

TERM SHEET FOR
GRANT AWARD AGREEMENT BETWEEN
TRIUMPH GULF COAST, INC.
AND
BAY COUNTY BOARD OF COUNTY COMMISSIONERS
(Lightning Strike/Project #258)

This Term Sheet summarizes the basic terms upon which Triumph Gulf Coast, Inc. (“**Triumph**”) is considering awarding a grant to the Bay County Board of County Commissioners (“**Grantee**”), under the Triumph Gulf Coast Trust Fund. This Term Sheet is intended for discussion and negotiation purposes only and (a) does not constitute a grant, or an approval of a grant, by Triumph to Grantee, and (b) does not create any binding obligations on Triumph or Grantee with respect to any grant, (ii) any approval of a grant, or (iii) engaging in any further discussions or negotiations with respect to a grant. Any binding agreement between Triumph and Grantee with respect to any grant must be contained in a definitive grant award agreement (the “**Agreement**”), approved by Grantee and the Board of Directors of Triumph and executed by Triumph and Grantee. At any time prior to such execution of the Agreement, either Triumph or Grantee may terminate negotiations, and upon such termination, neither party shall have any liabilities or obligations to the other.

GRANT AMOUNT: Up to \$7,000,000 (the “**Grant**”)

PURPOSE: To provide partial funding for a project (the “**Project**”) to (i) renovate and improve a six acre laydown facility (collectively, the “**Property**”) in the Venture Crossings Enterprise Centre in Panama City, Florida, and (ii) provide a rate reduction of ad valorem real property taxes for the Property, which Property will be leased by Grantee to a company to be named later that designs and manufactures electrical transformers and transformer component parts (the “**Company**”), all as further described in Grantee’s Application for Funds submitted to Triumph (the “**Grant Application**”). As noted below, the Company has committed to spend not less than \$12,921,081 to purchase equipment and to modify the Property.

CONDITIONS
FOR GRANT:

Triumph’s approval of the Grant, and any obligation to disburse the Grant, are expressly conditioned and contingent upon the following:

(a) **Matching Funds.** No Grant funds shall be disbursed to Grantee unless there are irrevocable and legally enforceable Matching Funds commitments from Grantee and the Company totaling not less than \$14,970,291 to be used exclusively toward completion of the Project as shown in the Budget.

(b) **Lease.** No Grant funds shall be disbursed to Grantee unless Grantee, as lessor, and the Company, as lessee, shall have entered into a binding and enforceable lease agreement (the “**Lease**”), pursuant to which Grantee agrees to lease the Property to the Company (i) at a rental rate of not less than fair value, for a term of not less than fifteen (15) years, (ii) with a covenant that the Company must pay to Grantee any Clawback Amount (as defined below) that Grantee owes to Triumph, and (iii) such other terms as the parties shall agree. Triumph shall have the right to review and approve the Lease. Triumph shall have forty-five (45) days from receipt of the Lease to approve or disapprove it, and Triumph’s failure to either approve or disapprove the Lease within such forty-five (45) day period shall be deemed approval.

(c) **Guaranties.** No Grant funds shall be disbursed to Grantee unless and until (i) Grantee has delivered Triumph, concurrently with the execution of the Agreement, a Guaranty Agreement (“**Guaranty Agreement**,” in the form attached hereto as Exhibit “B”, executed by the Company, pursuant to which the Company agrees to assume liability for payment of the Clawback Amount, and (ii) Triumph approves, in its sole and absolute discretion, such Guaranty Agreement.

COMPETITIVE
BIDS:

For contracts and/or purchases exceeding \$325,000, Grantee shall obtain competitive bids using Grantee’s established competitive bidding procedures (including, but not limited to, utilization of any continuing services agreements with approved vendors) for equipment, a copy of which established procedures shall be uploaded to Triumph’s SmartSheet system, as applicable. In awarding the contract pursuant to Sections 180.24 and 255 et seq., Florida Statutes, or pursuant to the Consultant’s Competitive Negotiation Act as set forth in Section 287.055, Florida Statutes, as applicable. Grantee shall award the contract to the lowest cost qualified responsive bidder considering the selection criteria contained within the invitation to bid. Triumph shall have the right to review and approve the proposed award and all other contracts. Triumph shall have fifteen (15) days from the receipt of the submitted material to notify Grantee of its approval or disapproval of such proposed award or contract. If Triumph fails to approve or disapprove of the award or contract within such fifteen (15) day period, the award or contract shall be deemed approved.

