiaries, assigns, or commonly controlled entities using funds awarded under this Grant. The Beneficiary shall notify the Commission within thirty (30) days of creation of any potentially patentable or copyrightable IP produced using funds awarded under this Grant and Beneficiary shall promptly thereafter take such steps as may be necessary to secure ownership rights in such IP. Any IP produced using funds awarded under this Grant shall be subject to a security interest in favor of the Commission as described in Section 9 of this Agreement.

7. Event of Default. The occurrence of one or both of the following events shall constitute an event of default (an "Event of Default") under the terms of this Agreement:

(a) IP is produced using funds awarded under the Grant, and such IP is used to generate gross revenue to the Grantee or the Beneficiary in excess of \$500,000, and

1. Full Completion (as defined below) has not occurred within the Tobacco Region and within the Development Period (öFull Completionö shall mean satisfactory performance by the Beneficiary of all promises, representations and measures of success proposed in the Application herein called öDeliverablesö) as reasonably determined by the Executive Director of the Commission; or
2. commercialization of such IP outside the Tobacco Region occurs during the Development Period without the prior written consent of the Executive Director of the Commission.

(b) a Purpose Breach occurs as defined in Section 13.

For the avoidance of doubt, it shall not be an Event of Default if no commercialization of the IP occurs within the Development Period and the Beneficiary has made its commercially reasonable efforts to do so, provided that no commercialization of IP produced using funds awarded under the Grant has occurred outside the Tobacco Region during the Development Period.

8. Remedies. Upon the occurrence of an Event of Default, the Commission shall, in addition to any other remedy available at law or in equity, have the following rights and remedies:

- a) Upon an Event of Default under Section 7(a)(1), the Commission may rescind the Grant by written notice to the Grantee and the Beneficiary, in which event the Beneficiary shall be obligated to repay to the Commission, within fifteen (15) days following receipt of such notice, an amount equal to all Grant disbursements received by the Beneficiary pursuant to this Agreement; provided, however, that in the event that partial performance of the Grant Conditions is achieved, the Beneficiary shall repay the Commission on a pro rata basis, and such pro rata repayment amount shall be based upon the level of completion of the Grant Conditions, as reasonably determined by the Executive Director of the Commission;
- b) Upon an Event of Default under Section 7(a)(2), the Commission may rescind the Grant by written notice to the Grantee and the Beneficiary, in which event the Beneficiary shall be obligated to pay to the Commission, within fifteen (15) days following receipt of such notice, an amount equal to: (1) the sum of all Grant disbursements received by the Beneficiary pursuant to this Agreement, plus (2) a penalty equal to one hundred percent (100%) of the total amount of the Grant (regardless of any disbursement).
- c) Upon a Purpose Breach, the Commission shall have the rights and remedies set forth in Section 13.

9. Grant of Security Interest. As full or partial security (as the case may be) for the performance of the Grantee's and Beneficiary's obligations under this Agreement, the Grantee and Beneficiary hereby pledge and grant to the Commission a continuing security interest in and to any and all IP produced using funds awarded under the Grant. In addition, the Grantee and Beneficiary hereby pledge and grant to the Commission a continuing security interest in all other

property, assets, rights, privileges and licenses of the Grantee and Beneficiary of every kind and description, real, personal or mixed, tangible and intangible, acquired with Grant funds, including the proceeds thereof (collectively, the "Collateral"). Neither the Grantee nor the Beneficiary shall further pledge, assign, transfer or otherwise grant a security interest in any of the Collateral without the prior consent in writing of the Commission, which approval shall not be unreasonably withheld. The Commission shall have the right to file such financing statements and continuation statements on its behalf, as secured party, and on behalf of the Grantee and Beneficiary, as debtors, as the Commission deems necessary to perfect a first lien on the Collateral and to maintain and preserve such perfected first lien as long as the Grantee's and Beneficiary's obligations with respect to the Grant remain outstanding. The Commission shall have the right to record a notice of its security interest in the Collateral acquired with the Grant, including but not limited to (a) with respect to patents and trademarks, in the United States Patent and Trademark Office, and (b) with respect to copyrights, in the United States Copyright Office. Nothing herein shall be construed to prevent or otherwise impede use by the Commission of any remedies which may otherwise exist at law or pursuant to the provisions of Sections 11 and 12 of this Agreement.

