

Please return to:
City Attorney's Office
P.O. Box 1110
Gainesville, FL 32602

AGREEMENT AND MORTGAGE

WHEREAS, the City of Gainesville (hereinafter called "Mortgagor") has applied to, received and accepted from the United States Department of Commerce, Economic Development Administration (EDA) a grant in the amount of Two Hundred Seventy Thousand Dollars (\$270,000 Grant Amount) pursuant to a Financial Assistance Award dated September 11, 2000, and bearing EDA Project No. 04-01-04729 (the Project); and

WHEREAS, the total project is estimated to cost \$811,800; and

WHEREAS, pursuant to the application filed by Mortgagor requesting said grant and pursuant to the Financial Assistance Award, the Grant Amount is to be used for the purpose of funding an overrun on EDA Project No. 04-11-04392 which will construct a building for use as a technology incubator on the real property described in Exhibit "A", attached hereto and made a part hereof (the Property); and

WHEREAS, any transfer or conveyance of a project by an EDA Recipient must have the prior written approval of EDA. However, EDA, under authority of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. Section 3121, is not authorized to permit transfer or conveyance of a project to parties which are not eligible to receive EDA grants unless EDA is repaid its share of the fair market value of the project or unless the authorized purpose of the EDA grant is to develop land in order to lease it for a specific use, in which case EDA may authorize a lease of the project if certain conditions are met; and

WHEREAS, the aforesaid grant from EDA provides that the authorized purpose for which the Grant Amount may be used is to develop and improve the Property in order to lease it for a specific use while further providing, inter alia, that Mortgagor will not sell, mortgage, or otherwise use or alienate any right to, or interest in the Property, (other than by a lease which has been previously approved by EDA), or use the Property for purposes other than and different from those purposes set forth in the Financial Assistance Award and the application made by Mortgagor therefor, such alienation or use being prohibited by 13 CFR Part 314, 15 CFR Part 24 or by Office of Management and Budget Circular A-110, Attachment N, (the OMB Circular); and

WHEREAS, at this time, Mortgagor and EDA desire to establish a value for EDA's share of the Project in the event that the Property is used, transferred or alienated in violation of the Financial Assistance Award, applicable OMB Circular, 13 CFR Part 314 or 15 CFR Part 24;

NOW THEREFORE, Mortgagor does hereby grant and convey unto EDA, its successors and assigns, a mortgage on said Property to secure a debt that shall become due and payable by Mortgagor to EDA upon the use, transfer or alienation of the Property in violation of the Financial Assistance Award or in violation of the regulations set forth in 13 CFR Part 314, 15 CFR Part 24 or the

THIS INSTRUMENT PREPARED BY:

JERRY C. FOSTER, REGIONAL COUNSEL, EDA
401 W. PEACHTREE STREET, N. W., SUITE 1820
ATLANTA, GEORGIA 30308-3510

applicable OMB Circular, as such Financial Assistance Award, regulations or Circular may be amended from time to time; provided, however, that the lien and encumbrance of this AGREEMENT AND MORTGAGE shall terminate and be of no further force and effect 20 years from the date hereof, which period of years has been established as the useful life of the improvements to the Property. The amount of the lien, encumbrance and debt created by this Agreement shall be the Grant Amount or the amount actually disbursed or an amount determined pursuant to 13 CFR Part 314. Mortgagor does hereby acknowledge that said debt shall accrue and be due and payable upon any use, transfer, or alienation prohibited by the Financial Assistance Award, applicable OMB Circular, 13 CFR Part 314 or 15 CFR Part 24, and does, moreover, agree that such debt shall be extinguished only through the full payment thereof to the United States.

The Mortgage and the underlying debt, and any interest thereon, if any, shall not be deemed to constitute a general debt, liability or obligation of the Mortgagor, or a pledge of the faith and credit of the Mortgagor, but shall be payable solely from the Property, and the Mortgagor is not obligated to pay the debt or any interest thereon except from the revenues and proceeds from the Property and neither the faith and credit nor the taxing power of the Mortgagor is pledged to the payment of the debt or any interest thereon.

Mortgagor further covenants and agrees as follows:

1. Lease of Property:

If the Grant Application and Financial Assistance Award authorizes Mortgagor to lease the Property, each lease arrangement shall be subject to the prior written approval of EDA. Prior to EDA granting said approval, it must be satisfied inter alia, that said lease arrangement is consistent with the authorized general and special purpose of the grant; that said lease arrangement will provide adequate employment and economic benefits for the area in which the Property is located; that said lease arrangement is consistent with EDA policies concerning, but not limited to, non-discrimination, nonrelocation and excessive profits and that the proposed Lessee is providing adequate compensation to Mortgagor for said lease. Any Lease Agreement entered into by Mortgagor of the Property shall be subordinate, junior and inferior to this AGREEMENT AND MORTGAGE.

