

INCENTIVE AGREEMENT

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Exhibits:

- Exhibit A: Legal Description of Initial Property
- Exhibit B: Employment Incentive Fees Report Prepared by BUSINESS
- Exhibit C: Location of Water, Fire Flow, and Sewer Service Lines
- Exhibit D: Location of Water Main Line to be Installed by City of Topeka
- Exhibit E: Location of Innovation Parkway
- Exhibit F: Schedule of Funds to be Escrowed by GO TOPEKA
- Exhibit G: Form of Escrow Agreement

INCENTIVE AGREEMENT

This Incentive Agreement is effective as of _____, 2011 (this “Agreement”), and is entered into by and among (i) GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC. (“GO TOPEKA”), (ii) MARS CHOCOLATE NORTH AMERICA, LLC, a Delaware limited liability company (“BUSINESS”) and (iii) JOINT ECONOMIC DEVELOPMENT ORGANIZATION (“JEDO”).

Recitals:

WHEREAS, BUSINESS is contemplating constructing a manufacturing facility in the Kanza Fire Commerce Park in Shawnee County, Kansas located on the parcel described in Exhibit A attached hereto, with an initial approximate space of Three Hundred Fifty Thousand (350,000) square feet (the “Facility”); and

WHEREAS, GO TOPEKA desires to assist and promote BUSINESS in locating its operations in the Kanza Fire Commerce Park in Topeka, Shawnee County, Kansas; and

WHEREAS, BUSINESS, acting in reliance upon the incentives set forth in this Agreement, has decided to locate its operations in the Kanza Fire Commerce Park in Topeka, Shawnee County, Kansas; and

WHEREAS, the parties wish to memorialize their understanding regarding the details of the incentive package to this legally enforceable contract.

WITNESSETH:

NOW, THEREFORE, in consideration of such mutual benefits and of the mutual covenants and agreements expressed herein, the parties covenant and agree as follows:

1. **Local Employment Incentive.**

- a. **Employment Incentive Fee.** For each new Full Time Employment Position (up to a maximum of Four Hundred Twenty-Five (425) positions) added and maintained (as required below) by BUSINESS, GO TOPEKA shall pay an incentive to BUSINESS of Six Thousand Dollars (\$6,000) (the “Employment Incentive Fee”). The aggregate of such Employment Incentive Fee shall not exceed Two Million Five Hundred Fifty Thousand Dollars (\$2,550,000). Each Full Time Employment Position in which BUSINESS receives an Employment Incentive Fee must be maintained for a minimum of ten (10) consecutive years measuring on the January 1st immediately succeeding the year that the Full Time Employment Position is filled (i.e., If Full Time Employment Position is filled on 6/1/14, the ten consecutive year period is measured from 1/1/15-12/31/25). To be eligible for an Employment Incentive Fee, the Full Time Employment Position must be created by December 31, 2019. Each Full Time Employment Position may qualify for only one Employment Incentive. BUSINESS agrees that to the extent that it receives any Employee Incentive Fee, it shall spend at least that amount in the construction and purchase of machinery and equipment for the Facility and the renewal wind energy facility. At such time that BUSINESS has spent \$2,550,000 in the design, engineering, construction and purchase of machinery and equipment for the Facility and the renewal wind energy facility (as defined in Section 7(a) of this Agreement), BUSINESS shall be deemed to satisfy the spending requirements in this Section 1(a).

