

ECIDA BUSINESS LOAN APPLICATION



A. BUSINESS SNAPSHOT

				\$	
NAME OF BUSINESS	YEARS IN BUSINESS	TAX ID NUMBER	ANNUAL SALES	NATURE OF BUSINESS	
STREET ADDRESS		CITY	ZIP CODE		
STRUCTURE OF YOUR BUSINESS		<input type="checkbox"/> LLC	<input type="checkbox"/> S CORP	<input type="checkbox"/> DBA	
<input type="checkbox"/> SOLE PROPRIETOR		<input type="checkbox"/> C CORP	<input type="checkbox"/> PARTNERSHIP	<input type="checkbox"/> OTHER _____	

B. LOAN HIGHLIGHTS

\$	+	\$	+	\$	=	\$
BANK AMOUNT		ECIDA AMOUNT		OTHER / EQUITY		TOTAL PROJECT

HOW DO YOU INTEND ON USING THE PROJECT FUNDS?

C. PERSONAL/GUARANTOR'S INFORMATION

#1

NAME		TITLE		DATE OF BIRTH		WORK PHONE	
HOME ADDRESS		CITY	STATE	ZIP	E-MAIL		
		\$	/mo. \$				
SOCIAL SECURITY NUMBER	HOW LONG AS OWNER?	GROSS INCOME	MONTHLY MORTGAGE/RENT PAYMENT		% OF OWNERSHIP		
\$	- \$		= \$				
PERSONAL ASSETS		PERSONAL LIABILITIES		PERSONAL NET WORTH			

#2

NAME		TITLE		DATE OF BIRTH		WORK PHONE	
HOME ADDRESS		CITY	STATE	ZIP	E-MAIL		
		\$	/mo. \$				
SOCIAL SECURITY NUMBER	HOW LONG AS OWNER?	GROSS INCOME	MONTHLY MORTGAGE/RENT PAYMENT		% OF OWNERSHIP		
\$	- \$		= \$				
PERSONAL ASSETS		PERSONAL LIABILITIES		PERSONAL NET WORTH			

D. PRIMARY LENDER INFORMATION

BANK OR LENDING INSTITUTE		BANKER OR CONTACT			
STREET ADDRESS		CITY	STATE	ZIP	PHONE
E-MAIL ADDRESS		WEB SITE www.			

E. ATTORNEY

FIRM		ATTORNEY			
STREET ADDRESS		CITY	STATE	ZIP	PHONE
E-MAIL ADDRESS		WEB SITE www.			

F. INSURANCE CONTACT INFORMATION

INSURANCE COMPANY		BROKER OR CONTACT			
STREET ADDRESS		CITY	STATE	ZIP	PHONE
E-MAIL ADDRESS		WEB SITE www.			

THE FOLLOWING CHECK LIST HAS BEEN PROVIDED TO ASSIST AND GUIDE YOU THROUGH THE ADDITIONAL DOCUMENTATION REQUIRED TO COMPLETE OUR PROCESS. TO THE EXTENT YOU'VE ALREADY PROVIDED ANY OF THESE TO YOUR BANK CHECK THE APPROPRIATE BOX OTHERWISE PLEASE ATTACH DOCUMENTS.

G. BUSINESS INFORMATION	ATTACHED	PROVIDED TO BANK
A) HISTORY AND NATURE OF BUSINESS	<input type="checkbox"/>	<input type="checkbox"/>
B) DESCRIBE THE OWNERSHIP OF YOUR BUSINESS	<input type="checkbox"/>	<input type="checkbox"/>
C) KEY MANAGEMENT PERSONNEL AND EXPERIENCE	<input type="checkbox"/>	<input type="checkbox"/>
D) PROVIDE A BRIEF PRODUCT OR SERVICES DECIPTION	<input type="checkbox"/>	<input type="checkbox"/>
E) WHO ARE YOUR MAIN COMPETITORS?	<input type="checkbox"/>	<input type="checkbox"/>
F) TELL US A LITTLE BIT ABOUT YOUR MARKET AREA	<input type="checkbox"/>	<input type="checkbox"/>
G) PROVIDE INFORMATION ON ANY KEY ACCOUNTS	<input type="checkbox"/>	<input type="checkbox"/>
H) PRIMARY SUPPLIERS (CONTACT AND PHONE #)	<input type="checkbox"/>	<input type="checkbox"/>
I) UNION RELATIONSHIP <input type="checkbox"/> NOT APPLICABLE	<input type="checkbox"/>	<input type="checkbox"/>
J) DESCRIPTION OF PLANT AND FACILITIES	<input type="checkbox"/>	<input type="checkbox"/>
K) EMPLOYMENT IMPACT (CURRENT AND 3 YEAR PROJECTION)	<input type="checkbox"/>	<input type="checkbox"/>
L) ACCOUNTING PROFESSIONAL CONTACT INFORMATION	<input type="checkbox"/>	<input type="checkbox"/>

