

**MICHIGAN BUSINESS DEVELOPMENT PROGRAM**  
**LOAN AGREEMENT**

THIS LOAN AGREEMENT is executed this 11th day of April, 2013 ("Effective Date"), by and between the Michigan Strategic Fund, a public body corporate and politic within the Department of Treasury of the State of Michigan, whose address is 300 North Washington Square, Lansing, Michigan 48913 ("Lender"), and Southwest Michigan First Corporation, a Michigan nonprofit corporation, whose address is 241 East Michigan Avenue, Kalamazoo, Michigan 49007 ("Borrower").

**Recitals:**

A. Act 250 amended the Michigan Strategic Fund Act (MCL 125.2001 et seq.) to add Section 88r, to enable Lender to create and operate the Michigan Business Development Program ("MBDP") which provides incentives in the form of grants, loans and other economic assistance to qualified businesses that make qualified investments or create qualified new jobs in the State of Michigan.

B. On December 21, 2011, the Michigan Strategic Fund Board ("MSF Board") of Lender established the MBDP.

C. The Borrower submitted to Lender an Application for Incentive Assistance under the MBDP dated January 22, 2013.

D. On March 27, 2013, the MSF Board approved a performance based loan to the Borrower under the MBDP to assist Borrower in the financing of the Project (hereinafter defined) in an amount up to Four Million Dollars (\$4,000,000).

E. Lender, in reliance on Borrower's representations and information provided to Lender, desires to make such credit facility available to Borrower on the terms and conditions hereinafter set forth.

F. The Borrower desires to obtain the Loan to make a qualified investment to the Project within the State of Michigan consistent with this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and the following several and mutual recitals, representations, warranties, promises, covenants, conditions and stipulations herein contained, Borrower and Lender do hereby covenant and agree and Borrower represents and warrants as follows:

**Section 1**      **Definitions**

In this Loan Agreement and in the Related Documents the following general words, phrases and expressions shall have the respective meanings attributed to them:

1.1 "Act" shall mean the Michigan Strategic Fund Act, MCL 125.2001 et seq., including, in particular, MCL 125.2088r which authorized the creation of the MBDP.

1.2 "Agreement" shall mean this Loan Agreement, and all amendments, modifications, extensions and/or restatements hereof.

1.3 "Application" shall mean the Application for Incentive Assistance, dated January 22, 2013, submitted by the Borrower to the Lender.

1.4 "Auditor General" shall mean the auditor general of the State of Michigan.

1.5 "Disbursement Date" shall mean the dates on which Milestone One or Milestone Two set forth on Exhibit D are satisfied to Lender's satisfaction in accordance with Section 3.2 and Lender makes the Loan pursuant to Section 2.1.

1.6 "Event of Default" shall mean an event of default as defined in Section 6 of this Agreement.

1.7 "Financial Statements" shall mean a balance sheet, income statement, statements of cash flow and amounts and sources of contingent liabilities, a reconciliation of changes in equity and liquidity verification, and cash flow projections audited and certified by an independent CPA firm. For purposes of this definition and any covenant requiring the delivery of Financial Statements, a specified period to which the required Financial Statements relate is a "reporting period."

1.8 "Improvements" shall mean the construction of a building of approximately thirty-five thousand (35,000) square feet with related site improvements and parking areas, located upon the Facility.

1.9 "Indebtedness" shall mean and include the following:

(a) all indebtedness, obligations and liabilities of Borrower under the Loan or arising under the Note or Related Documents, of whatsoever kind, nature and description, primary or secondary, direct, indirect or contingent, due or to become due, and whether now existing or hereafter arising, and including without limitation of the generality of the foregoing, all indemnities, defenses and hold harmless obligations of Borrower to Lender in connection with the Loan.

(b) all present and future cash advances made by Lender in connection with the Loan, the Note and/or the Related Documents, and whether made at Lender's option or otherwise, now or hereafter executed or existing in connection herewith, and interest accrued thereon, from time to time.

(c) all future advances made by Lender, as provided herein or in the Related Documents.

(d) all reasonable costs and expenses incurred by Lender in connection with or relating to the Loan, arising out of the protection, enforcement or collection of any of the foregoing, including without limitation, reasonable attorneys' fees.

1.10 "Lease(s)" shall mean any and all existing and future leases of the Improvements or the Facility (including subleases and lease guaranties) and all amendments, renewals and replacements thereof, specifically including, but not limited to, that certain lease of the Facility to Newell Rubbermaid Inc.

1.11 "Legal Requirements" shall mean:

(a) all laws, ordinances and regulations of the United States of America, the State of Michigan, and all county and municipal governments having jurisdiction over the acquisition, use, ownership, leasing, occupancy and maintenance of the Facility, including laws relating to access and use by persons with disabilities.

(b) the final and unappealable orders of any court or regulatory, administrative or municipal authority with respect to Borrower and the acquisition, use, ownership, leasing, occupancy and maintenance of the Facility.

(c) the terms and conditions of all governmental approvals, licenses and permits issued by local government authorities with respect to the Facility.

1.12 "Loan" shall mean a non-revolving loan from Lender to Borrower in the amount of Four Million Dollars (\$4,000,000) provided for in this Agreement.

1.13 "Loan Disbursement" shall mean Loan funds disbursed to the Borrower by the MSF pursuant to this Agreement.

1.14 "Loan Disbursement Request" shall mean a written request from the Borrower for a Loan Disbursement in form and substance required from time to time by the MBDP.

1.15 "Loan Manager" shall mean that individual person designated by the MSF Fund Manager from time to time to administer this Agreement and monitor the performance of the Borrower, Milestones and Loan Disbursements under this Agreement.

1.16 "Mandatory Prepayment Event" shall mean any liquidity event with respect to the Project, including a change in control of Borrower, a sale of all or substantially all of the assets of Borrower, or the liquidation, dissolution or windup of Borrower.

1.17 "Maturity Date" shall mean the earliest to occur of (i) there is a sale of any material portion of the Project, (ii) there is any loan obtained by Borrower and secured by the Improvements, Facility or Project and/or which provides cash out to Borrower, (iii) the occurrence of any Mandatory Prepayment Event, (iv) any proceeds of the Loan are used by Borrower toward the development of a stadium, casino (or property affiliated with the operation of a casino) or arena for use by a professional sports team, to induce business to leave the State of Michigan, or to contribute to the violation of internationally recognized workers' rights or workers in a foreign country, (v) Borrower has provided, or provides, any materially incorrect information in support of this Agreement, a Loan Disbursement Request, or Milestone Report, (vi) the Facility is not used for the intended purpose of the Project, or (vii) January 31, 2019.