- b. Full Term Employment Position Defined. A “Full Time Employment Position” must include Two Thousand Eighty (2,080) paid hours annually at the Facility, with at least an annual base average wage of \$43,000 (when averaged against all other Full Time Employment Positions at the Facility and shall not include bonuses or over-time pay) plus benefits which at a minimum shall include health insurance of which BUSINESS shall pay a portion of the premium. A Full Time Employment Position is an employment position at the Facility for which the BUSINESS withholds and pays all federal, state and local employment taxes attributable to the employee. Nothing herein shall require that a Full Time Employment Position be held by the same person, nor shall this Agreement preclude BUSINESS from changing the title, purpose or utility of a position (as long as it meets the other requirements identified in this Section 1(b)).
- c. Timing of Payments and Reports. No later than January 31st of each year commencing on January 31, 2012 to January 31, 2030, BUSINESS shall send GO TOPEKA a written report which provides: (i) the average number of Full Time Employment Positions maintained in the previous calendar year, (ii) the number of Full Time Employment Positions maintained on December 1st of the immediately previous calendar year, (iii) the amount of Employment Incentive Fees due and payable to BUSINESS on March 1st from GO TOPEKA as a result of new Full Time Employment Positions filled in the immediately previous calendar year, (iv) the amount of Employment Incentive Fees that will be returned to GO TOPEKA by BUSINESS pursuant to Sections 1(d) or 1(e) of this Agreement, and (v) the difference between the amounts set forth in Sections 1(c) (iii) and (iv) and the total amount of payment due to the applicable party after the offsets have been calculated. In addition, for January 31, 2015, the report shall also provide the number of Full Time Employment Positions maintained by Business on April 1, 2014 and June 1, 2014 (only if the number of Full Time Employment Positions on April 1, 2014 is less than 180). A sample of the written report that BUSINESS would provide to GO TOPEKA is attached hereto as Exhibit B. If Employment Incentive Fees are due and payable by GO TOPEKA to BUSINESS after the calculation set forth in clause (v) above, GO TOPEKA shall pay such Employment Incentive Fees to BUSINESS no later than March 1st of each year. If Employment Incentive Fees are to be reimbursed by BUSINESS to GO TOPEKA after the calculation set forth in clause (v) above, BUSINESS shall pay such Employment Incentive Fees to GO TOPEKA no later than March 1st of each year.
- d. Minimum Employment Requirement. BUSINESS shall have at least 180 Full Time Employment Positions by April 1, 2014. If BUSINESS has less than 180 Full Time Employment Positions by April 1, 2014, it shall inform GO TOPEKA in writing and GO TOPEKA shall give BUSINESS a two calendar month cure period. If BUSINESS has less than 180 Full Time Employment Positions by June 1, 2014, BUSINESS shall reimburse GO TOPEKA for all of the Employment Incentive Fees that it had previously received no later than March 1, 2015, and BUSINESS shall not be eligible to receive any further Employment Incentive Fees.
- e. Pro-Ration of Employment Incentive Fee. If, after receiving an Employment Incentive Fee for a Full Time Employment Position, BUSINESS scales back, eliminates, or otherwise fails to maintain the Full Time Employment Position for the full ten (10) consecutive years as provided in Section 1(a), without another eligible Full Time Employment Position taking such terminated position’s place no later than December 1st during the calendar year in which such terminated position occurred, BUSINESS shall refund to GO TOPEKA Ten Percent (10 %) of the Employment Incentive Fee received for such position for each year that the Full Time Employment Position is not maintained for the entire such year pursuant to Section 1(c).

Example #1: If position #1 was terminated after eight years, but there were 428 full-time positions in years nine and ten then BUSINESS would retain the entire Employment Incentive for position #1.

Example #2: If position #1 was terminated after seven years, but there were 424 full-time positions in year eight, 425 full-time positions as measured on December 1st in year nine and 424 positions in year ten, BUSINESS would remit \$600 to GO TOPEKA at the end of each of years eight and ten and would retain \$600 relating to year nine.

Example #3: If in year nine another eligible Full Time Employment Position was established, BUSINESS would receive a \$6,000 Employment Incentive Fee for such new position, provided that Employment Incentive Fees had not already been paid for 425 positions.

2. **Property Transfer Matters.**

- a. On the date which is the earlier of (i) the 30th day after the full execution of this Agreement or (y) July 29, 2011, GO TOPEKA shall transfer marketable fee simple title in and to Block "A", Lots 1 and 2, in the Kanza Fire Commerce Park, in Shawnee County, Kansas, as set forth in **Exhibit A** attached hereto, consisting of approximately One Hundred Fifty (150) contiguous acres (the "Initial Property") by special warranty deed to BUSINESS, free and clear of any liens or encumbrances. If the Initial Property does not include the real property in which the spur and rail yard servicing the Facility shall be located (the "Rail Yard Property"), then GO TOPEKA shall transfer to BUSINESS, marketable fee simple title to the Rail Yard Property by special warranty deed, free and clear of any liens or encumbrances, within thirty days after written request of BUSINESS. For purposes of this Agreement, the value of the Initial Property (which shall include the Rail Yard Property) is agreed to be Four Million Five Hundred Thousand Dollars (\$4,500,000).
- b. If BUSINESS notifies GO TOPEKA in writing by December 31, 2012, that BUSINESS desires to construct a wind renewable energy facility to support the Facility, GO TOPEKA shall transfer to BUSINESS no later than February 15, 2013, marketable fee simple title of approximately 40 acres of land free and clear of any liens or encumbrances, for purposes of accommodating wind renewable energy facilities to support the Facility (collectively, the "Additional Property" and with the Initial Property and the Rail Yard Property, collectively, the "Property"). The value of the Additional Property shall be agreed to by the parties at the time of transfer. If the Additional Property is not contiguous with the Initial Property, GO TOPEKA shall provide BUSINESS or its subsidiary with an access easement so that BUSINESS shall have unrestricted permanent access for vehicular traffic between the Initial Property and the Additional Property. In addition, the access easement must satisfy any conditions relating to the Property achieving BUSINESS' desired LEED certification.
- c. GO TOPEKA agrees that it shall not use eminent domain or other legal means to seize, transfer or purchase all or any portion of the Property from BUSINESS after the Facility is constructed without BUSINESS's consent which it may withhold in its sole discretion.
- d. GO TOPEKA and BUSINESS will work together in good faith to create a Declaration of Covenants, Conditions, Restrictions and Dedication of Easements that would encumber certain real estate within the Kanza Fire Commerce Park in the City of Topeka, Shawnee County, Kansas (the "Declaration") as mutually agreeable to the parties. GO TOPEKA and BUSINESS desire to