H. FINANCIAL INFORMATION	ATTACHED	PROVIDED TO BANK
A) PROVIDE FINANCIAL STATEMENTS FOR THE LAST THREE (3) YEARS	<input type="checkbox"/>	<input type="checkbox"/>
B) PROVIDE A COPY OF YOUR FED. TAX RETURN FOR THE LAST (3) YEARS	<input type="checkbox"/>	<input type="checkbox"/>
C) INTERIM FINANCIAL STATEMENTS FOR BORROWER	<input type="checkbox"/>	<input type="checkbox"/>
D) SHAREHOLDERS PERSONAL FINANCIAL STATEMENTS	<input type="checkbox"/>	<input type="checkbox"/>
E) CREDIT AUTHORIZATION LETTER	<input type="checkbox"/>	<input type="checkbox"/>
(PLEASE REFER TO COPY AT http://www.ecidany.com/documents/due_diligence_letter.pdf)		
F) PROVIDE A SOURCES AND USES OF FUNDS STATEMENT	<input type="checkbox"/>	<input type="checkbox"/>

I. PROJECTIONS	ATTACHED	PROVIDED TO BANK
A) THREE (3) YEARS PROJECTED YEAR-END PROFIT AND LOSS STATEMENT	<input type="checkbox"/>	<input type="checkbox"/>
B) THREE (3) YEARS PROJECTED YEAR-END BALANCE SHEETS	<input type="checkbox"/>	<input type="checkbox"/>
C) OTHER FINANCIAL INFORMATION AS DEEMED NECESSARY	<input type="checkbox"/>	<input type="checkbox"/>

J. SIGNATURES

I UNDERSTAND THAT THE CREDIT REPORT AND NYS GOOD STANDING CERT. FEES SUBMITTED WITH THIS APPLICATION ARE NON-REFUNDABLE. I AGREE TO PAY ALL EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEY FEES, MORTGAGE TAXES, RECORDING AND FILING FEES AND COLLECTION OR WORKOUT COSTS OF ANY KIND INCURRED IN NEGOTIATING OR EXTENDING CREDIT TO THE COMPANY.

By signing below, I am authorizing my bank (as identified on this application) to release any and all documentation relating to this loan request to the Erie County Industrial Development Agency for their consideration in granting this loan.

AUTHORIZED SIGNER	TITLE	DATE
PERSONAL/GUARANTOR #1	PERSONAL/GUARANTOR #1	DATE

K. BORROWERS ACKNOWLEDGEMENT AND SIGNATURES

_____ (APPLICANT'S NAME OR NAME OF CHIEF EXECUTIVE OFFICER OR OTHER AUTHORIZED REPRESENTATIVE OF APPLICANT, IF ANY) DEPOSES AND SAYS THAT HE/SHE IS THE _____ (TITLE) OF _____ (NAME OF CORPORATION OR OTHER ENTITY IF APPROPRIATE) NAMED IN THIS APPLICATION (THE "APPLICANT"), THAT HE/SHE HAS READ THE FOREGOING APPLICATION AND THE ATTACHMENTS AND KNOWS THE CONTENTS THEREOF, AND HEREBY REPRESENTS, UNDERSTANDS, AND OTHERWISE AGREES THAT THE APPLICANT AND THE INDIVIDUAL EXECUTING THE APPLICATION ARE AWARE OF AND WILL COMPLY WITH THE FEDERAL STATUTORY AND REGULATORY REQUIREMENTS THAT APPLY TO ACTIVITIES CARRIED OUT WITH ANTICIPATED LOAN PROCEEDS.