FUNDING:

The estimated total cost of the Project is \$21,970,291, as more fully shown in the Budget attached hereto as **Exhibit “A”** and incorporated herein (the “**Budget**”), with the Grant providing \$7,000,000 of that amount and other funding sources providing \$14,970,291 of that amount (the “**Matching Funds**”). To the extent that the actual cost of the Project exceeds \$21,970,291, Grantee shall be solely responsible for such excess. As shown on the Budget, of the \$7,000,000 Grant amount, up to \$5,000,000 shall be allocated to the renovations and improvements as shown on the Budget, and up to \$2,000,000 shall be allocated to a rate reduction of ad valorem real property taxes for the Property. In the event that there are any remaining undisbursed Grant funds upon completion of the Project, such funds shall not be disbursed to Grantee and Grantee shall have no claim thereto.

Grantee shall submit to Triumph a separate Request for Funding for each Budget category (a “**Request for Funding**”) in accordance with the Budget and shall submit information pursuant to a SmartSheet system by Grantee’s authorized users. After the first Request for Funding, each subsequent Request for Funding may only be submitted after Triumph’s approval of the immediately preceding Request for Funding. Each Request for Funding shall include the following items (A) through (H): (A) completed detailed Project account spreadsheet (i.e., in a tab on the Budget), (B) a completed Expense Itemization Sheet in a form provided by Triumph (“**Expense Itemization Sheet**”) for each category of funds requested and for Matching Funds category, together with real property ad valorem tax bills or other evidence needed for payment of tax amounts to which the tax rate reduction applied, and invoices, receipts, or contracts from vendors providing equipment, materials, and services; (C) payroll ledgers, percentage of time dedicated to the Project, and job descriptions as they relate to the Project, (D) documentation evidencing the completion of the work that is the subject of the requested funding, (E) to the extent that any portion of the current funding request is for reimbursement of amounts already paid by Grantee, copies of front and back of cancelled checks for funding, (F) to the extent that all or any portion of the prior funding was a disbursement for items to be paid rather than a reimbursement of amounts already paid, a completed Expense Itemization Sheet and receipts or other documentation evidencing that the funds disbursed previously were in fact paid in the proper amounts to the proper vendors for such items, including copies of front and back of cancelled checks for funding (G) copies of the insurance policies required under the Agreement and evidence that such policies are in current force and effect, and (H) such other documents as

Triumph shall require in order to determine that the funding is consistent with the purposes of the Grant. Grantee shall notify the Triumph Program Administrator via email each time a Request for Funding is submitted. Other than the final Request for Funding, no single Request for Funding shall be submitted for a funding request amount of less than \$175,000. In no event shall the cumulative fundings made by Triumph exceed the \$7,000,000 maximum amount of the Grant. Upon Triumph's receipt of (a) notification to the Program Administrator, and (b) a Request for Funding that includes all required supporting documents, Triumph shall have forty-five (45) days from receipt to review and either approve or disapprove of a Request for Funding. If Triumph approves a Request for Funding, then it shall fund the approved amount to Grantee within thirty (30) days after approval. If Triumph disapproves a Request for Funding, Triumph shall deliver a notice of disapproval within such forty-five (45) day period that states the reasons for such disapproval. If the stated reasons for disapproval can be cured by Grantee's submittal of missing or corrective items, Grantee shall have thirty (30) days following receipt of the notice of disapproval to submit such missing or corrective items. If Triumph fails to notify Grantee of its disapproval of the Request for Funding within forty-five (45) days of receipt, such Request for Funding shall be deemed disapproved.

None of the Grant shall be used as a reimbursement of items purchased by Grantee prior to the date of the Agreement. None of the amounts paid by Grantee in connection with the invoices submitted in a Request for Funding and then funded by Triumph shall also have been or will in the future be in any manner (a) reimbursed, returned, refunded, rebated, or otherwise credited to, Grantee by any contractor, materialman, vendor, or any other person or entity, or (b) paid, reimbursed, returned, refunded, rebated, or otherwise credited to Grantee by the State of Florida, the United States, or any agency or instrumentality of any of the foregoing, whether under any grant or loan program or other method of contribution, it being expressly understood and agreed that Grantee shall not receive payments, refunds, reimbursements, rebates or credits from any sources in amounts collectively exceeding 100% of the amounts paid or owing by Grantee.

None of the Grant funds or the Matching Funds shall be used to pay, reimburse, or recover any overhead or other indirect costs, including, but not limited to, general and/or administrative overhead, rental or other facilities overhead, continuing education fees, auxiliary fees, and fringe fees.