1.18 "MBDP" has the meaning set forth in Recital A.

1.19 "MEDC" shall mean the Michigan Economic Development Corporation, a public body corporate which provides administrative services for the Michigan Strategic Fund.

1.20 "MSF" shall mean the Lender as set forth in the preamble.

1.21 "MSF Fund Manager" shall mean the person designated by the Board of Directors of the MSF from time to time to serve as the manager for the MSF programs.

1.22 "Milestone Report" shall mean a report submitted by Borrower to demonstrate and certify the completion of one or more milestones as described on Exhibit D attached hereto and provided for in this Agreement.

1.23 "Organizational Documents" shall mean the entity documents and agreements of Borrower, any member of Borrower which is an entity, and all certificates filed with the applicable governmental authority.

1.24 "Progress Reports" shall mean the annual report submitted no later than October 10 of each year during the Term of the Loan that consists of the quantitative or numerical data required by the Act, as more particularly described in Section C.1 of Exhibit C, and otherwise in form and substance required from time to time by the MBDP.

1.25 "Project" shall mean the Borrower's plan, more particularly described in the attached Exhibit A, for the property located 3300 Research Way, Kalamazoo, Michigan and sometimes referred to as the "Facility".

1.26 "Project Status Reports" shall mean reports provided to the Loan Manager on a monthly basis on the first of each month following the Disbursement Date and continuing until the sooner of the Maturity Date or the satisfaction of Milestone Three. Project Status Reports shall include a narrative on the status of the Project construction, updates on timing including estimated timeline to reach each Milestone, and copies of any and all lien waivers received by Borrower.

1.27 "Qualified Investment" shall mean the minimum expenditure of Two Million Seven Hundred Thousand Dollars (\$2,700,000) by the Borrower, after April 1, 2013, for the purchase of the Facility and construction of the Improvements for the Project.

1.28 "Related Documents" shall mean any and all documents, instruments, notes, assignments, estoppels, certificates and written memoranda referred to herein, or executed in connection herewith or therewith, now or hereafter existing, in form and substance satisfactory to Lender and delivered to Lender in connection with the Loan.

1.29 "Term of the Loan" shall mean from the Effective Date and, unless earlier terminated as provided by this Agreement, through the date the Loan is paid in full.

## Section 2 Loan

2.1 Loan: Lender agrees to make the Loan to Borrower and Borrower agrees to take the Loan from Lender in a sum not to exceed the Loan, upon the terms, covenants and conditions hereinafter set forth, to provide funds to Borrower, to be used for the financing of the Project.

2.2 Promissory Note: Borrower shall evidence its obligation to repay the Loan by execution of a Promissory Note in the principal amount of the Loan (the "Note"). The Note shall be dated as of March 27, 2013. The Note will include the interest rate, term and maturity, repayment and prepayment provisions, and terms and conditions under which the Note may be accelerated. This Agreement and the Note are of equal materiality and shall each be construed in such manner as to give full force and effect to all provisions of both documents.

## Section 3 Conditions Precedent to Effective Date and Funding

3.1 Conditions Precedent to Effective Date: The obligation of Lender to enter into this Agreement is subject to the satisfaction by Borrower of the following conditions precedent as of the Effective Date, each in form and substance satisfactory to Lender:

(a) Related Documents. All of the Related Documents and other documents evidencing and securing the Indebtedness shall have been duly executed.

(b) Organizational Documents. Lender shall have received the Organizational Documents and certified resolutions of Borrower, if necessary, authorizing the consummation of the Loan.

(c) Taxes. Borrower shall have furnished Lender with evidence that all current and past real estate taxes and assessments, levied or assessed against the Facility, if any, have been paid.

(d) Due Diligence. Lender shall be satisfied with the results of its real estate due diligence, if any, and due diligence with respect to Borrower.

In addition to the foregoing, no Event of Default shall exist and, no event shall have occurred which with the passage of time or the giving of notice or both would constitute an Event of Default.

3.2 Conditions to Funding. The obligation of Lender to fund any portion of the Loan is subject to the satisfaction by Borrower of the following conditions precedent as of the respective Disbursement Date, each in form and substance satisfactory to Lender:

(a) Milestones. Each Milestone listed on Exhibit D as of the respective Disbursement Date.

(b) Loan Disbursement Requests. The Borrower, at its discretion, may request a Loan Disbursement of a portion of the Loan by submitting to the Loan Manager a completed Loan Disbursement Request and a Milestone Report. The initial Loan Disbursement Request must be accompanied by a Milestone Report demonstrating achievement of Milestone Number One as set forth on Exhibit D, and must not exceed Three Million Dollars (\$3,000,000).

Only after complete achievement of Milestone Number One and Milestone Number Two may the Borrower request a second Loan Disbursement. The second Loan Disbursement Request must be accompanied by a Milestone Report demonstrating achievement of Milestone Number One and Milestone Number Two as set forth on Exhibit D, and must not exceed One Million Dollars (\$1,000,000).

Only after complete achievement of Milestone Number One, Milestone Number Two, and Milestone Number Three may the Borrower request the final Loan Disbursement, if any. The final Loan Disbursement, together with all other Loan Disbursements to the Borrower, cannot exceed the Loan, and may be disbursed provided the Borrower has achieved all of the Milestones set forth on Exhibit D, submitted its final Loan Disbursement Request and Milestone Report demonstrating achievement of all of its Milestones, and is otherwise in compliance with this Agreement.

(c) Loan Manager Review. The Loan Manager shall within thirty (30) calendar days of receipt of a Loan Disbursement Request and accompanying Milestone Report, do one or more of the following:

(i) request to review Borrower records, request additional information, or request a site visit to the Borrower, or any combination, all of which shall be determined in the sole discretion of the Loan Manager. The Borrower shall comply with the written request, to the satisfaction of the Loan Manager, or the Loan Manager shall reject the Loan Disbursement Request in the manner provided in Section 3.2(c)(ii); or

(ii) reject the Loan Disbursement Request, by providing an explanation of the reason for the rejection, which may be based on any one or more of the following: (A) the failure of the Borrower to demonstrate achievement of the applicable Milestone, (B) there is an outstanding Event of Default, or (C) the Borrower is otherwise not in compliance with this Agreement; or

(iii) approve the Loan Disbursement provided there is no outstanding Event of Default, the Borrower is otherwise in compliance with this Agreement, and the Borrower has achieved all of its then required Milestones to the satisfaction of the Loan Manager.