*** SHOULD THERE BE MORE THAN 2 PERSONAL GUARANTORS, PLEASE ATTACH THEIR INFORMATION SEPARATELY**



ADDENDUM TO LOAN APPLICATION

BORROWERS ACKNOWLEDGMENT AND SIGNATURES

_____ (applicant's name or name of chief executive officer or other authorized representative of applicant, if any) deposes and says that he/she is the _____ (title) of _____ (name of corporation or other entity if appropriate) named in this Application (the "Applicant"), that he/she has read the foregoing Application and the attachments and knows the contents thereof, and hereby represents, understands, and otherwise agrees that the Applicant and the individual executing the Application are aware of and will comply with the Federal statutory and regulatory requirements that apply to activities carried out with anticipated loan proceeds.

ERIE COUNTY REVOLVING LOAN FUND

APPLICATION ATTACHMENT

ACKNOWLEDGMENT OF AWARENESS OF AND COMPLIANCE WITH FEDERAL STATUTORY AND REGULATORY REQUIREMENTS

Throughout the duration of the loan, Borrowers must comply with all requirements of Federal, State and local laws including the applicable provisions of:

- Public Works and Economic Development Act of 1965 (42 U.S.C. §1321 et seq.) as amended, regulations issued pursuant thereto, and such directives and instructions as may be issued from time to time by the Economic Development Administration (“EDA”); and
- Housing and Community Development Act of 1974 (42 U.S.C. Ch. 69 et al.) as amended, regulations issued pursuant thereto, and such directives and instructions as may be issued from time to time by the U.S. Department of Housing and Urban Development (“HUD”); and
- all other Federal, State and local laws, rules and regulations applicable to its activities, including:

1. **Flood Insurance:** Borrower shall not use any of the proceeds of the Loan for the reconstruction, repair, or improvement of any publicly or privately owned building, or for machinery, equipment, fixtures, and furnishings contained or to be contained therein without complying with the requirements of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 42 U.S.C. §4001 et seq.) and the regulations of EDA (13 CFR §309.5), as applicable.

None of the proceeds of the Loan shall be used, directly or indirectly, for acquisition or construction purposes if the Project is located in a designated special flood hazard area in which flood insurance is available, without the purchase of flood insurance. For purposes of this requirement, acquisition or construction purposes means any acquisition, construction, reconstruction, repair, or improvement of any building, and for machinery, equipment, fixtures, and furnishings contained therein. Borrower is subject to the Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 42 U.S.C. §4001 et seq.) and the regulations thereunder (24 CFR Ch. X, Subchapter B).

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or

improved with assistance provided from the proceeds of the Loan shall contain, if such land is located in the area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under section 102(a) of the Flood Disaster Protection Act of 1973. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided from the proceeds of the Loan.

2. **Non-discrimination:** Borrower shall comply with the non-discrimination policies of the Federal Government as expressed in:

(i) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352, 42 U.S.C. §2000d), and the regulations issued pursuant thereto (15 CFR, Subtitle A, Part 8 and 24 CFR Part 1, as applicable), which provide that no person in the United States shall on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant received Federal financial assistance, and Executive Orders 11.114, 11246, and 11375; and

(ii) Section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. §5309), and the regulations issued pursuant thereto (24 CFR §570.601), which provide that no person in the United States shall, on the grounds of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with HUD community development funds made available pursuant to 24 CFR Part 570; and

(iii) Section 112 of Pub. L. 92-65, of the Public Works and Economic Development Act of 1971 (42 U.S.C. §3123), which provides that no person in the United States shall, on the ground of

sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving assistance from EDA; and

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) which provides that no otherwise qualified handicapped individual in the United States, shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and the implementing regulations of the Department of Commerce in 15 CFR 8b, prohibiting discrimination against and providing fair and equitable treatment of the handicapped under programs or activities receiving Federal financial assistance; and

(v) Section 402 of the Vietnam Era Veterans Readjustment Assistance Act (38 U.S.C. Chapter 42) and all regulations promulgated with respect thereto. No person in the United States shall on the ground of race, color, creed, religion, national origin, sex, disability, or because he or she is a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program, activity, or service receiving Federal financial assistance; and

(vi) Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), which prohibits discrimination on the basis of sex under federally-assisted education programs or activities;

(vii) The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation; and

(viii) Regulations issued pursuant to the Age Discrimination Act of 1965 (42 U.S.C. 6101, et seq.) (15 CFR Part 20); and

(ix) 13 CFR Part 311 imposing civil rights requirements on recipients and such other civil rights legislation as is applicable.