10. Annual Reports. The Grantee, with such assistance from the Beneficiary as may be mutually agreed to between the Grantee and the Beneficiary, shall submit to the Commission annual financial and narrative reports reflecting activity in the Fund and progress made towards completion of the Project. Annual financial reports shall be presented on the Commission's Grant Reporting Form. The Grantee's most recent audited financial statements shall be submitted with the annual financial report. Annual narrative reports shall indicate the progress made toward achieving the goals of the Grant and shall be submitted along with the financial information on the Commission's Grant Reporting Form. The narrative reports shall also provide full and complete information on the Collateral, including but not limited to, all information and records necessary to determine compliance with this Agreement. Annual reports shall be due one year from the date of this Agreement and annually thereafter until the Project is complete. The Commission reserves the right to make additional commercially reasonable requests for information to supplement the information provided in the Commission's Grant Reporting Form.

11. Final Report. The Grantee, with such assistance from the Beneficiary as may be mutually agreed to between the Grantee and the Beneficiary, shall provide a final financial and narrative report to the Commission within thirty (30) days of completion of the Project or thirty days of the expiration of the Development Period, whichever is sooner. The report shall contain the type of information contained in the Annual Reports, a narrative as to the success of the Project and a description of the long-term expectations for the Project. The Commission may withhold final disbursement of up to ten percent (10%) of the total Grant awarded until receipt of a final report that is in all respects satisfactory to the Commission. The Commission may, in its sole discretion, require additional reporting on the long-term achievements of the Project.

12. Interim Reports. In addition to the Annual Report and Final Report required by Sections 10 and 11 of this Agreement, the Commission may make commercially reasonable requests that additional or interim information be submitted. The Grantee, its employees and agents shall confer with the Commission, its employees and agents regarding such information upon request.

13. Misuse of Award and Rights of the Commission. In the event that the Grantee desires to use the Grant funds for any purpose outside of the Tobacco Region, the Grantee shall provide the Commission with written notice of such intended use outside of the Tobacco Region. The Grantee may use the Grant funds for such use outside of the Tobacco Region in the sole discretion of the Commission upon the receipt by Grantee of written notice of the Executive Director of the Commission approving such use outside of the Tobacco Region. If the Commission determines that any part of the Grant has not been used for the Project or for any other purpose approved in writing by the Executive Director of the Commission, or that the Grantee or Beneficiary has failed to comply with any material term or condition of this Agreement, including but not limited to the use of the Grant for any purpose outside of the Tobacco Region (a "Purpose Breach"), without approval by the Executive Director, the Commission may withhold any further payments to the Grantee and, in its sole discretion, may: (a) rescind the Grant by written notice to the Grantee and the Beneficiary, in which event the Beneficiary shall be obligated to repay and the Grantee return to the Commission, within thirty (30) days following receipt of such notice, an amount equal to all Grant payments received by the Grantee pursuant to this Agreement, plus (i) a fee equal to 100% percent of the Grant and (ii) interest from the date of receipt of the disbursed funds at the prime rate printed in the Wall Street Journal on the date of the notice; (b) require the Grantee to take action as the Commission may direct in order to recover any improperly used Grant funds, and to comply with any procedures that the Commission may direct in order to prevent further improper use; and/or (c) take any other action as necessary to preserve the integrity of the Commission funds and to preserve them for appropriate uses. The Commission may take such judicial action as is necessary to collect any amounts owed pursuant to this Section or as otherwise provided in this Agreement. The Grantee and Beneficiary, as applicable, shall on demand pay the Commission's reasonable attorneys' fees and actual costs incurred in the collection of funds or for the enforcement of any obligation of the Grantee or Beneficiary, appropriately allocated and as set forth in this Agreement. In the event any of the forgoing actions or remedies are taken or employed by the Commission to enforce its rights against the Grantee, the Grantee shall be subrogated to such rights of the Commission as against the Beneficiary.

14. Clawback. During the Development Period, the Commission retains an undivided equitable reversionary interest in all real property or tangible personal property acquired or improved with Grant funds. Such assets shall not be leased, sold, disposed of, used to secure a mortgage or deed of trust, or otherwise be used as collateral, or be encumbered without the prior written approval of the Commission. In the event that any such asset is disposed of without such approval, the Commission may (a) assert its interest in the asset to recover the Commission's share of the value of the asset, or (b) recover the same from the Grantee or Beneficiary, or (c) both (the "Clawback"). The amount of any such Clawback shall be limited to the amount of the Grant disbursed at the time the Commission's rights under this Section 14 are asserted; however, nothing contained herein shall be deemed a limitation on the Commission's remedies available under other provisions of this Agreement.