promote development within the Kanza Fire Commerce Park that is site responsive, aesthetically appropriate and consistent in character, by designing and developing the Kanza Fire Commerce Park in a manner that will result in attractive, functional and viable businesses located within the Kanza Fire Commerce Park for the City of Topeka and Shawnee County. GO TOPEKA acknowledges that the design and development of the Facility shall be used as a model for determining the appropriate covenants, conditions and restrictions that shall be part of the Declaration.

3. **Incentive Calculation Documentation.** When and as reasonably requested by GO TOPEKA, BUSINESS shall provide GO TOPEKA or a third party accounting firm selected thereby, with invoices relating to the purchase of equipment and machinery and other capital investment relating to the construction and operation of the Facility and relating to satisfying the conditions set forth in Section 7a(ii) of this Agreement, state tax return of BUSINESS, payroll receipts and/or time sheets for the employees employed at the Facility to establish investment in and at the Facility and employment levels for purposes of calculating Employment Incentives and monitoring BUSINESS' performance hereunder. GO TOPEKA, at its sole cost and directly or through a third party accounting firm selected by GO TOPEKA, shall have the right to review the documents set forth in the immediately previous sentence but shall not have the right to request the financial statements of BUSINESS. If GO TOPEKA and BUSINESS disagree as to whether BUSINESS has satisfied the requirements set forth in this Agreement to receive the incentives as set forth in this Agreement, the parties agree to meet in person through their representatives selected by each respective party to try to amicably resolve the issue prior to submitting the issue to litigation.

4. **Other GO TOPEKA Incentives.** GO TOPEKA, at its sole cost and expense, shall also provide the following to (or for the benefit of) BUSINESS:

a. Processing and installation of all water, fire flow, and sewer service lines to certain designated service points at the Facility as reasonably determined by BUSINESS, with sufficient capacity as reasonably determined by BUSINESS to support the Facility (collectively, the "Service Lines") GO TOPEKA estimates will cost GO TOPEKA approximately Three Hundred Sixty-Seven Thousand One Hundred Dollars (\$367,100) to process and install the Service Lines. The location of the Service Lines are shown on the attached **Exhibit C.** The Service Lines shall be installed no later than December 31, 2011. GO TOPEKA agrees that it is responsible for processing and installing the Service Lines even if the cost exceeds \$367,100, and BUSINESS acknowledges that if the cost for processing and installing the Service Lines is less than \$367,100, that GO TOPEKA shall retain such cost savings.

b. The Facility building permit fees paid to the City of Topeka (the "Permit Fees") which is estimated at Two Hundred Thousand Dollars (\$200,000), based on the published schedule set by the City of Topeka ordinance. GO TOPEKA agrees that it is responsible for paying the Permit Fees even if the cost exceeds \$200,000, and BUSINESS acknowledges that if the Permit Fees are less than \$200,000, that GO TOPEKA shall retain such cost savings.

c. The cost of water and sewer connection fees for the Facility (the "Connection Fees") which is estimated at Thirty Thousand Dollars (\$30,000), based on the published schedule set by the City of Topeka ordinance. GO TOPEKA agrees that it is responsible for paying the Connection Fees even if the cost exceeds \$30,000, and BUSINESS acknowledges that if the Connection Fees are less than \$30,000, that GO TOPEKA shall retain such cost savings.