Borrower shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability or because he or she is a disabled veteran or veteran of the Vietnam era. Borrower shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, disability or because he or she is a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Borrower shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this nondiscrimination clause. Borrower shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, disability or because he or she is a disabled veteran or veteran of the Vietnam era. Borrower shall incorporate the foregoing requirements of the paragraph in all of its contracts for work under the Loan, except contracts for construction work, or modification thereof, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for work under the Loan.

Borrower shall keep such records and submit to Lender timely, complete and accurate compliance reports at such times and in such form and containing such information as Lender may determine to be necessary to enable him to ascertain whether Borrower or such other party has complied or is complying with 15 CFR Part 8.

3. **Environmental Laws:** Borrower shall comply with applicable standards, orders and regulations including but not limited to those issued pursuant to National Environmental Policy Act of 1969 (42 U.S.C. §4321 et seq.) as amended, as implemented by the regulations of the President's Council on Environmental Quality (40 CFR Parts 1500- 1508); Clean Air Act of 1970 (42 U.S.C. §7401 et m.) as amended, and Executive Order 11738; Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) as amended; National Historic Preservation Act of 1966 (16 U.S.C. §470) as amended and regulations at 36 CFR Part 800; Archeological and Historic Preservation Act of 1974 (16 U.S.C. §469), Executive Order 11593, including

the procedure prescribed by the Advisory Council on Historic Preservation in 36 CFR Part 8001 and Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.); the Coastal Zone Management Act of 1972, P.L. 92-583, as amended (16 U.S.C. 1451, et seq.); Executive Order 11988, Floodplain Management (May 24, 1977), and regulations and guidelines issued thereunder by the Economic Development Administration; Executive Order 11990, Protection of Wetlands (May 24, 1977); the Endangered Species Act of 1973, P.L. 93-205, as amended (16 U.S.C. 1531, et seq.); the Safe Drinking Water Act, P.L. 93-523, as amended (42 U.S.C. 300f-300j-9); the Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271, et seq.); the Resource Conservation Act of 1976, P.L. 94-580, as amended (42 U.S.C. 6901); the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), F.L. 96-510, as amended by Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 6091, et seq.); Coastal Barriers Resources Act, F.L. 97-348 (16 U.S.C. 3501, et seq.); the Fish and Wildlife Coordination Act, as amended, (16 U.S.C. § 661 et seq.); the Endangered Species Act of 1973, as amended, (16 U.S.C. § 1531 et seq.); the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") (42 U.S.C. § 9601 et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9662 et seq.); the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. § 6901 et seq.); the Farmland Protection Policy Act, as amended, (7 U.S.C. §§ 4201 — 4209); the Noise Control Act of 1972, as amended, (42 U.S.C. § 4901 et seq.); the Native American Graves Protection and Repatriation Act, as amended, (25 U.S.C. § 3001 et seq.); and all state and local environmental review requirements with all applicable Federal, state and local standards.

In accordance with regulations of the Environmental Protection Agency ("EPA") (40 CFR Part 15), Borrower specifically agrees to the following:

(a) that any facility to be utilized in the accomplishment of the project is not listed on the Environmental Protection Agency's List of Violating Facilities pursuant to 40 CFR Part 15.20; and

(b) that in the event a facility utilized in the accomplishment of the project becomes listed on the EPA List, Lender may, *inter alia*, cancel, terminate for default, or suspend such failure, in whole or in part, the Loan; and

(c) that Borrower will comply with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Act relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in Section 114 and Section 308, respectively, and all regulations and guidelines issued thereunder; and

(d) that Borrower will promptly notify Lender of the receipt of any notice from the Directory, Office of Federal Activities, EPA, indicating that any facility utilized or to be utilized in the accomplishment of the project is under consideration for listing on the EPA List of Violating Facilities; and