Triumph will honor requests for funding; provided, however, that Triumph may elect by notice in writing not to make a payment if:

- (a) There is missing or incomplete documentation;
- (b) The Request for Funding seeks funding for items other than as shown in the Budget or seeks funding for more than amounts actually invoiced by contractors, materialmen, or other vendors under any contracts, or that are otherwise due in connection with the tax rate reduction;
- (c) The amount requested for funding under the Request for Funding, together with all amounts previously funded under the Grant, would exceed the \$7,000,000 maximum amount of the Grant; or the amount requested for funding under the Request for Funding for a particular Budget category, together with all amounts previously funded for such Budget category, would exceed the maximum amount allocated to such Budget category; or Grantee failed to use any Grant funds funded to date in the amounts and for the purposes stated in the Budget;
- (d) Grantee made a misrepresentation or omission of a material nature in the Grant Application, or any supplement or amendment to the Grant Application, or with respect to any document or data furnished with the Grant Application or pursuant to the Agreement;
- (e) There is any pending litigation with respect to the performance by Grantee of any of its duties or obligations which may jeopardize or adversely affect the Project, the Agreement, or funding of the Grant;
- (f) Grantee has taken any action pertaining to the Project which, under the Agreement, requires the approval of Triumph, and Grantee failed to obtain such approval;
- (g) There has been a violation of the prohibited interests provisions of the Agreement;
- (h) Grantee is in material violation, default, or breach of or under any provision of the Agreement;
- (i) Grantee is in breach of any material representation or warranty contained in the Agreement;
- (j) Grantee and/or any federal, state, or local government, organization or agency providing financial assistance to the Project has revoked, suspended, or terminated that financial assistance to the Project, including, but not limited to, the Matching Funds;

(k) The Matching Funds are not being used for the intended purposes and in the amounts and at the times as set forth in the Budget, and/or Grantee has failed to provide Triumph with evidence of payment of the Matching Funds toward completion of the Project;

(l) With respect to previous fundings of the grant and payments under contracts, Grantee has failed to pay, or has failed to provide Triumph with evidence of payment of, the grant for the purposes of such funding. Such evidence shall include, but not be limited to, payroll ledgers, state and federal payroll returns, job descriptions, cancelled checks, wire transfer confirmations;

(m) Prior to the Completion Deadline (as defined below), Grantee has abandoned or discontinued the Project, or for any reason the commencement, prosecution, or timely completion of the Project by Grantee is rendered improbable, infeasible, impossible, or illegal;

(n) All or any portion of the requested funding includes funding for items that are outside the scope of the Project that is contemplated under the Budget;

(o) One or more of the contracts previously approved or deemed approved by Triumph have been modified, amended, or terminated, or have been subject to a change order, without the prior written consent or deemed approval of Triumph; provided, however, that any change order under \$65,000 shall not be subject to approval under the Agreement;

(p) Intentionally omitted;

(q) Without the prior approval of Triumph, the total Project cost as set forth in the Budget, the overall Budget, and/or a particular Budget category, has been increased or decreased by more than 5%; and/or the Matching Funds have decreased by more than 5%; provided, however, that, not more than twice during the term of the grant and with prior approval of Triumph staff, Grantee may re-allocate Matching Funds among the budget categories for programmatic purposes even if such re-allocation is in excess of 5% of the category amount;

(r) Completion of the Project is not on schedule for completion by December 31, 2032;

(s) Grantee has failed to maintain in full force and effect all insurance required under the Agreement;

(t) Grantee is not in compliance with all applicable environmental laws and regulations in accordance with the Agreement;

(u) Grantee is not in compliance with the competitive bidding requirements described above; and/or

(v) Grantee is not in compliance with the equal employment opportunity and other labor provisions as required by the Agreement.

ELIGIBLE
COSTS/
DOCUMENT-
ATION:

All amounts paid by Grantee with respect to the Project for both the purchase and the renovation of the Property shall be supported by properly executed invoices, contracts, and other records evidencing in proper detail the nature and propriety of the charges and use of the Matching Funds. All checks, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible, and, to the extent feasible, kept separate and apart from all other such documents.

MAINTENANCE
OF RECORDS:

Grantee shall establish separate accounts to be maintained within its existing accounting system or establish independent accounts (the "Project account"). Records of costs incurred shall be maintained in the Project account and made available upon request to Triumph at all times during the period of the Agreement and for five (5) years after final grant payment is made. Copies of these documents and records shall be furnished to Triumph upon request. Records of costs incurred include Grantee's general accounting records and the Project records, together with supporting documents and records, of Grantee and all consultants and sub-consultants performing work on the Project and all other records of Grantee and consultants considered necessary by the Triumph for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the five (5) year period, the records shall

be retained until all litigation, claims, or audit findings involving the records have been resolved.