(d) Additional Loan Manager Review. If after receipt of a Loan Disbursement Request and Milestone Report, the Loan Manager requests to review Borrower records, requests additional information or otherwise conducts a site visit, the Loan Manager shall within an additional thirty (30) calendar days after the last to occur of: (A) the date the Borrower provides the Borrower records or additional information to the Loan Manager as requested by, and to the satisfaction of, the Loan Manager, or (B) the date of the site visit conducted by the Loan Manager, either:

(i) reject the Loan Disbursement Request, by providing an explanation of the reason for the rejection, which may be based on any one or more of the following: (A) the failure of the Borrower to demonstrate achievement of the applicable Milestone, (B) there is an outstanding Event of Default, or (C) the Borrower is otherwise not in compliance with this Agreement; or

(ii) approve the Loan Disbursement provided there is no outstanding Event of Default, the Borrower is otherwise in compliance with this Agreement, and the Borrower has achieved all of its then required Milestones to the satisfaction of the Loan Manager.

**3.3 Compliance:** On the Effective Date and at the time of the making of any Loan Disbursement contemplated herein:

(a) Borrower shall have complied and shall then be in compliance with all the terms, covenants and conditions of this Agreement.

(b) there shall exist no Event of Default as defined in Section 6 and no event which, with the giving of notice or the lapse of time, or both, would constitute such an Event of Default.

(c) the representations and warranties contained in Section 4 shall be true, with the same effect as though such representations and warranties had been made at the time of the making of any such advance.

If requested by Lender, Borrower shall deliver a certificate dated as of the date of such advance, confirming the foregoing.

#### **Section 4 Representations and Warranties**

Borrower represents and warrants to Lender as follows:

##### **4.1 Authority; Enforceability:**

(a) Borrower is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State of Michigan and has the power to own property and to carry on its business as now being conducted, and is duly qualified to do business, and is in good standing, in each jurisdiction in which the transaction of its business makes such qualification necessary.

(b) Borrower has full power and authority to enter into this Agreement, to make the borrowings hereunder, to execute and deliver the Related Documents, and to incur the obligations provided for herein, all of which have been duly authorized by all proper and necessary action of Borrower. No consent or approval of any public authority is required as a condition to the validity of this Agreement or any Related Document. Borrower has duly executed and delivered this Agreement and the Related Documents.

(c) The Loan Documents to which Borrower is a party constitute the valid and legally binding obligations of Borrower, and are fully enforceable against Borrower in accordance with their respective terms, except to the extent that such enforceability may be limited by laws generally affecting the enforcement of creditors' rights.

4.2 Litigation: Except as disclosed in writing to Lender, there are no actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower, or the Facility or any other property of Borrower, in any court or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which may result in any material adverse change in the business, properties or assets or in the condition, financial or otherwise, of Borrower. Except as disclosed in writing to Lender, Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or federal, state, municipal or other governmental department, commission, board, bureau, agency, instrumentality, default under which might have consequences which would materially and adversely affect their respective business or properties.

4.3 Financial Condition; Budget: The financial statements heretofore delivered to Lender are complete and correct in all material respects and fully present the financial condition of Borrower. The financial statements of Borrower fully present the result of its operations and transactions as at the date and for the period referred to, and the same have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the period involved. There are no liabilities, direct or indirect, fixed or contingent, of Borrower as of the date of such financial statements or balance sheet(s) which are not reflected therein or in the notes thereto. There has been no material adverse change in the financial condition or operation of Borrower since the date of such financial statements or balance sheet(s). Attached hereto as Exhibit B is a budget for the Project.

4.4 Adverse Contracts, etc.: Borrower is not a party to any contract or agreement or subject to any other restriction or no unusually burdensome order of any regulatory commission, board or agency which materially and adversely affect its business, properties or assets or its condition, financial or otherwise. The execution and performance of this Agreement will not result in the creation of any other encumbrance or charge upon any asset of Borrower pursuant to the terms of any other agreement. No provision of any existing mortgage, indenture, contract or agreement or affecting their respective properties is in effect which would conflict with or in any way prevent the execution, delivery or carrying out of the terms of this Agreement.

4.5 Liens: Borrower has made no contract or arrangement of any kind, the performance of which by the other party thereto would give rise to a lien or claim of lien on the Facility.

4.6 Default: No event or circumstance on the part of Borrower has occurred under this Agreement, the Note or the Related Documents, now existing or hereafter executed, and no event has occurred and is continuing which with notice or the passage of time or either would constitute an Event of Default under any thereof.

4.7 Prohibited Use of Loan: Borrower shall not use any Loan disbursements for the development of a stadium or arena for use by a professional sports team or development of a casino or property associated or affiliated with the operation of a casino as prohibited by the Act (see MCL 125.2088(c)(3)(c)), or to induce the Borrower, a qualified business, or small business to leave the State of Michigan, or to contribute to the violation of internationally recognized workers' rights, of workers in a country other than the U.S., as prohibited by the Act (see MCL 125.2088(c)(4)(c) and (d)).

4.8 Criminal or Civil Matters: Borrower affirms that to the best of its knowledge that neither it nor its affiliates, subsidiaries, officers, directors, and managerial employees: (a) do not have any criminal convictions incident to the application for or performance of a state contract or subcontract; and (b) do not have any criminal convictions or have not been held liable in a civil proceeding, that negatively reflects on the person's business integrity, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or violation of state or federal antitrust statutes.

4.9 Change of Legal Status: Borrower shall (a) give Lender notice of any change in its name, its organizational identification number, if it has one, its type of organization, its jurisdiction of organization, and (b) not make any change in its legal structure that would, as a matter of law, affect its surviving obligations under this Agreement, without the prior written consent of Lender.

4.10 Borrower Investment: Borrower shall invest the greater of Two Million Seven Hundred Thousand Dollars (\$2,700,000) or all Loan Disbursements for the Project in Improvements, fixtures, or any combination thereof, which includes the Qualified Investment.

The representations and warranties set forth herein will be true and correct at the date of the funding of the Loan and thereafter.

## Section 5 Particular Covenants of Borrower.

5.1 Payment of Taxes: Borrower shall promptly pay and discharge all lawful taxes, assessments and governmental charges or levies imposed upon it, the Facility or upon its income or profits or upon any property, real, personal or mixed, belonging to it; provided, however, that Borrower shall have the right to contest any of the foregoing in good faith and without payment provided that Lender's interests are adequately protected in Lender's sole discretion.