2. Charges; Liens:

Mortgagor shall protect the title and possession of the Property, pay when due all taxes, assessments, and other charges, fines and impositions now existing or hereafter levied or assessed upon the Property and preserve and maintain the priority of the lien hereby created on the 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 the 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. Any insurance proceeds received by Mortgagor due to loss shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, Mortgagor shall use said insurance proceeds to compensate EDA for its

fair share. EDA's fair share shall be a percentage of said insurance proceeds equal to its grant percentage in the total cost of the grant program for which the damaged or destroyed real property was acquired or improved.

4. Preservation and Maintenance of the Property:

Mortgagor shall keep the Property in good condition and repair and shall not permit or commit any waste, impairment, or deterioration of the Property.

5. Inspection:

EDA may make or cause to be made reasonable entries upon and inspection of the Property.

6. Condemnation:

The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for any conveyance in lieu of condemnation shall be used by Mortgagor to compensate EDA for its fair share. EDA's fair share shall be a percentage of said condemnation proceeds equal to its grant percentage in the total cost of the grant program for which the condemned property was acquired or improved.

7. Forbearance by EDA Not a Waiver:

Any forbearance by EDA in exercising any right or remedy hereunder, or otherwise affordable by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder.

8. Recording of Mortgage - Mortgagor's Copy:

Mortgagor shall record this AGREEMENT AND MORTGAGE in the County where the Property is located, thereby securing to EDA an estate in the Property. Mortgagor shall be furnished a conformed copy of this Mortgage at the time of execution or after recordation thereof.

9. Remedies Cumulative:

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

10. Notice:

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

11. Remedies:

Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this AGREEMENT AND MORTGAGE, EDA, its designees, successors or assigns may declare the entire indebtedness secured hereby immediately due, payable and collectible. This AGREEMENT AND MORTGAGE may be enforced by the Secretary of Commerce of the United States of America, the Assistant Secretary of Commerce for Economic Development or their designees, successors or assigns, by and through a foreclosure 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 waiver of the aforesaid debt or of any possible further or additional action to recover repayment thereof.

After any breach on the part of Mortgagor, EDA, its designees, successors or assigns shall, upon bill filed or the proper legal proceedings being commenced for the foreclosure of this 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 the Property, with power to lease and control the Property, and with such other powers as may be deemed necessary.

12. Governing Law; Severability:

This AGREEMENT AND MORTGAGE shall be governed by applicable Federal law and nothing contained herein shall be construed to limit the rights the EDA, its designees, successors or assigns is entitled to under applicable Federal 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.

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

ATTEST: _____
City of Gainesville, Florida
Mortgagor

By: Paul M. DeBruy
Its: Mayor

Title: Clerk of the Commission

Approved: [Signature]
Attorney for Mortgagor
NOV 29 2000

STATE OF FLORIDA
COUNTY OF _____

I hereby certify that on this day before me _____, a Notary Public authorized in the State and County aforesaid to take acknowledgments, personally appeared _____, to me known to be the person described in and who executed the foregoing instrument as _____ of _____, and acknowledged before me that he executed the same as such officer in the name of and on behalf of said _____.

Witness my hand and official seal in the County and State last aforesaid this _____ day of _____, 19_____.

Notary Public

My Commission Expires _____

"EXHIBIT A"

LOT 105 NEW GAINESVILLE PLAT BOOK "A", PAGE 66 TAX PARCEL NO. 1340-000-000. LOT 105 LESS WEST 20 FEET FOR RIGHT OF WAY, NEW GAINESVILLE, A SUBDIVISION AS PER PLAT BOOK "A", PAGE 66, OF THE PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA.

LOT 106 NEW GAINESVILLE PLAT BOOK "A" PAGE 66 TAX PARCEL NO. 11341-000-000. THAT PORTION OF LOT 106, NEW GAINESVILLE, AS PER THEREOF RECORDED IN PLAT BOOK "A", PAGE 66, OF THE PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA, LYING SOUTH AND WEST OF STATE ROAD NO. 20; LESS THAT PART CONVEYED TO THE CITY OF GAINESVILLE IN O.R. BOOK 2084, PAGE 2793.