AUDITS:

The Grant shall be subject to audits and/or monitoring by Triumph. Grantee shall on an annual basis on or before October 31 of each year submit to Triumph an activity report which contains, in addition to any other information requested by Triumph (a) the progress of the Project, (b) costs incurred to date, (c) how Grantee is progressing with attainment toward achieving the Performance Metrics (as defined below), (d) Grantee's most recent audited financial statements. (e) a completed detailed Project account spreadsheet (i.e., in a tab on the Budget), (f) a completed Expense Itemization Sheet in a form provided by Triumph ("**Expense Itemization Sheet**") for each category of Grant funds previously disbursed and for Matching Funds category, together with invoices, receipts, or contracts from vendors providing equipment, materials, and services; (g) documentation evidencing the completion of the work to date, and (h) such other documents as Triumph shall require in order to determine that the Grant funds previously disbursed and Matching Funds used to date are consistent with the purposes of the Grant. Triumph shall have the right, at any time and from time to time upon reasonable notice to Grantee, to access the Project and inspect any work being performed or as completed. Grantee shall also make available to Triumph copies of any and all invoices, contracts, plans and specifications, and other documentation relating to the Project.

TERMINATION
OR
SUSPENSION
OF PROJECT:

If Grantee abandons or, before completion, finally discontinues the Project; or for any other reason, the commencement, prosecution, or timely completion of the Project by Grantee is rendered improbable, infeasible, impossible, or illegal, Triumph will, by written notice to Grantee, suspend any or all of its obligations under the Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected, or Triumph may terminate any or all of its obligations under the Agreement. Upon receipt of any final termination or suspension notice, Grantee shall upon demand by Triumph remit to Triumph all or a portion of the Grant previously received.

COMPLIANCE
WITH LAWS:

Grantee shall comply with all applicable laws regarding public records,

third party contracts, labor laws, civil rights laws, and environmental laws.

INSURANCE: Grantee shall keep and maintain or cause to be maintained casualty insurance on all improvements, fixtures, and equipment, that constitute the Project, the cost of which was in whole or in part funded using the Grant, but only to the extent that such equipment and improvements can in fact be insured. In the event of the loss of such equipment or improvements, Grantee shall either replace the improvements, fixtures, and equipment, or reimburse Triumph to the extent the Grant was used to purchase or such improvements, fixtures, and equipment

CLAWBACK: Any grant funds funded by Triumph to Grantee shall be subject to being repaid (“clawed back”) in the event (i) Grantee made any materially false certification or representation to Triumph in connection with its application for the grant, under the Agreement, and/or in connection with any request for funding, and/or (ii) Grantee breached, violated, or is in any way in default under any of its obligations under the Agreement, and/or (iii) both of the following performance metrics (the “**Performance Metrics**”) set forth in subparagraphs (a) and (b) below are not achieved, then Grantee shall upon written demand by Triumph repay to Triumph some or all portions of Grant theretofore funded to and received by Grantee:

(a) **Performance Metric #1:** By the date (the “**Performance Commencement Date**”) which is the earlier of (i) three (3) years after the date that the renovations of the Property have been substantially completed as evidenced by a certificate of occupancy or other reasonable evidence, or (ii) December 31, 2025, the Company will have created at least 200 New Jobs (as defined below); and

(b) **Performance Metric #2:** All of the 200 New Jobs shall have been maintained for at least three (3) years after the Performance Commencement Date.

As used herein, a “**New Job**” shall mean a job with the Company at the Property that (a) has an average wage of not less than 115% of the 2021 EFI-specified average wage for the Panama City Metro area, (b) was created after December 9, 2021, (c) could not be sustained absent the availability of the Property, and (d) is performed by a full-time employee or a full-time equivalent employee working at least 35 paid hours per week. Jobs are not considered New Jobs if they are (A) moved from one business to

another business within the Company in Florida, unless the relocated positions are back-filled with net new-to-Florida full-time-equivalent jobs paying at least the wage of the transferred position(s), (B) moved from one business unit or location of a business or any of its affiliates or subsidiaries in Florida to another business unit or location of that business or any of its affiliates or subsidiaries in Florida, unless the relocated positions are back-filled with net new-to-Florida full-time-equivalent jobs paying at least the wage of the transferred position(s); or (C) temporary construction jobs involved with the construction of the Project, or temporary or seasonal jobs associated with cyclical business activities or to substitute for permanent employees on a leave of absence.

The calculation of the number of New Jobs shall be made by Rick Harper or another similarly qualified economist or analyst selected by Triumph.

Upon the occurrence of (i) Grantee having made any materially false certification or representation to Triumph in connection with its application for the grant, under the Agreement, and/or in connection with any request for funding, and/or (ii) Grantee having breached, violated, or is in any way in material default under any of its obligations under the Agreement, then Triumph shall have the right to demand payment of all amounts of the Grant that were theretofore funded, together with interest at the rate *Wall Street Journal Prime Rate* plus three percent (3%) per annum on such amounts to be repaid.