5.2 Observance of Rules: Borrower covenants and represents and warrants that Borrower has and will continue at all times to promptly comply with all laws, ordinances, regulations or requirements of any governmental authority relating to Borrower's business, property or affairs.

5.3 Business Existence: Borrower will keep and cause to be kept in full force and effect and in "good standing," its existence as a nonprofit corporation organized under the laws of the State of Michigan, and all rights, licenses, leases and franchises reasonably necessary to conduct the business of Borrower.

5.4 Limitation on Sale: Borrower shall not sell, transfer or assign all or any portion of the Facility.

5.5 Further Encumbrances: Borrower shall not further encumber, mortgage or permit any security interest or lien to attach to the Facility.



5.6 Conditional Sales Contracts: Borrower shall not purchase or acquire any materials, fixtures or equipment upon leases, conditional sale, or other type of title retention, or security agreement, without the prior written consent of Lender.

5.7 Transfer of Ownership Interest in Borrower: There shall be no change in the management of Borrower without Lender's prior written consent, in particular any change in position, responsibility or relationship between the Borrower and Ron Kitchens.

5.8 Leases: Borrower shall not:

(a) Enter into any Lease, without the prior written consent of Lender, which consent by Lender shall not be unreasonably withheld or delayed.

(b) Breach or violate any of the material covenants and agreements on the landlord's part to be performed under any Leases.

5.9 Reporting: During the term of the Loan:

(a) Borrower shall deliver Financial Statements, in a form acceptable to Lender, no later than April 1 and as may be reasonably requested by Lender.

(b) Borrower shall deliver its annual federal income tax returns (with all forms and supporting schedules attached), on or before a date not later than April 1st.

(c) Borrower shall deliver Progress Reports in a form acceptable to Lender and as more particularly described in Section C.1 of Exhibit C.

(d) Borrower shall deliver Loan Disbursement Requests in a form acceptable to Lender and as more particularly described in Exhibit D.

(e) Borrower shall deliver Milestone Reports in a form acceptable to Lender and as more particularly described in Exhibit D.

(f) Borrower shall deliver Project Status Reports in a form acceptable to Lender.

(g) From time to time promptly after any Lender's request, such additional information, reports and statements respecting the Facility and the Improvements, or the business operations and financial condition of each reporting party, as any Lender may reasonably request.

5.10 State Required Terms: Borrower shall comply with all State required terms listed on Exhibit C attached hereto.

5.11 Compliance:

(a) Borrower shall comply with all Legal Requirements and all covenants, restrictions and easements affecting the Facility, including building and use restrictions in all material respects.

(b) At the time of the making of any advance contemplated herein:

(i) Borrower shall have complied and shall then be in compliance with all the materials terms, covenants and conditions of this Agreement which are binding upon it.

- (ii) there shall exist no Event of Default as defined in Section 6.
- (iii) the representations and warranties contained in Section 4 shall be true, with the same effect as though such representations and warranties had been made at the time of the making of any such advance.

5.12 Fees

- (a) On or before the first Disbursement Date, Borrower shall pay Lender a loan origination fee equal to one-half percent (0.5%) of the Loan.
- (b) The foregoing fee is payable as of the first Disbursement Date, as the case may be, shall be deemed fully earned as of such date and are non-refundable.

**Section 6 Default And Remedies**

6.1 Default: The entire unpaid Indebtedness shall be deemed matured and shall become immediately due and payable, at the option of Lender, without notice or demand, except as otherwise specifically required herein and without regard to the Maturity Date, upon the occurrence of any of the following events after the passage of any applicable notice and cure period ("Event(s) of Default");

(a) The payment of any principal or interest under the Note or any other payment of the Indebtedness by Borrower required pursuant to this Agreement or under any Related Document is not made within five (5) days after the date when due under the Note or under any Related Document.

(b) Failure to pay any required penalty to Lender arising from the failure to submit a Progress Report.

(c) Any material representation or warranty made by Borrower herein, or any material statement or representation made by Borrower in any Related Document or in any certificate or other writing delivered pursuant hereto, or contained in any financial statement shall prove to have been false or incorrect in any material respect when made.

(d) Borrower's failure to comply with any of the material terms, covenants and conditions on its part to be performed under Legal Requirements, which is not corrected within thirty (30) days from the date which is the earlier of the date that Borrower has knowledge of such failure or the date upon which Borrower receives notification of such failure from the governmental authority having jurisdiction.

(e) The failure or breach of any other non-monetary covenant, warranty, promise, or representation herein contained and/or contained in any Related Document and the continuation of such failure or breach for a period of thirty (30) days after written notice thereof to Borrower with additional time to cure as necessary if Borrower is diligently pursuing completion of such cure; provided, however, such additional time to cure shall not extend beyond the Maturity Date; provided further, if a different period or notice requirement is specified for a particular breach under any other subsection of this Section 6, or any other Related Document, or if no notice requirement is specified (notice by Lender shall not be required for a default under Subsections 6.1(a), 6.1(e), or 6.1(f) or for a default arising as a result of a breach of Section 5.4, 5.5, 5.6, 5.7, or 5.8 of this Agreement), then that specific provision shall control; provided, further, that the thirty (30) day cure period provided by this Section 6.1(e) shall not be in addition to any cure period specifically provided elsewhere in this Agreement or in any Related Document.