d. Two Million Four Hundred Thousand Dollars (\$2,400,000) payable to BUSINESS within thirty (30) days after written request from BUSINESS for such funds. BUSINESS does not need to

provide invoices or other documentation at the time it requests and receives these funds. The funds shall be used toward the costs of installing railroad infrastructure for the Facility, including the required sidings and main switch that meet the Burlington Northern Santa Fe (“BNSF”) design guidelines; construction of renewable energy capacity and/or rates to serve the Facility; and as a reserve fund that may be allocated to any need directly associated with constructing or making the Facility operational as determined by BUSINESS, including the renewable energy capacity and/or rates. BUSINESS may direct that GO TOPEKA pay BUSINESS’s contractors directly with the funds or request that BUSINESS be paid the funds directly. At such time that a certificate of occupancy for the Facility is issued and the Facility is at least Three Hundred Fifty Thousand (350,000) square feet, BUSINESS shall be deemed to have satisfied the requirement that the \$2,400,000 be used for the purposes set forth in this Section 4(d).

- e. One Million Seven Hundred Thousand Dollars (\$1,700,000), to be paid by GO TOPEKA to the Washburn Institute of Technology, for the training of key Facility positions, pursuant to an agreement by and among BUSINESS, GO TOPEKA and the Washburn Institute of Technology.
 - f. In addition to the foregoing, GO TOPEKA shall use its best efforts (by working with the County and landowners) to zone the real property within an approximately two (2) miles straight line radius from the boundary line of the Initial Property and within an approximately one (1) mile straight line radius from the boundary line of the Additional Property for only commercial and industrial uses. These zoning restrictions shall be established by no later than June 1, 2012 for the Initial Property and a date mutually agreeable to the parties for the Additional Property. Notwithstanding the foregoing, the real property used as of the date hereof for residential purposes relating to the two mile radius around the Initial Property will not be so restricted; provided that no additional residential improvements may be built on such property (“Existing Residential Homes”). If GO TOPEKA is unable to rezone the real property within an one mile straight line radius from the boundary of the Property (the “One Mile Radius Properties”) for only commercial or industrial use by June 1, 2012 for the Initial Property and by a mutually agreeable date for the Additional Property, GO TOPEKA shall use its best efforts to purchase at commercially reasonable rates by December 31, 2012 for the Initial Property and a mutually agreeable date for the Additional Property, the residential development rights for the One Mile Radius Properties which are not Existing Residential Homes.
 - g. If GO TOPEKA has cost savings in implementing any of its estimated incentives (such as in Sections 4(a), 4(b) or 4(c)) or if BUSINESS informs GO TOPEKA in writing that it does not anticipate using the entire incentive set forth in a certain provision of this Agreement (collectively, “Incentive Cost Savings”), GO TOPEKA has the right to use such Incentive Cost Savings to fund its obligations under this Agreement.
5. **Other Incentives.** In addition to the foregoing, the parties understand BUSINESS would qualify for the following incentives not administered or controlled by GO TOPEKA, and confirmation by BUSINESS of such qualification for all such incentives and self-help rights for BUSINESS to provide it with protection that such incentives shall be timely delivered shall be a condition of BUSINESS proceeding with the contemplated development of Facility:
- a. Installation by and at the cost of the City of Topeka of a twelve (12) inch water main along the west side of the BNSF rail from Gary Ormsby Drive to Innovation Parkway. The lines are shown on the attached **Exhibit D**. The construction of this water main shall be completed by December 9, 2011.