In the event Grantee fails to timely achieve the Performance Metrics described above, then, upon written demand by Triumph, Grantee shall within ninety (90) days of such demand repay to Triumph an amount of the Grant proportional to the jobs shortfall, based on \$35,000 per job (see the basis for this number below). For example, if there is a shortfall of 1 job (199 jobs created or maintained instead of 200), then the amount owed would be \$35,000 (1 x \$35,000), and if there is a shortfall of 75 jobs (75 jobs created or maintained instead of 200), then the amount owed would be \$2,625,000 (75 x \$35,000). The \$35,000 per job amount is determined by dividing the \$7,000,000 Grant amount by the 200 promised jobs. All amounts owed shall be repaid with interest at the rate *Wall Street Journal Prime Rate* plus three percent (3%) per annum on such amounts to be repaid. Such interest shall accrue commencing on the date of such written demand by Triumph and shall continue to accrue until the amount demanded is repaid in full. The amount due, including interest thereon, is referred to herein as the “**Clawback Amount**”).

Notwithstanding the foregoing, Triumph shall have the discretion to waive, reduce, extend, or defer any Clawback Amount due if it determines in its sole and absolute discretion that (i) a breach of a representation and warranty herein or in the Grant Application, or a breach, violation, or default of or under any other provision of the Agreement, was not material in nature, (ii) based on quantitative evidence, the Performance Metrics were not achieved due to negative economic conditions beyond Grantee's reasonable control, (iii) Grantee made a good faith effort to achieve the Performance Metrics, and/or (iv) based on quantitative evidence, the effects of a named hurricane or tropical storm, or specific acts of terrorism, adversely affected Grantee's ability to achieve the Performance Metrics.

OTHER
TERMS AND

The Agreement shall contain such other terms and conditions as required by Triumph and its counsel.

By signing below, the parties are indicating a willingness to proceed with having a draft grant award Agreement prepared on substantially the terms set forth herein. However, as indicated above, this Term Sheet is merely intended for discussion and negotiation purposes only and (a) does not constitute a grant, or an approval of a grant, by Triumph to Grantee, and (b) does not create any binding obligations on Triumph or Grantee with respect to (i) any grant, (ii) any approval of a grant, or (iii) engaging in any further discussions or negotiations with respect to a grant. Any binding agreement between Triumph and Grantee with respect to any grant must be contained in a definitive grant award Agreement, approved by the Board of Directors of Triumph and Grantee and executed by Triumph and Grantee. At any time prior to such execution of the Agreement either Triumph or Grantee may terminate negotiations, and upon such termination neither party shall have any liabilities or obligations to the other.

[signature page follows]

Dated: _____, 2022

TRIUMPH:
Triumph Gulf Coast, Inc.

By: _____
Name: _____
Title: _____

GRANTEE:
Bay County Board of County
Commissioners

By: _____
Name: _____
Title: _____

A4504951.DOCX

EXHIBIT “A”

BUDGET

[see attached]

Exhibit A

Project #, name 258 Bay- Project Lightning Strike
Budget \$ 21,970,291.00
Estimated construction start date if applicable Q1 2022
Estimated education component start date if applicable N/A

	Renovation, Construction & Equipment	Lease Payments	State &/or County Tax Incentives	Triumph Tax Rate Reduction	Total
Please change year # to actual year					
Project Total					
Calendar Year 1	-	71,353	-	-	71,353
Calendar Year 2	10,000,000	857,510	847,000	-	11,704,510
Calendar Year 3	2,550,790	872,756	120,221	200,000	3,743,767
Calendar Year 4	-	888,003	120,221	200,000	1,208,224
Calendar Year 5	-	903,365	120,221	200,000	1,223,586
Calendar Year 6	-	919,997	120,221	200,000	1,240,218
Calendar Year 7	-	857,307	120,221	200,000	1,177,528
Calendar Year 8	-	-	120,221	200,000	320,221
Calendar Year 9	-	-	120,221	200,000	320,221
Calendar Year 10	-	-	120,221	200,000	320,221
Calendar Year 11	-	-	120,221	200,000	320,221
Calendar Year 12	-	-	120,221	200,000	320,221
Project Total	12,550,790	5,370,291	2,049,210	2,000,000	21,970,291

Triumph

2021				
2022	5,000,000			5,000,000
2023			200,000	200,000
2024			200,000	200,000
2025			200,000	200,000
2026			200,000	200,000
2027			200,000	200,000
2028			200,000	200,000
2029			200,000	200,000
2030			200,000	200,000
2031			200,000	200,000
2032			200,000	200,000
Triumph Total	5,000,000	-	2,000,000	7,000,000