- (f) Should any of the following occur with regard to Borrower:
  - (i) a general assignment for the benefit of creditors.
  - (ii) the filing of a voluntary petition under any bankruptcy or insolvency law.
  - (iii) the filing of any involuntary petition under any bankruptcy or insolvency law, such petition remaining undischarged for a period of sixty (60) days.
  - (iv) the appointment by any court of a receiver to take possession of substantially all assets of Borrower, or of the Facility, such receivership remaining undischarged for a period of sixty (60) days.
  - (v) attachment, execution or other judicial seizure of substantially all of assets of Borrower, or the Facility, such attachment, execution or other seizure remaining undischarged for a period of sixty (60) days after the levy thereof.
- (g) Borrower fails to pay any indebtedness (other than the Loan) owed by Borrower to any lender (other than Lender) when and as due and payable (whether by acceleration or otherwise).
- (h) any default, violation, breach or non-compliance by Borrower under any agreement with the State of Michigan, any agency therein or the MEDC, or with any other entity that may have a material adverse effect on the development of the Project.
- (i) The occurrence of any prohibited conflict of interest.
- (j) Borrower's failure to timely achieve any Milestone described on Exhibit D.
- (k) Newell Rubbermaid Inc. vacates the Facility and moves substantially all of its operations from the Facility to outside the State of Michigan prior to the earlier of the Maturity Date or the end of the lease term by and between Borrower and Newell Rubbermaid Inc. described on Exhibit D, Milestone Three. (In the event Newell Rubbermaid Inc. vacates the Facility, but substantially all of its operations from the Facility remain in the State of Michigan, then provided prior written notice is given to the Loan Manager, this Agreement may continue as written.)
- (l) The occurrence of the Maturity Date other than as provided in Subsection 1.17(vii).
- (m) If any of the Loan is used by the Borrower toward development of a stadium or arena for use by a professional sports team or development of a casino or property associated or affiliated with the operation of a casino as prohibited by the Act (see MCL 125.2088(c)(3)(c)), or to induce the Borrower, a qualified business, or small business to leave the State of Michigan, or to contribute to the violation of internationally recognized workers' rights, of workers in a country other than the U.S., as prohibited by the Act (see MCL 125.2088(c)(4)(c) and (d)).

6.2 Borrower's Obligation to Give Notice of Event of Default: Borrower shall give written notice to Lender of the occurrence of any Event of Default or the existence of any event which would, with the passage of time or giving of notice or both, constitute an Event of Default hereunder immediately after discovery of any such event.

6.3 Remedies: Upon the happening of an Event of Default under this Agreement or any Related Document, Lender shall be entitled to exercise any and all remedies available to it by law and/or in equity, including any rights and remedies contained in this Agreement or in any Related Document, including without limitation, (i) acceleration of the Maturity Date of the Loan, (ii) suspension or termination of any obligation to make any Loan Disbursement, (iii) financial penalties of Five Thousand Dollars (\$5,000) for each occurrence of non-compliance with the reporting requirements set forth herein, (iv) imposition of a default rate of interest, (v) retention of auditors or third party consultants to assist Lender in determining the financial condition of Borrower, and (vi) imposition of the requirement to pay interest on any payment obligation not paid when due, and costs and fees incurred by Lender.

6.4 Disbursement of Funds: Upon the happening of an event which would, with the passage of time or the giving of notice or both, constitute an Event of Default under this Agreement or any Related Document, Lender's obligation to disburse funds under the Loan shall be suspended until the event is cured within the time period provided herein; upon the occurrence of an Event of Default, Lender's obligation to disburse the proceeds of the Loan shall terminate.

6.5 Application of Funds in Account; Default Charge: After maturity of the Loan by acceleration or otherwise Borrower shall pay interest at the default rate of interest set forth in the Note.

6.6 Remedies are Cumulative: All remedies provided for herein are cumulative and shall be in addition to any and all other rights and remedies provided by law, including banker's lien and right of offset. The exercise of any right or remedy by Lender hereunder shall not in any way constitute a cure or waiver of default hereunder or invalidate any act done pursuant to any notice of default or prejudice Lender in the exercise of any of its rights hereunder or under the Related Documents, unless in the exercise of such rights, Lender realizes all amounts owed under the Note, the Related Documents and hereunder.

6.7 Right of Contest: Borrower shall have the right to contest in good faith any claim, demand, levy or assessment, the assertion of which would constitute an Event of Default hereunder. Any such contests shall be prosecuted diligently and in a manner which does not prejudice Lender hereunder. Upon demand by Lender, Borrower shall make suitable provisions by deposit of funds or by bond satisfactory to Lender for the possibility that the contest will be unsuccessful. Such provision shall be made within ten (10) business days after demand therefor and if made by deposit of funds, the amount so deposited shall be disbursed in accordance with the resolution of the contest either to Borrower or the adverse claimant.

6.8 Waiver: To the extent permitted by applicable law, all parties hereto, except Lender, hereby agree to waive and do hereby absolutely and irrevocably waive and relinquish the benefit and advantage of the doctrine of marshaling, any non-judicial valuation, stay, appraisal, extension or right to a judicial hearing, pursuant to statute and case made and provided, now existing or which may hereafter exist, which but for this provision, might be applicable to any sale made under the judgment, order or decree or any court, or otherwise, based on any promissory note or Related Documents contemplated hereby or on any claim for interest on the promissory note.

## Section 7 Miscellaneous

7.1 No Waiver: No waiver of any default or breach by Borrower hereunder shall be implied from any omission by Lender to take action on account of such default if such default persists or is repeated. No express waiver shall affect any default other than the default specified in the waiver, and it shall be operative only for the time and to the extent therein stated, unless not therein stated, in which case, until revoked in writing. Waivers of any covenant, term or condition contained herein shall not be

construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by Lender to or of any act by Borrower requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

7.2 No Third Parties Benefited: This Agreement is made and entered into for the sole protection and benefit of Lender and Borrower, their successors and assigns, and no other person or persons shall have any right of action hereon.

7.3 Actions: Lender shall have the right to commence, appear in or defend any action or proceeding purporting to affect the rights, duties or liabilities of the parties hereunder or the disbursement of any funds. In connection therewith, Lender may incur and pay costs and expenses, including a reasonable attorneys' fee. Borrower agrees to pay to Lender on demand all such expenses, and Lender is authorized to disburse funds from the account for such purpose.

7.4 Commissions and Brokerage Fees: Borrower agrees to indemnify Lender from any responsibility and/or liability for the payment of any commission, charge or brokerage fees to anyone which may be payable in connection with the making of the Loan herein contemplated, it being understood that any such commission, charge or brokerage fees will be paid directly by Borrower to the party or parties entitled thereto. Lender has not dealt with Borrower through the agency of any person or entity in a manner which would, in Lender's good faith opinion, provide such person or entity with a claim for a commission or fee.

7.5 Successors and Assigns: The terms hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, that Borrower shall not assign its rights hereunder in whole or in part without the prior written consent of Lender, to be given or withheld at Lender's sole discretion. Any such assignment without such consent shall be void.

7.6 Modifications: Without any notice to or any further assent by any other persons the liability of Borrower to Lender on any Indebtedness may, from time to time, in whole or in part, be renewed, extended, modified, accrued, compromised or released by Lender. All of the obligations of any parties hereto, except Lender, contemplated by this Agreement shall be deemed to be joint and several.