(e) that Borrower will insert in any of its contracts and require insertion in subcontracts entered into for the purpose of accomplishing the project, unless otherwise exempted pursuant to the EPA regulations implementing the Air or Water Act (40 CFR Part 1 5.5) provisions which shall include the criteria and requirements set forth in this paragraph, including this subparagraph (b) (v); and

(f) that in the event that either Borrower or its contractors or the latter's subcontractors for the construction, supply and service contracts entered into by Borrower for the purposes of accomplishing the project were exempted from complying with the above subdivisions of 40 CFR Part 15.5(a), the exemption shall be nullified should the facility give rise to a criminal conviction (see 40 CFR Part 15.20) during the accomplishment of the project. Furthermore, with the nullification of the exemption, the above subdivisions shall be effective. Borrower shall notify Lender as soon as Borrower's, its contractor's, or the latter's subcontractors' facility is listed for having given rise to a criminal conviction noted in 40 CFR Part 15.20; and

(g) in no event shall any amount of the assistance provided under the Loan be utilized with respect to a facility which has given rise to a conviction under section 113(c) (1) of the Clean Air Act or section 309(c) of the Federal Water Pollution Control Act; and

(h) the term "facility" means: (A) any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations (B) owned, leased, or supervised (C) by Borrower or its contractors and/or the latter's subcontractors (D) for

the construction, supply and service contracts entered into by Borrower for the purpose of accomplishing the project.

Additionally, Borrower shall provide any environmentally related data relating to Borrower, including, without limitation, engineering and architectural design, internal plant processes and available pollution abatement equipment.

4. **Section 3 Compliance:** Certain of the funds advanced under the Loan have been provided under a program providing direct Federal financial assistance from HUD, and all uses of all or any part of the Loan are subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. §1701(u). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

Borrower and any parties to any contract using all or any part of the Loan will comply with the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Exhibit A. Borrower and any parties to any contract using all or any part of the Loan certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

The contractor (that is, Borrower or any other entity performing work in connection with a section 3 covered project) will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers representative of his commitments under this section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

The contractor will include the provisions of this section in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in

violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

Compliance with the provisions of section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

5. **Books and Records:** Borrower will give Lender through any authorized representatives access to and the right to examine all records, books, papers, or documents related to Borrower or the Loan. Said access shall continue to the end of a period of three years beginning with the date of submission of Lender's final expenditure report or until audit findings have been resolved.

6. **Conflict of Interest:**

(a) No member of or Delegate to the Congress of the United States, and no Resident Commissioner, shall be admitted to any share or part of the Loan or Loan agreements or to any direct or indirect benefit to arise from the proceeds of the Loan.

(b) No member, officer, or employee of Lender or its designees or agents, or person related to the officer, employee, or member of the Board of Directors by blood, marriage, law, or business arrangement, no member of the governing bodies of the locality in which the Loan is incurred, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Loan during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract, or the proceeds thereof, for work to be performed in connection with the Loan.

(c) No officer, employee or member of the Lender's Board of Directors, or person related to the officer, employee or member of the Board by blood, marriage, law or business arrangement shall receive any benefits resulting from the use of loan proceeds, unless the officer, employee or Board member affected first discloses to the Lender on the public record the proposed or potential benefit and receives the Lender's written determination that the benefit involved is not so substantial as to affect the integrity of the Lender's decision process and of the services of the officer, employee or board member.

(d) No Loan shall be made to a business entity if the owner of such entity is related by blood, marriage, law or business arrangement to any officer or employee of the Lender or any member of the Lender's Board of Directors, or a member of any other Board (hereinafter referred to as "other Board") which advises, approves, recommends or otherwise participates in decision concerning loans or the use of grant funds.

(e) No Borrower or prospective Borrower shall give to any officer, employee or board member of the Lender, directly or indirectly, any gift, gratuity, favor, entertainment or any other thing of monetary value.

(f) Former board members and/or officers of the Lender are ineligible to apply for or receive a Loan for a period of one year from the date of termination of his/her services.

(g) The Borrower, contractor and/or subcontractor shall not sub-grant or subcontract the approved project in whole or in any part to any agency of the Department of Commerce. The Borrower, contractor and/or subcontractor, shall not sub-grant or subcontract any part of the approved project to any other Federal department, agency or instrumentality, without the advance written approval of the EDA.