Grantee

2021		71,353		71,353
2022	5,000,000	857,510		5,857,510
2023	2,550,790	872,756		3,423,546
2024		888,003		888,003
2025		903,365		903,365
2026		919,997		919,997
2027		857,307		857,307
2028				
2029				
2030				
2031				
2032				
Grantee Total	7,550,790	5,370,291	-	12,921,081

State Sales Tax Exemption on Equipment

2021				
2022			847,000	847,000
2023				
2024				
2025				
2026				
2027				
2028				
2029				
2030				
2031				
2032				
Match Source 1 Total			847,000	847,000

Bay County Tax Abatement

2021				
2022				
2023			120,221	120,221
2024			120,221	120,221
2025			120,221	120,221
2026			120,221	120,221
2027			120,221	120,221
2028			120,221	120,221
2029			120,221	120,221
2030			120,221	120,221
2031			120,221	120,221
2032			120,221	120,221
Match Source 2 Total			1,202,210	1,202,210

EXHIBIT “B”

Form of Guaranty Agreement

[see attached]

GUARANTY AGREEMENT

This Guaranty Agreement (this “**Agreement**”) is made and entered into as of _____, 2022 by _____ (“**Guarantor**”) in favor of and for the benefit of Triumph Gulf Coast, Inc., a Florida not-for-profit corporation (“**Triumph**”).

RECITALS:

WHEREAS, Triumph and the Bay County Board of County Commissioners (the “**Grantee**”) are parties to that certain Grant Award Agreement dated _____, 2022 (the “**Grant Agreement**”).

WHEREAS, pursuant to the Grant Agreement, and subject to the terms and conditions therein, Triumph has agreed to make a grant to Grantee in the maximum amount of \$7,000,000 (the “**Grant**”) to provide partial funding for a project (the “**Project**”) to (i) renovate and improve a six acre laydown facility (collectively, the “**Property**”) in the Venture Crossings Enterprise Centre in Panama City, Florida, and (ii) provide a rate reduction of ad valorem real property taxes for the Property, which Property will be leased by Grantee to the Company.

WHEREAS, pursuant to Section 8.4 of the Grant Agreement, Grantee must pay a certain Clawback Amount (as defined in the Grant Agreement) in the event that certain Performance Metrics (as defined in the Grant Agreement) are not satisfied.

WHEREAS, Guarantor has agreed to enter into this Agreement pursuant to Section 3.2 of the Grant Agreement, pursuant to which, among other things, Guarantor agrees to re-pay to Triumph the Clawback Amount in the event Grantee fails to do so.

WHEREAS, Guarantor will derive a substantial benefit from the making of the Grant to Grantee and the completion of the Project, and thus has received and thus is receiving good and valuable consideration for entering into this Agreement.

NOW, THEREFORE, for and in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. Accuracy of Recitals. Guarantor acknowledges and agrees that the foregoing Recitals are true and accurate.

2. Review and Understanding of Grant Agreement and this Agreement. Guarantor acknowledges and agrees that it (i) has been provided with and has reviewed a fully-executed copy of the Grant Agreement, and (ii) has had an opportunity to consult with its own legal counsel regarding its rights and obligations under this Agreement, including, but not limited to, rights and obligation that arise under this Agreement as it

relates to the Grant Agreement.

3. Guaranty of Clawback Amounts.

(a) Guaranty. Guarantor hereby unconditionally and irrevocably guaranties payment by Grantee of the Clawback Amount that becomes due and payable under the Grant Agreement. Subject to the limitations set forth in Section 3(c) below, Guarantor hereby covenants and agrees that in the event that Triumph demands payment by Grantee of the Clawback Amount and such amount is not paid in full to Triumph within thirty (30) days of demand by Triumph, Guarantor agrees to pay to Triumph, within thirty (30) days of demand by Triumph, the difference between (i) the Clawback Amount, minus (ii) any portion of the Clawback Amount previously paid to Triumph by Grantee and/or any other guarantor of the Clawback Amount.

(b) Triumph shall have the right to enforce this Agreement and any other agreements guarantying Grantee's obligations with respect to the Clawback Amount concurrently, in any order Triumph desires and for up to the maximum liability under each such agreement, until the entire Clawback Amount has been paid in full to Triumph. Between payments of portions of the Clawback Amount by Grantee, Guarantor, and any other guarantors of the Clawback Amount, Triumph shall not be entitled to collect an amount in excess of the Clawback Amount plus attorney's fees under Section 10.12 of the Grant Agreement and under Section 5.7 below. Nothing herein shall be construed to prohibit Guarantor from pursuing an action for contribution or indemnification against other guarantors of the Clawback Amount.

(c) Notwithstanding anything in this Agreement to the contrary, Guarantor's liability under this Agreement for payment of all or any portion of the Clawback Amount shall not exceed the sum of Seven Million Dollars (\$7,000,000), plus interest and attorney's fees under the Agreement.