- b. Washburn Institute of Technology has proposed the training program pursuant to the funds that it receives from GO TOPEKA pursuant to Section 4(e).
- c. Three Million Dollars (\$3,000,000) by the Kansas Department of Transportation (“KDOT”) for the construction and completion of a three lane industrial grade street to be known as Innovation Parkway which location is outlined on Exhibit E. The construction of Innovation Parkway shall be completed by October 5, 2012.
- d. Three Hundred Thousand Dollars (\$300,000) from the Kansas Economic Opportunity Initiatives Fund (“KEOIF”) and Eight Hundred Thousand Dollars (\$800,000) from the Kansas Department of Commerce (“KDOC”) for renewable energy capacity to serve the Facility.
- e. One Million One Hundred Thousand Dollars (\$1,100,000) by KDOT for the rail infrastructure to serve the Facility.
- f. The KDOC, through the Kansas Partnership Fund, shall also contribute a low interest negotiable loan, in an amount up to Seven Hundred Fifty Thousand Dollars (\$750,000), to local governmental jurisdiction, to support infrastructure needs of the Facility to be installed by such local governmental jurisdiction.
- g. Annual real property tax abatement relating to the Property is estimated at Three Million Six Hundred Thousand Dollars (\$3,600,000) to Five Million Nine Hundred Thousand Dollars (\$5,900,000) depending on the size of BUSINESS’ capital investment. BUSINESS shall receive the annual real property tax abatement for the ten (10) year period commencing the year that the Facility is fully operational (tax abatement period estimated to be 2013-2023).
- h. Westar Energy, Inc., has proposed pursuing a new renewable energy tariff providing a 30% discount (if Facility receives Platinum LEED certification), 25% discount (if Facility receives Gold LEED certification) and 20% discount (if Facility receives Silver LEED certification) over 20 years for qualifying LEED facilities, but this is subject to approval of the Kansas Corporation Commission.
- i. Westar Energy, Inc., is also proposing a five-year rate discount on the traditional tariff starting at 10% in year 1 (first year BUSINESS achieves at least 7 MW of load) and reducing 200 basis points annually each year, phasing out after five years, but this is subject to approval by the Kansas Corporation Commission.
- j. BNSF will provide BUSINESS with \$100 per inbound rail car to cover the cost of the main line switch, but not to exceed \$300,000. This incentive fee would be paid over the period of three years or until the cost of the switch is fully reimbursed (whichever comes first). BUSINESS has the right to off-set any monies due to BNSF with this incentive fee.
- k. Nordic Windpower USA and two solar developers have proposed providing two megawatts of renewable energy devoted to the Facility.
- l. The Kansas Department of Commerce has outlined a number of other incentives in its Incentive Overview dated January 6, 2011 to GO TOPEKA relating to the Facility, and are additional incentives not otherwise provided in this Agreement.

- m. Processing and installation of all electric service to certain designated service points at the Facility, with sufficient capacity to support the Facility to be provided and paid for by Westar Energy.
- n. Processing and installation of all gas service to certain designated service points at the Facility, with sufficient capacity to support the Facility to be provided and paid for by Kansas Gas Service.
- o. Processing and installation of all telephone and cable and/or FIOS service to certain designated service points at the Facility, with sufficient capacity to support the Facility to be provided and paid for by the applicable telephone/cable and/or FIOS company.

Each of these benefits, programs and/or services are important to BUSINESS's decision to enter into this Agreement. GO TOPEKA agrees to cooperate in and facilitate BUSINESS's efforts in accessing each of the incentives set forth in this Section 5.

6. **Property Tax Abatement.** For each year in which BUSINESS receives a property tax abatement relating to the Facility as set forth in Section 5(g), BUSINESS shall pay to GO TOPEKA (within 60 days after the confirmation that such abatement has been applied to the BUSINESS's tax obligation relating to the Property) an amount equal to Ten Percent (10%) of such annual abatement for application by GO TOPEKA to the sustainability of improvements in the Kanza Fire Commerce Park and the construction and operation of a fire house and fire department which would serve the Facility.

7. **Default of Business.**

- a. An Event of Default by BUSINESS shall occur if any of the following conditions exist and BUSINESS has not cured such default within ninety (90) days following written notice from GO TOPEKA of such default:
 - i. BUSINESS fails to maintain at least a minimum of an average of One Hundred (180) Full Time Employment Positions at the Facility for each of the calendar years 2015-2025 (the "Minimum Required Employment Positions;"), with the average Full Time Employment Positions separately measured each calendar year; or
 - ii. BUSINESS fails to invest, by December 31, 2015, at least Two Hundred Seventy Million Dollars (\$270,000,000) of new capital investment in the design, engineering, and construction of the Facility and the renewal wind energy facility and the design, engineering, purchase, installation and operation of machinery and equipment in or at the Facility or the renewal wind energy facility (collectively, "Total Project Costs"). BUSINESS's placement of a purchase order by December 31, 2015, shall count as investment in Total Project Costs.