7. **Approval Fees:** The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of obtaining HUD approval of the application for such assistance, or HUD approval of the application for such assistance, or any other approval or concurrence of HUD, if required, in connection with the Loan or this Agreement or under Title I of the Housing and Community Development Act of 1974 or HUD regulations with respect thereto.

8. **Covenants:** Borrower shall, by contractual requirement, covenant, or other binding commitment, assure the compliance with the covenants provided in Exhibit A on the part of any contractor, subcontractor, transferee, successor in interest or other participant in any act pursuant to the use of the Loan proceeds.

9. **Beneficiaries:** The obligations of Borrower to comply with the covenants herein provided shall inure to the benefit of the United States, HUD, EDA, County of Erie, Erie County Industrial Development Agency and Lender, any of which shall be entitled to invoke any remedies available by law to redress any breach thereof or to compel compliance therewith by Borrower or contractor, subcontractor, transferee, successor in interest or other participant, as applicable.

10. **Hatch Act:** Borrower will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment is funded in whole or in part with Federal funds.

11. **Criminal and Prohibited Activities:** Borrower will comply with the provisions of the Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812) which provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money (including grants, loans, or other benefits); the Criminal False Claims Act and the False Statements Act (18 U.S.C. §§ 287 and 1001) which provides for criminal prosecution of a person who knowingly makes or presents any false, fictitious, or fraudulent statements or representations or claims against the United States; the Civil False Claims Act (31 U.S.C. § 3729) which provides that suits under this Act can be brought by the Federal Government, or a person on behalf of the Federal Government, for false claims under federal assistance programs; and the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 276c), which prohibits a person or organization engaged in a federally-supported Project from enticing an employee working on the Project from giving up a part of his compensation under an employment contract.

12. **Travel:** Borrower will comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131 — 301-10.143.

13. Lobbying Restrictions: Borrower acknowledges that the Loan is subject to Section 319 of Public Law 101-121, which added Section 1352, regarding lobbying restrictions, to Chapter 13 of Title 31 of the United States Code. The new section is explained in the common rule, 15 CFR Part 28 (55 FR 6736-6748, 2/26/90). The Borrower and its contractors and subcontractors are generally prohibited from using Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this Loan.

Any Borrower receiving a loan from Lender exceeding \$100,000 of Federal funds and any contractor or subcontractor of any Borrower entering into a contract or subcontract funded with the Loan proceeds exceeding 100,000 of Federal Funds, and any contractor or subcontractor of any Borrower entering into a contract or subcontract funded with Loan proceeds exceeding \$100,000 of Federal funds, shall file Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions and Lobbying" and Standard Form-LLL, "Disclosure of Lobbying Activities" regarding the use of any nonfederal funds for lobbying.

Any Borrower, contractor or subcontractor that is subject to the foregoing certification and disclosure provision is required to file a disclosure form within 15 days of the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person.

14. Construction: If the proceeds of the Loan are to be used for the construction of any type facility (Project) the following additional covenants shall apply:

- Timing: No part of the construction of the Project has been commenced prior to the date of the commitment letter of Lender to Borrower.
- Employment Conditions:

(a) When any related construction contract exceeds \$2,000.00, all laborers and mechanics employed by contractors or subcontractors in the construction of the Project shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the

Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5). The construction work on the Project will be subject to the regulations issued by the Secretary of Labor pursuant to the Davis-Bacon Act (29 CFR Part 5).

(b) Contractors and subcontractors engaged in construction of the Project are subject to the provisions of the Copeland Act, as amended (40 U.S.C. 276c) and the regulations by the Secretary of Labor (29 CFR Parts 3 and 5).

(c) Contractors and subcontractors engaged in construction of the Project are subject to the provisions of the Contract Work Hours and Safety Standards, as amended (40 U.S.C. 327-333) and the regulations issued thereunder by the Secretary of Labor (29 CFR Part 5), and with the Anti-Kickback Acts, as amended (40 U.S.C. 276(c); 18 U.S.C. 874).