15. Future Funding. The Grant provided pursuant to this Agreement shall not be deemed to be an actual or implied promise to fund the Project except as provided for herein. No representation by the Commission, its employees, its agents or other representatives shall be binding unless set forth in writing and signed by the Executive Director of the Commission upon approval by the Commission. In addition to the other remedies provided by law or in this

Agreement, if the Grantee fails to comply with the terms of this Agreement, the Grantee shall not be entitled to additional funding for the Project.

16. Conditional Funding. In the event that the Grant awarded is contingent upon the happening of an event or events that have not been satisfied as of the date of this Agreement, the Commission may withdraw the Grant award if such events have not been substantiated with appropriate documentation satisfactory to the Commission within one (1) year of the date of this Agreement.

17. Limitation of Commission's Liability/Limitation of Grantee's Liability. Nothing herein shall be deemed to be a covenant, agreement or obligation of a present or future member of the Commission or of an employee or agent of the Commission. No member, employee or agent of the Commission or the Grantee shall incur any personal liability with respect to any action taken by him or her pursuant to this Agreement.

18. Force Majeure. Any delay in the performance of any of the duties or obligations of either party hereto (except the payment of money) shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay; *provided that* such delay has been caused by or is the result of any acts of God, acts of the public enemy, insurrections, riots, embargoes, labor disputes (including strikes, lockouts, job actions, or boycotts), fires, explosions, hurricanes, tornadoes, floods or other unforeseeable causes beyond the control and without the fault or negligence of the party whose performance is delayed. The party whose performance is delayed shall give prompt notice to the other party of such cause, and shall take whatever reasonable steps are necessary to relieve the effect of such cause as rapidly as possible.

19. Entire Agreement. This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters. No modification or revision of this Agreement will be valid and binding unless reduced to writing and signed by authorized signatories of all Parties.

20. Governing Law, Jurisdiction, Venue. This Agreement shall be governed by the laws of the Commonwealth of Virginia, without reference to its choice of law provisions. Any suit, action or proceeding arising out of or in connection with any dispute involving this Agreement, or the subject thereof will be subject to the jurisdiction of the courts of City of Richmond, Virginia, including, without limitation, the United States District Court for the Eastern District of Virginia, Richmond Division, or the Circuit Court of the City of Richmond, Virginia. The Grantee and Beneficiary irrevocably waive any objection that either or both may have at any time to the laying of venue of any suit, action or proceeding arising out of or relating hereto brought in any such court, irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum, and irrevocably waive the right to object, with respect to any such claim, suit, action or proceeding brought in any such court, that such court does not have jurisdiction over the Grantee or the Beneficiary.

21. Severability. If any provision of this Agreement shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof.

22. Public Documents. All reports, documents, financial data and other information provided to the Commission shall be public record except those that may be lawfully maintained as confidential under the Virginia Freedom of Information Act.

23. Expiration. At the conclusion of the Development Period, all undisbursed Grant funds shall be automatically rescinded, unless an extension is granted in writing by the Commission.

24. Termination. Unless terminated sooner pursuant to the provisions of this Agreement, this Agreement shall terminate, without delivery of any instrument or performance of any act by any Party, upon the first to occur of: (a) the mutual written consent of the Parties to terminate this Agreement; (b) the completion of all obligations of the Parties hereunder; or (c) at the expiration of the Development Period. Upon termination of this Agreement, the Beneficiary shall have the right to file such documents as may be reasonably necessary, including without limitation termination statements, to terminate any liens of the Commission against the Collateral pursuant to Section 9.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

**TOBACCO INDEMNIFICATION AND
COMMUNITY REVITALIZATION
COMMISSION**

By: _____
Name: Neal Noyes
Title: Executive Director

GRANTEE

By: _____
Name:
Title:

Grantee Information:

Address:

Phone:

BENEFICIARY

By: _____
Name:
Title:

Address:

Phone:

Federal ID: _____