7.7 Continuing Agreement: All of Borrower's and/or any other parties' agreements, representations, warranties and certificates under, pursuant or relating to this Agreement shall survive and continue until all Indebtedness hereunder is paid in full as to both principal and interest.

7.8 Additional Documentation: Borrower, from time to time, upon written request of Lender will make, execute, acknowledge and deliver all such further and additional instruments and take all such further action as may be reasonably required to carry out the intent and purpose of this Agreement and to provide for the payment of all loans, notes, borrowings and advances according to the intent and purpose herein and therein expressed.

7.9 Law of Michigan; Venue: This Agreement shall be interpreted and the rights of the parties hereunder shall be determined under the laws of the State of Michigan. Borrower hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the jurisdiction of any state court or any United States federal court sitting in the State of Michigan. Borrower hereby irrevocably waives, to the fullest extent permitted by law, any objection that Borrower may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum.

7.10 Counterparts: This Agreement may be executed in several counterparts, and each executed counterpart shall constitute an original instrument, but such counterparts shall together constitute but one and the same instrument.

7.11 Inclusion by Reference: All of the various instruments and documents referred or alluded to in this Agreement shall be deemed to be included herein and made a part hereof as though specifically set forth herein, word by word; provided, however, that if any conflict exists with respect to the rights of Lender, then the terms of such instruments, documents, pledges and security agreements will govern.

7.12 Severability: Should any part, term or provision of this Agreement be by the courts decided to be illegal or in conflict with any law of the State of Michigan, the validity of the remaining portions or provisions of the Agreement shall not be affected thereby.

7.13 Notices: All notices or demands hereunder to the parties hereto shall be sufficient if made in writing and (a) delivered in person, (b) deposited in the mail, certified, postage prepaid, or (c) delivered by a recognized overnight carrier (such as Federal Express) and addressed to the parties respectively as follows:

IF TO LENDER:

Michigan Strategic Fund  
c/o Michigan Economic Development Corporation  
300 N. Washington Square  
Lansing, Michigan 48913  
Attention: Loan Manager

With a copy to:

Michigan Economic Development Corporation  
300 N. Washington Square  
Lansing, Michigan 48913  
Attention: General Counsel

IF TO BORROWER:

Southwest Michigan First Corporation  
Attention: Katie Perry  
241 East Michigan Avenue  
Kalamazoo, Michigan 49007

With a copy to:

Fred Schubkegel, Esq.  
Varnum LLP  
251 N. Rose Street Fl 4  
Kalamazoo, Michigan 49007

Notice shall be deemed to be effective upon delivery if hand delivered; seventy-two (72) hours from the date such notice is deposited in the U.S. mail or, one (1) business day from the date such notice is delivered to a recognized overnight carrier for next business day delivery.

7.14 Hold Harmless/Indemnity: Borrower hereby assume responsibility and liability for, and hereby hold harmless and indemnify Lender from and against any and all, by way of example but without limitation, liabilities, demands, obligations, injuries, costs, damages (direct, indirect or consequential), awards, loss of interest, principal, or any portion of the Loan, charges, expenses, payments of monies and reasonable attorneys' fees, incurred or suffered, directly or indirectly, by Lender and/or asserted against Lender by any person or entity whatsoever, including Borrower, arising out of this Agreement, the Note, the Related Documents, or any other document executed pursuant to this Agreement, or the relationship herein set forth or the exercise of any right or remedy including the realization, disposition or sale of the Facility, or any portion thereof, or the exercise of any right in connection therewith, for which Lender may be liable, for any reason whatsoever, unless caused by the gross negligence or intentional misconduct of Lender.

7.15 Relationship: Nothing contained in this Agreement or any action of Lender or Borrower taken pursuant hereto or in connection herewith shall create any relationship of agency, partnership, co-venture or joint venture so as to render Lender liable in any manner to any party dealing with Borrower, and Borrower shall indemnify, defend and hold Lender harmless from and against any claim that Lender is, or has acted in the capacity of an agent, partner, co-venturer or joint venturer of or with Borrower.

7.16 Customer Identification - USA Patriot Act Notice; OFAC and Bank Secrecy Act: Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "Patriot Act"), and Lender's policies and practices, Lender is required to obtain, verify and record certain information and documentation that identifies Borrower, which information includes the name and address of Borrower and such other information that will allow Lender to identify Borrower in accordance with the Patriot Act. In addition, Borrower shall (a) ensure that no person who owns a controlling interest in or otherwise controls Borrower or any subsidiary of Borrower is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act ("BSA") laws and regulations, as amended.

7.17 Entire Agreement: This Agreement and the Related Documents given in connection herewith contain the entire agreement between the parties with respect to the Loan.

(Signature page follows)

Execution Copy

IN WITNESS WHEREOF, Lender and Borrower have each executed this Agreement as of the day and year first above written.

**Lender:**

Michigan Strategic Fund, a public body  
corporate and politic within the Department of  
Treasury of the State of Michigan

By:   
Name: Karla K. Campbell  
Title: Fund Manager

**Borrower:**

Southwest Michigan First Corporation, a  
Michigan nonprofit corporation

By:   
Name: Ronald Kitchens  
Title: Chief Executive Officer



**EXHIBIT A**

**OVERALL DEVELOPMENT DESCRIPTION**

The Project will be the construction by Borrower of a new product design and testing facility for Newell Rubbermaid Inc. Newell Rubbermaid within the first year of implementing the Project expects to relocate to the 35,000 sq. ft. facility in Kalamazoo, Michigan located in Western Michigan University's Business Technology and Research Park. The Facility will be provided initially to Newell Rubbermaid for five (5) years at no cost except for triple net (NNN) expenses, building upkeep and maintenance. Newell Rubbermaid expects to have approximately 100 professionals dedicated to world-class creative design within three years. Presently Newell Rubbermaid has design and test facilities in Illinois, Virginia, Massachusetts, Georgia, North Carolina and California. Newell Rubbermaid within the first year of implementing the Project expects to relocate these professionals to the Facility. Borrower will be contributing investment in land and new construction valued at a capital investment of Four Million Two Hundred Sixty Five Thousand Dollars (\$4,265,000).