(d) Except with respect to the rehabilitation of residential property designed for residential use for less than eight (8) families, Borrower and all contractors engaged under contracts in excess of \$2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with proceeds of the Loan, shall comply with HUD requirements pertaining to such contracts and the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 3, 5 and 5a, governing the payment of wages and the ratio of apprentices and trainees to journeymen: Provided, that if wage rates higher than those required under such regulations are imposed by state or local law, nothing hereunder is intended to relieve Borrower of its obligations, if any, to require payment of the higher rates. Borrower shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of 29 CFR 5.5 and, for such contracts in excess of \$10,000, 29 CFR 5a.3.

(e) No award of the contracts covered under these provisions shall be made to any contractor who is at the time ineligible under the provisions of any applicable regulations of the Department of Labor to receive an award of such contract.

- Handicapped Accessibility: Any building or facility financed in whole or in part with proceeds of the Loan which is intended for use by the public or for employment of the

physically handicapped, must be accessible to the physically handicapped, as required by Pub. L. 90-480, as amended (42 U.S.C. 4151-41.56), the regulations promulgated thereunder (41 CFR Subpart 101-9.6) and the regulations of EDA (13 CFR §309.14).

- Paint: If the Project includes a residential structure which is being constructed or rehabilitated, no paint shall be used on applicable surfaces in excess of those percentages as required by the Lead-based Paint Poisoning Prevention Act, Pub. L. 94-317 (42 U.S.C. 4831). The restriction against the use of lead-based paint shall be included in all contracts and subcontracts involving the use of Federal funds.
- Earthquake Requirements: The Borrower shall comply with the Earthquake Hazards Reduction Act of 1977, (Public Law 95-124), as amended (42 U.S.C. 7704, et seq.) and Executive Order 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction" for the design of newly constructed building.
- Non-discrimination: Borrower shall comply with Part III of Executive Order 11246, as amended, requiring non-discrimination in federally assisted construction contracts.

(f) Borrower shall cause or require to be inserted in full in any non-exempt contract and subcontract for construction work, or modification thereof, as defined in 24 CFR Part 130, which is paid for in whole or in part with assistance provided under the Loan, the following equal opportunity clauses:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training; including

apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative or workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules and regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contract procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1)

through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of the Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

(a) Each non-exempt prime contractor or subcontractor shall include the equal opportunity clause in each of its non-exempt subcontracts.

(b) Borrower shall require any non-exempt prime contract, as provided in 41 CFR §60-1.40, to develop a written affirmative action compliance program, as defined by said regulation and 41 CFR Part 60-2 and to otherwise comply with 41 CFR Part 60-4 as applicable.

(c) In the sale, lease or other transfer of land acquired, cleared or improved with the proceeds of the Loan, Borrower shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer prohibiting discrimination upon the basis of race, color, religion, sex or national origin, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon, and providing that Lender, County of Erie, and United States are beneficiaries of and entitled to enforce such covenant.

Dated as of _____, 20____
Borrower: _____
By: _____
Name: _____
Title: _____

ADDITIONAL REPRESENTATIONS/CERTIFICATIONS

So long as the Loan shall be effective, Borrower represents and certifies that:

Operations: All of Borrower's facilities

shall be properly and efficiently administered, operated and maintained.

Employment Practices: Borrower intends to give preferential consideration for employment, whenever possible, to the long term unemployed and underemployed residing in the project area, in connection with the project or uses assisted by EDA funding.

Employment Increase: Increased employment at Borrower's facilities will result from the making of the Loan.

Airfield: Borrower has no interest in, and no portion of the Loan will be expended in, public or privately owned land adjacent to or in the vicinity of a federally owned or operated airfield.

Relocation: Borrower did not relocate within 24 months of applying for assistance from Lender.

Erroneous Certification Notification: Borrower shall provide immediate notification to the Lender if at any time Borrower learns that its certification, Form CD-5.11, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirement and Lobbying" was erroneous when submitted or has become erroneous by reason of changed circumstances.

Seat Belt Usage: Pursuant to Executive Order 13043, Borrowers should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally-owned vehicles.

Buy American: Borrower, to the greatest extent possible, will purchase American-made equipment and products with funding provided under this loan

Drug Free Workplace: Borrower agrees to provide a drug-free workplace as defined but the Controlled Substances Act (21 U.S.C. 812) and 21 CFR 1308.11.

Borrower will comply with all requirements imposed by the Federal sponsoring agencies concerning special requirements of law, program requirements and other administrative requirements, not limited to those stated above.