"Total Project Costs" in clause (ii) above shall include, but not be limited to all hard and soft costs and expenses in connection with land acquisition, the development, design, engineering, construction and operation of the Facility and the renewal wind energy facility and any other part of this project and the design, engineering, purchase, installation and operation of the machinery and equipment to be used in connection with the Facility and the renewal wind energy facility incurred by BUSINESS or its affiliates, including (A) amounts due to all third-parties (i.e. architects, engineers, contractors, accountants, attorneys and consultants), (B) all costs incurred to discharge any liens against the Facility or the renewal wind energy facility, (C) all costs incurred in obtaining all governmental approvals necessary

to receive a certificate of occupancy for such Facility, (D) all expenses set forth in the development budget for the Facility, which includes: all real estate taxes (if not abated), insurance, interest and financing fees (or imputed interest if BUSINESS finances the project itself), (E) the total value of all contracts, as may be increased by change orders or authorizations, for all third-party design professional services for the Facility and the renewal wind energy facility, including, but not limited to, engineers, architects and their respective subconsultants that provide architectural, engineering, structural, mechanical, electrical and plumbing/fire protection, acoustical, geotechnical, environmental, landscaping, transportation, logistics, LEED, Building Information Modeling, or other design consulting services; (F) the total value of all contracts and purchase orders, as may be increased by change orders, for the construction management and pre-construction and construction of the Facility and the renewal wind energy facility, including all construction manager and trade contractor fees, costs, allowances, general conditions, incentive bonuses and contingencies; (G) the total value all materials and supplies used in, or under contract for, the construction of the Facility and the renewal wind energy facility; (H) insurance, bonds, legal and accounting fees and costs for the Facility and the renewal wind energy facility, (I) utility and telecommunications costs incurred by the Facility or other parts of the project and paid by BUSINESS or its affiliates and not paid by GO TOPEKA, and (J) all internal costs incurred by BUSINESS relating to the design, engineering and construction of the Facility and the renewal wind energy facility and the machinery and equipment relating to the Facility, that are allocated to this project by BUSINESS and which would not otherwise be incurred by BUSINESS.

- b. If BUSINESS maintains at least the Minimum Required Employment Positions, but fails to maintain positions for which it received an Employment Incentive Fee, timely repayment of that Employment Incentive Fee (or the proportionate amount thereof) as required by Section 1 shall be sufficient to avoid a default hereunder. If BUSINESS is in default under Section 7(a)(i) for failure to maintain the Minimum Required Employment Positions, such default shall not preclude or otherwise relieve BUSINESS from also repaying the Employment Incentives Fee for positions that were not maintained as required pursuant to Section 1.
- c. BUSINESS shall be deemed to be in default under this Agreement for provisions other than Section 7 (an "Event of Default by BUSINESS") in the event BUSINESS shall fail to keep, observe or perform any material covenant, agreement, term or provision of this Agreement to be kept, observed or performed by BUSINESS, and such failure shall continue (i) for a period of ten (10) business days after BUSINESS receives written notice from GO TOPEKA specifying the default in case of monetary defaults or (ii) for a period of thirty (30) days after BUSINESS receives written notice from GO TOPEKA in the case of non-monetary defaults; provided, however, that if such non-monetary default cannot be cured within such thirty (30) day period, then BUSINESS shall be entitled to such additional time as shall be reasonable, provided BUSINESS is capable of curing same, has promptly proceeded to commence cure of such default within said period, and thereafter diligently prosecutes the cure to completion; provided, however, that in no event shall such additional time exceed ninety (90) days.

8. **GO TOPEKA Default Remedies.**

- a. In the event that by January 1, 2015, BUSINESS elects not to build the core manufacturing facility with an initial approximate space of no less than 350,000 square feet ("Core Facility") after the Property has been transferred to BUSINESS or its subsidiary, BUSINESS or its subsidiary, as applicable, shall: (i) promptly transfer the Property back to GO TOPEKA in the same condition as it received the Property, free and clear of any liens or encumbrances caused by BUSINESS, (ii) repay any Employee Incentive Fee that it received, (iii) repay the amount that had been actually paid by GO TOPEKA to BUSINESS or on its behalf pursuant to Section 4(d)

of this Agreement (\$2,400,000), and (iv) repay the amount that had been actually paid by GO TOPEKA under Section 4(b) for the Permit Fees in an amount not to exceed \$200,000.