(d) At any time and from time to time, upon written request by Triumph, Guarantor shall, within ten (10) days of such request, deliver to Triumph financial statements and/or federal income tax returns for the three (3) years immediately preceding the request.

(e) Guarantor acknowledges and agrees that any amounts set forth in this Section 3 to be paid by Guarantor is intended as a third-party repayment of Grant funds conditionally disbursed to Grantee and are due and payable to Triumph as a result of Grantee's failure to timely satisfy the Performance Metrics set forth in the Grant Agreement and/or Grantee's failure to comply with other provisions of the Grant Agreement. Such amounts are not intended as and shall not be deemed damages or a penalty. Notwithstanding the foregoing, to the extent that for any reason such amounts are deemed damages, Guarantor agrees that (i) such amounts shall constitute liquidated damages, (ii) the actual damages suffered by Triumph would be unreasonably difficult to determine and that Triumph would not have a convenient and adequate alternative to the

liquidated damages, (iii) the amounts due Triumph bear a reasonable relationship to any anticipated harm and is a genuine pre-estimate suffered by Triumph, and (iv) Guarantor irrevocably waives any right that it may have to raise as a defense that any such liquidated damages are excessive or punitive.

(f) This Agreement and the Guarantor's obligations hereunder shall remain in full force and effect until the later to occur of (i) all obligations of Grantee under the Grant Agreement have been satisfied, or (ii) all Clawback Amounts due and payable under the Grant Agreement have been paid in full and no additional Clawback Amount can thereafter arise under the Grant Agreement.

4. **Representations and Warranties of Guarantor.** Guarantor hereby makes the following representations and warranties to Triumph:

(a) **Organization; Power and Authority.** Guarantor is a _____ duly organized, validly existing, and in good standing under the laws of the State of _____ and is duly qualified to do business in and is in good standing in the State of Florida, and has all requisite power and authority to own, lease, and operate its properties and to carry on its affairs as currently conducted.

(b) **Authorization and Binding Obligation.** Guarantor has all necessary power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Guarantor. This Agreement has been duly executed and delivered by Guarantor and constitutes the legal, valid, and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms (subject to applicable bankruptcy, insolvency, moratorium, reorganization, or similar laws affecting the rights of creditors generally and the availability of equitable remedies).

(c) **No Violations.** The execution and delivery by Guarantor of this Agreement and the performance by it of the transactions contemplated hereby does not (i) conflict with or result in a breach of any provision of Guarantor's articles/certificate of incorporation, certificate of formation, bylaws, or similar corporate document, (ii) result in violation or breach of or constitute a default (or an event which, with or without notice or lapse of time or both, would constitute a default) under, or result in the termination, modification, cancellation or acceleration under the terms, conditions, or provisions of any of Guarantor's loan agreements, indentures, material agreements or other material instruments or (iii) violate any applicable law or regulation. Guarantor has not been convicted of a "public entity crime" (as such term is defined in Section 287.133 of the Florida Statutes) nor has Guarantor been placed on the "discriminatory vendor list" (as such term is defined in Section 287.134 of the Florida Statutes). Neither Guarantor nor any person or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of Guarantor, is listed on the Specially Designated Nationals List or the Foreign Sanctions Evaders List, in each case, as

maintained by the United States Department of the Treasury. Neither Guarantor nor its officers, directors, agents, distributors, employees, or other persons or entities acting on its behalf has taken any act in furtherance of an offer, payment, promise to pay, authorization, or ratification of the payment, directly or indirectly, of any gift, money or anything of value to a government official or to obtain or retain business for any person or entity in violation of applicable law.

(d) **Litigation; Compliance with Laws.** No litigation, investigation, claim, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of or before any arbitrator or governmental agency is pending or, to the knowledge of Guarantor, threatened by or against Guarantor or against any of its properties or assets, which, individually or in the aggregate, could reasonably be expected to result in a material and adverse effect on the assets, operations, or financial condition of the Guarantor or Guarantor's ability to perform its obligations under this Agreement. No state or federal criminal investigation, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of the Office of the Attorney General of the State of Florida, any State Attorney in the State of Florida, the United States Department of Justice, or any other prosecutorial or law enforcement authority is pending or, to the knowledge of Guarantor, threatened by or against Guarantor or any of its officers. No permanent injunction, temporary restraining order or similar decree has been issued against Guarantor which, individually or in the aggregate, could reasonably be expected to have a material and adverse effect on the assets, operations, or financial condition of Guarantor or Guarantor's ability to perform its obligations under this Agreement.