The Facility is located at 3300 Research Way in the Western Michigan University Business, Technology and Research Park in Kalamazoo, Michigan consisting of approximately 8.58 acres upon which the Improvements will be located, and legally described as:

Property located in the City of Kalamazoo, County of Kalamazoo and State of Michigan, and described as follows:

Unit 33 of Western Michigan University Business, Technology and Research Park, according to the Master Deed recorded at Document No. 2001-018722, the First Amendment to Master Deed recorded in Document No. 2002-003549, the Second Amendment to Master Deed recorded in Document No. 2003-051555, the Third Amendment to Master Deed recorded at Document No. 2005-022027, the Fourth Amendment to Master Deed recorded at Document No. 2007-005898, the Fifth Amendment to Master Deed recorded in Document No. 2007-030770, the Sixth Amendment to Master Deed recorded in Document No. 2009-013811, the Seventh Amendment to Master Deed recorded in Document No. 2010-030953, and the Eighth Amendment to Master Deed recorded in Document No. \_\_\_\_\_, designated as Kalamazoo County Condominium Subdivision Plan No. 134, together with rights in common elements as set forth in the Master Deed and as described in Act 59 of the Public Acts of 1978, and amendments thereto.

**EXHIBIT B**

**BUDGET**

Site Acquisition	\$265,000
Site Planning	\$100,000
Site Improvements	\$900,000
Building Shell	\$1,250,000
Mechanical & Electrical	\$1,250,000
Finishes	\$500,000
Free Land Value	(\$265,000)
Total Project Budget	\$4,000,000

## EXHIBIT C

### STATE REQUIRED TERMS

1. **Progress Reports.** No later than October 10<sup>th</sup> of each year during the Term of the Loan, Borrower shall submit to the Loan Manager a Progress Report. Following the end of the Term of the Loan, the Borrower shall submit to the Loan Manager a final Progress Report by no later than October 10<sup>th</sup>. The Progress Report shall be an all-encompassing report and shall include a description of the Milestones achieved during the preceding twelve (12) months, if any, and submission of all data required for Lender to comply with its annual reporting requirements to the Michigan legislature under the Act (see MCL 125.2088r(6) and MCL 125.2088n(5)); including reporting the following for the previous twelve (12) months:

- (a) the total proposed amount, and the actual amount, of investment attracted by the Borrower to the Project;
- (b) the total committed, and the actual number of, new jobs created by the Borrower;
- (c) the individuals hired by the Borrower, including the number and their educational attainment (including whether high school diploma or equivalent, higher education certificate or degree, or advanced degree or training), and the number of individuals hired by the Borrower who relocated to the State;
- (d) the number of new patents, copyrights, or trademarks applied for and issued to the Borrower;
- (e) the amounts of other funds leveraged by the Borrower;
- (f) the number of new licensing agreements by Borrower and the number of such licensing agreements entered into by Borrower with Michigan based firms; and
- (g) the number of products commercialized by Borrower.

This Section shall survive the end of the Term of the Loan for a period of one (1) year.

2. **Confidentiality.** Lender, the MEDC or their representatives may obtain, or have access to information or data concerning the business, operations, assets or liabilities of Borrower in connection with the transactions contemplated by this Agreement. Under MCL 125.2005(9), the MSF Board has authority, upon Borrower's request, to acknowledge financial or proprietary Borrower information as confidential. If Lender acknowledges Borrower information as confidential (the "Confidential Information"), the MEDC and Lender agree that they and their representatives will use the Confidential Information solely for the purpose of administering this Agreement, and that the Confidential Information will be kept strictly confidential and that neither the MEDC, Lender, nor any of their representatives will disclose any of the Confidential Information in any manner whatsoever. However, Lender or the MEDC may disclose Confidential Information: (i) to such of its representatives who need such information or data for the sole purpose of administering the MBDP and the transactions contemplated by this Agreement; (ii) to the extent required by applicable law (including, without limitation, the Michigan Freedom of Information Act); (iii) if, before the Effective Date, such information or data was generally publicly available; (iv) if after the Effective Date, such information or data

becomes publicly available without fault of or action on the part of Lender, the MEDC or their respective representatives; and (v) in all other cases, to the extent that Borrower gives its prior written consent to disclosure. This Section 2 of Exhibit C shall survive indefinitely.

3. **Access to Records and Inspection Rights.** During the Term of the Loan, there will be frequent contact between the Loan Manager, or other MEDC, Lender or representatives of the State, and Borrower, including possible site visits. In addition, to enable the Auditor General, the Department of Technology, Management and Budget (the "DTMB"), Lender, or the MEDC to monitor and ensure compliance with the terms of this Agreement, Borrower shall permit the Auditor General, the DTMB, Lender, or the MEDC to visit Borrower, and any other location where books and records of Borrower all other information and data relevant to the terms of this Agreement, including the expenditure of the Loan Disbursement; provided, however, that such audit right shall survive the end of the Term of the Loan by three (3) years. In connection with any such audit, Borrower shall cooperate with the chief compliance officer, if contacted, as provided in MCL 125.2088i(6)(h). At such visits, Borrower shall permit the Auditor General, the DTMB, Lender, or any member, employee or agent of Lender, the Loan Manager or any employee or agent of the MEDC to make copies or extracts from information and to discuss the affairs, finances and accounts of Borrower related to this Agreement with its officers, employees or agents. Notwithstanding anything to the contrary, any information and data that Borrower reasonably determines is Confidential Information shall be reviewed by the Auditor General, the DTMB, Lender, and the MEDC at the offices of the Borrower and the Auditor General, the DTMB, Lender, or the MEDC shall have the right to remove, photocopy, photograph or otherwise record in any way any part of such books and records only with the prior written consent of Borrower, which consent shall not be unreasonably withheld, conditioned or delayed.
4. **Indemnification and Hold Harmless.** Except for their respective obligations to process or disburse Loan Disbursements as required in this Agreement, Lender, the State, the MEDC, its Executive Committee and their respective directors, participants, officers, agents and employees (collectively, the "Indemnified Persons") shall not be liable to Borrower for any reason. Borrower shall indemnify and hold the State, Lender, and the MEDC and other Indemnified Person harmless against all claims asserted by or on behalf of any individual person, firm or entity (other than an Indemnified Person), arising or resulting from, or in any way connected with this Agreement or any act or failure to act by Borrower under the Agreement, including all liabilities, costs and expenses, including reasonable counsel fees, incurred in any action or proceeding brought by reason of any such claim. Borrower shall also indemnify Lender, the MEDC and other Indemnified Person from and against all costs and expenses, including reasonable counsel fees, lawfully incurred in enforcing any obligation of Borrower under this Agreement.