- b. If an Event of Default occurs under Section 7(a)(ii) of this Agreement, BUSINESS shall (i) repay any Employee Incentive Fee that it has received and shall no longer be eligible to receive the Employee Incentive Fee set forth in Section 1, (ii) repay the amount that had been actually paid by GO TOPEKA to BUSINESS or on its behalf pursuant to Section 4(d) of this Agreement (\$2,400,000), (iii) repay the amount that had been actually paid by GO TOPEKA under Section 4(b) for the Permit Fees in an amount not to exceed \$200,000, and (iv) Business shall have the option to either (1) promptly transfer the Property back to GO TOPEKA in the same condition as it received the Property, free and clear of any liens or encumbrances caused by BUSINESS, or (2) pay GO TOPEKA the lesser of (x) the appraised value of the Property (which value shall exclude any improvements paid by BUSINESS or its affiliates) as determined by an appraiser mutually agreeable to GO TOPEKA and BUSINESS plus the demolition cost of removing the Facility from the Initial Property (the "Demolition Costs"), or (y) Four Million Five Hundred Thousand Dollars (\$4,500,000) for the Initial Property and the value of the Additional Property as determined by the parties at the time of the Additional Property transfer to BUSINESS.
- c. If an Event of Default occurs under Section 7(a)(i) of this Agreement, BUSINESS shall repay to GO TOPEKA a proportion (defined below) of (1) the Employment Incentive Fee, (2) the lesser of (x) the appraised value of the Property (which value shall exclude any improvements paid by BUSINESS or its affiliates) as determined by an appraiser mutually agreeable to GO TOPEKA and BUSINESS plus the Demolition Costs, or (y) Four Million Five Hundred Thousand Dollars (\$4,500,000) for the Initial Property and the value of the Additional Property as determined by the parties at the time of the Additional Property transfer to BUSINESS, and (3) the amount that had been actually paid by GO TOPEKA to BUSINESS or on its behalf pursuant to Section 4(d) of this Agreement (\$2,400,000). The repayment proportion shall be calculated by multiplying the foregoing amounts by a fraction, the numerator of which shall be the number of years (including the year of the Event of Default) left in the expected Ten (10) year performance period when the Event of Default occurs, which performance period begins on January 1, 2015. The denominator of such fraction is "10."

For example, if the Employment Incentive Fee of \$2,550,000 has been received, the Additional Property is valued at Five Hundred Thousand Dollars (\$500,000) at the time of the transfer, the appraised value of the Property is \$4,400,000, the entire Two Million Four Hundred Thousand Dollars (\$2,400,000) has been expended in accordance with Section 4(d), and an Event of Default occurs in May 2021, the repayment amount will be:

$$4/10 * \$9,350,000 = \$3,740,000.$$

[Where \$9,350,000 = \$2,550,000 + \$4,400,000 + \$2,400,000, and where the numerator is calculated based on the fact that years 2015 through 2020 are complete, leaving 4 years.]

- d. In the event that BUSINESS elects not to build the Core Facility or BUSINESS defaults under this Agreement for any reason whatsoever, BUSINESS shall not be liable for any damages or be liable to reimburse GO TOPEKA, JEDO or any other party for any funds spent by such party in anticipation of the operation of the Facility as set for in Sections 4(a) (water/fire/sewer lines), 4(c) (water/sewer connection fees), 4(e) (Washburn Institute of Technology) and 4(f) (zoning) and Section 5.