5. **Miscellaneous Provisions:**

5.1 **Severability.** If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

5.2 **Non-Assignment.** Guarantor shall not assign, subcontract, or otherwise transfer its rights, duties, or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of Triumph, which consent may be withheld in Triumph's sole and absolute discretion. Triumph shall at all times be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another person or entity upon giving prior written notice to Guarantor. Any attempted assignment of this Agreement or any of the rights hereunder in violation of this provision shall be void *ab initio*.

5.3 **Construction: Interpretation.** The title of and the section and paragraph headings in this Agreement are for convenience of reference only and shall not govern or affect the interpretation of any of the terms or provisions of this Agreement. The term "this Agreement" means this Agreement, as the same may from time to time be amended, modified, supplemented, or restated in accordance with the terms hereof. All words used

in this Agreement in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. The use in this Agreement of the term “including” and other words of similar import mean “including, without limitation” and where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit, or restrict in any manner the construction of the general statement to which it relates. The word “or” is not exclusive and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Agreement as a whole, and not to any particular section, subsection, paragraph, subparagraph, or clause contained in this Agreement. Time is of the essence with respect to the performance of all obligations under this Agreement. Guarantor and Triumph have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by Guarantor and Triumph, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

5.4 Preservation of Remedies; Severability. No delay or omission to exercise any right, power, or remedy accruing to either party hereto upon breach or default by either party hereto under this Agreement, will impair any such right, power, or remedy of either party; nor will such delay or omission be construed as a waiver of any breach or default or any similar breach or default. If any term or provision of this Agreement is found to be illegal, invalid, or unenforceable, such term or provision will be deemed stricken, and the remainder of this Agreement will remain in full force and effect.

5.5 Entire Agreement; Amendment; Waiver. This Agreement embodies the entire agreement of Guarantor and Triumph other than those contained in this Agreement; and this Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between Guarantor and Triumph. No amendment will be effective unless reduced to writing and signed by an authorized officer of the Guarantor and the authorized officer of Triumph. No waiver by a party hereto of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party hereto shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

5.6 Notices. All notices and demands to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (i) when personally delivered, (ii) when transmitted via facsimile to the number set out above if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), (iii) the day following the day (except if not a business day then the next business day) on which the

same has been delivered prepaid to a reputable national overnight air courier service, or (iv) the third business day following the day on which the same is sent by certified or registered mail, postage prepaid. Notices and shall be sent to the applicable address set forth below, unless another address has been previously specified in writing in accordance with this Section 5.6:

If to Triumph:

Triumph Gulf Coast, Inc.
P.O. Box 12007
Tallahassee, FL 32317
Attention: Executive Director

If to Guarantor:

5.7 Attorney's Fees. In the event litigation arises (at the trial or appellate level) in connection with this Agreement, the prevailing party will be entitled to be reimbursed for all costs incurred in connection with such litigation, including without limitation reasonable attorneys' fees and costs.

5.8 TO THE FULLEST EXTENT LEGALLY PERMISSIBLE, GUARANTOR AND, BY ITS ACCEPTANCE OF THIS AGREEMENT, TRIUMPH, HERETO WAIVE TRIAL BY JURY IN RESPECT OF ANY CLAIM, DISPUTE OR ACTION ARISING OUT OF, RELATED OR PERTAINING TO THIS AGREEMENT, THE GRANT APPLICATION, AND/OR THE GRANT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE AND GUARANTOR AND, BY ITS ACCEPTANCE OF THIS AGREEMENT, TRIUMPH, HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR GUARANTOR AND, BY ITS ACCEPTANCE OF THIS AGREEMENT, TRIUMPH, ENTERING INTO THIS AGREEMENT. EACH OF GUARANTOR AND, BY ITS ACCEPTANCE OF THIS AGREEMENT, TRIUMPH, IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. EACH OF GUARANTOR AND, BY ITS ACCEPTANCE OF THIS AGREEMENT, TRIUMPH, REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

5.9 Governing Law. The laws of the State of Florida shall govern the construction, enforcement and interpretation of this Agreement, regardless of and without reference to whether any applicable conflicts of laws principles may point to the application of the laws of another jurisdiction. The exclusive personal jurisdiction and venue to resolve any and all disputes between them including, without limitation, any disputes arising out of or relating to this Agreement shall be in the state courts of the

State of Florida in the County of Escambia. Guarantor expressly consents to the exclusive personal jurisdiction and venue in any state court located in Escambia County, Florida, and waives any defense of forum non conveniens, lack of personal jurisdiction, or like defense, and further agree that any and all disputes between Guarantor and Triumph shall be solely in the State of Florida. Should any term of this Agreement conflict with any applicable law, rule, or regulation, the applicable law, rule, or regulation shall control over the provisions of this Agreement.

5.10 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, Guarantor caused this Agreement be
executed as of the day and year first above written.

Guarantor:

By: _____

Print Name: _____

Title: _____