Borrower shall have no obligation to indemnify an Indemnified Person under this Section 4 of Exhibit C if a court with competent jurisdiction finds that the liability in question was solely caused by the willful misconduct or gross negligence of Lender, the MEDC or other Indemnified Person, unless the court finds that despite the adjudication of liability, Lender, the MEDC or other Indemnified Person is fairly and reasonably entitled to indemnity for the expenses the court considers proper. Lender, the MEDC and Borrower agree to act cooperatively in the defense of any action brought against Lender, the MEDC or another Indemnified Person to the greatest extent possible.

Performance of Borrower's obligations contemplated under this Agreement is within the sole control of Borrower and its employees, agents and contractors, and an Indemnified Person shall have no liability in tort or otherwise for any loss or damage caused by or related to the actions or

failures to act, products and processes of Borrower, its employees, agents or contractors. This Section shall survive indefinitely.

5. Termination of Funding. If the State Legislature or the State government fails to provide or terminates the funding necessary for Lender to fund the Loan, Lender may terminate this Agreement by providing notice to Borrower not less than thirty (30) calendar days before the date of cancellation provided, however, that if the action of the State Legislature or State government results in an immediate absence or termination of funding, this Agreement may be terminated effective immediately upon delivery of written notice to Borrower. Upon such termination of funding, Lender shall have no further obligation to make Loan Disbursements beyond the date of termination of this Agreement.
6. Non-Discrimination and Unfair Labor Practices. In connection with this Agreement, Borrower agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability unrelated to the individual's ability to perform the duties of the particular job or position. Borrower further agrees that every subcontract entered into for performance of this Agreement will contain a provision requiring nondiscrimination in employment, as specified in this Agreement, binding upon each subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and any breach thereof may be regarded as a material breach of this Agreement.

Under 1980 PA 278, MCL 423.321, *et seq.*, the State shall not award a contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. The United States Labor Relations Board compiles this information. Borrower shall not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any contract if, subsequent to the award of the contract, the name of Borrower as an employer, or the name of a subcontractor, manufacturer, or supplier of Borrower appears in the register.

7. Jurisdiction. The parties shall make a good faith effort to resolve any controversies that arise regarding this Agreement. If a controversy cannot be resolved, the parties agree that any legal actions concerning this Agreement shall be brought in the Michigan Court of Claims or, as appropriate, Ingham County Circuit Court in Ingham County, Michigan. Borrower acknowledges by signing this Agreement that it is subject to the jurisdiction of this court and agrees to service by first class or express delivery wherever Borrower resides, in or outside of the United States. This Section 7 of Exhibit C shall survive indefinitely.

## EXHIBIT D

Subject to all other terms and conditions of the Agreement, including but not limited to Section 3, prior to the disbursement of the Loan on the respective Disbursement Date, Borrower must complete all of the components of each of the following Milestones, including satisfying all of the Conditions to Funding set forth in Section 3.2, and Borrower must otherwise be in compliance with the Agreement.

### MILESTONES

#### Milestone One

Disbursement: \$3,000,000

By no later than May 1, 2013, Borrower shall have submitted all then required Project Status Reports, must otherwise be in compliance with this Agreement, and shall submit to the satisfaction of the Loan Manager, a Milestone Report, along with the following, together with any back-up documentation requested by Lender:

1. The Borrower shall provide a copy of the fully executed construction contract for the design center facility for Newell Rubbermaid Inc. at the Western Michigan University's BTR Park in the City of Kalamazoo located at the Facility and signed by Borrower; and
2. The Borrower shall provide all documentation to the satisfaction of Loan Manager that Kalamazoo County, Michigan has contributed economic development funds in the minimum amount of at least Seventy Five Thousand Dollars (\$75,000) for the Project to Borrower on terms and conditions acceptable to the Loan Manager for allocation to the Project by Borrower.

#### Milestone Two

Disbursement: \$1,000,000

Borrower may submit a Loan Disbursement Request to Lender only after completion of all of the components of Milestone One. Subject to all other terms and condition of the Agreement, prior to any Loan Disbursement, Borrower shall have submitted by no later than July 1, 2013, all then required Project Status Reports, must otherwise be in compliance with this Agreement, and shall submit to the satisfaction of the Loan Manager, a Milestone Report, along with the following, together with any back-up documentation requested by Lender:

1. The Borrower shall provide copies of all the invoices, work orders, bills, and the corresponding evidence of payment, and any other documentation which itemizes in detail, and substantiates, that a minimum of ninety percent (90%) of disbursed funds from Milestone One has been spent on the construction of the Facility for the Project in the amount of at least Two Million Seven Hundred Thousand Dollars (\$2,700,000) by Borrower;
2. The Borrower shall provide all documentation to the satisfaction of Loan Manager that Borrower is the holder of good and valid fee simple title to the entire Facility and represents and warrants that there are no mortgages, liens or encumbrances on the Facility or property; and
3. The Borrower shall provide all documentation to the satisfaction of Loan Manager that any and all necessary local, state or other governmental licenses or permits have been approved and

obtained by Borrower for the construction of the Project, the Project complies in all respects with applicable zoning requirements (including parking) permitting the use of the Project, as well as all public utilities necessary for operation of the Project are available for connection and use.

### Milestone Three

Disbursement: None

The Borrower shall have satisfied all of the components of Milestone One, Milestone Two, all other terms and condition of the Agreement, all then required Project Status Reports, must otherwise be in compliance with this Agreement, and shall submit to the satisfaction of the Loan Manager a Milestone Report, along with the following, together with any back-up documentation requested by Lender by no later than October 1, 2013:

1. The Borrower shall provide copies of a fully executed Lease for the Facility by and between Borrower and Newell Rubbermaid Inc. for a minimum term of five (5) years.
2. There are no liens on the Facility, unless specifically approved in writing by Lender, as demonstrated by a down dated title insurance commitment and an as-built survey received by the Lender which evidences that the Facility is lien free except as set forth above and which is otherwise acceptable to the Lender in its sole discretion.
3. The construction of the Facility is complete and evidence that: (i) all public utilities necessary for operation of the Facility are connected and available for use; (ii) true and correct copies of an unconditional certificate of occupancy for the entire Facility from the appropriate governmental authority(ies) empowered to exercise jurisdiction over the Facility, or if such jurisdiction does not issue certificates of occupancy or an equivalent thereto, evidence that the Facility has passed all inspections and received all approvals which are conditions precedent to the use and occupancy of the Facility; and (iii) the Facility complies in all respects with applicable zoning requirements (including parking) permitting the use of the Facility.