- e. If BUSINESS elects to receive the Additional Property and does in fact receive the Additional Property, but does not commence the construction of a functional renewal wind energy facility thereon by December 31, 2013, BUSINESS shall either (i) deed the Additional Property back to GO TOPEKA, subject only to the easements, liens, covenants and restrictions of record and zoning regulations that were in place when received by BUSINESS, or (ii) if BUSINESS still plans to develop a functional renewal wind energy facility on the Additional Property, BUSINESS may reimburse GO TOPEKA for the lesser of (x) the appraised value of the Additional Property (which value shall exclude any improvements paid by BUSINESS or its affiliates) as determined by an appraiser mutually agreeable to GO TOPEKA and BUSINESS or (y) the value of the Additional Property as determined by the parties at the time of the Additional Property transfer to BUSINESS.
 - f. If an Event of Default occurs by BUSINESS under this Agreement, GO TOPEKA and JEDO shall have no further obligations under this Agreement, such as to make incentive or other payments, transfers or efforts to or for the benefit of BUSINESS.
 - g. GO TOPEKA and JEDO shall not be entitled to specific performance as a result of an Event of Default by BUSINESS under this Agreement. For Events of Default relating to Section 7(a) of this Agreement, GO TOPEKA's remedies are set forth exclusively in Sections 8(a), 8(b), 8(c), 8(d), 8(e) and 8(f)). For Events of Default of BUSINESS that are other than Events of Default relating to Section 7(a) of this Agreement, the remedy set forth in Section 8(f) shall be in addition to any other remedies BUSINESS may have under applicable law.
9. **Default by GO TOPEKA.** GO TOPEKA shall be deemed to be in default under this Agreement (an "Event of Default by GO TOPEKA") in the event GO TOPEKA shall fail to keep, observe or perform any material covenant, agreement, term or provision of this Agreement to be kept, observed or performed by GO TOPEKA and such failure shall continue (i) for a period of ten (10) business days after written notice thereof by BUSINESS to GO TOPEKA in case of monetary defaults, or (ii) for a period of thirty (30) days after written notice thereof by BUSINESS to GO TOPEKA in the case of non-monetary defaults; provided, however, if such default cannot be cured within such thirty (30) day period, then GO TOPEKA shall be entitled to such additional time as shall be reasonable, provided that GO TOPEKA is capable of curing same, has promptly proceeded to commence cure of such default within said period, and thereafter diligently prosecutes the cure to completion; provided, however, that in no event shall such additional time to cure non-monetary defaults exceed ninety (90) days.
10. **BUSINESS Default Remedies.**
- a. Upon the occurrence of an Event of Default by GO TOPEKA under this Agreement, BUSINESS shall be entitled to exercise its rights at law or in equity, including the right to (i) compel specific performance of GO TOPEKA's and/or JEDO's obligations hereunder, (ii) self-help rights set forth in Section 10(c) of this Agreement, or (iii) to terminate this Agreement and to recover any amounts owed to BUSINESS under this Agreement. The remedies set forth in Section 10 shall be in addition to any other remedies BUSINESS may have under applicable law.
 - b. If GO TOPEKA has defaulted on any of its obligations under this Agreement or if BUSINESS has not received the benefits of the incentives set forth in Sections 5(a), 5(h), 5(i), 5(j), 5(m), 5(n) or 5(o) of this Agreement, BUSINESS shall have the right to set-off the abatement payment due to GO TOPEKA under Section 6 (Property Tax Abatement) and any payments due to GO TOPEKA under this Agreement by the amount needed to satisfy GO TOPEKA's obligations under this Agreement and the amount needed to satisfy the incentives promised to BUSINESS under Sections 5(a), 5(h), 5(i), 5(j), 5(m), 5(n) or 5(o) of this Agreement. If permitted by all of

the parties in the agreements set forth in Sections 5(a), 5(h), 5(i), 5(j), 5(m), 5(n) or 5(o) of this Agreement, GO TOPEKA shall be a third party beneficiary of such agreements; provided that GO TOPEKA's actions to enforce such agreements on behalf of BUSINESS shall not interfere with the enforcement of such agreements by BUSINESS.

- c. If an Event of Default by GO TOPEKA occurs under Sections 4(a), 4(b), 4(c), or 4(e) of this Agreement, BUSINESS may, without waiving any claim for breach of agreement, cure such default for the account of GO TOPEKA and make all necessary payments in connection therewith, including but not limited to, reasonable attorneys' fees, costs, or charges in connection with any legal action that may have been brought, with interest thereon at six percent (6%) per annum. BUSINESS shall have the right to offset such costs against any payments due and owing under this Agreement to GO TOPEKA, until fully reimbursed.
- d. If an Event of Default occurs by GO TOPEKA or JEDO under this Agreement, BUSINESS shall have no further obligations under this Agreement, including, without limitation, any obligations to make any payments, transfers of real property or efforts to or for the benefit of GO TOPEKA or JEDO.

11. **Escrow and JEDO Obligation.**

- a. GO TOPEKA's obligations hereunder are within its budget and expected funding stream. Notwithstanding the foregoing, GO TOPEKA's obligations hereunder are contingent upon the continued funding of GO TOPEKA at adequate levels through a portion of the Shawnee County, Kansas, retailer's sales tax and/or by the local Joint Economic Development Organization ("JEDO"). Commencing on July 20, 2011, GO TOPEKA agrees that it will escrow funds on the 20th day of July, October, January, and April with First American Title Insurance Company, National Commercial Services ("Escrow Agent"), that it receives from the Shawnee County, Kansas, retailers' sales tax (the "Escrowed Funds") to fulfill its obligations under this Agreement pursuant to the payment schedule attached hereto as **Exhibit F**. The Escrowed Funds will be held in escrow pursuant to an Escrow Agreement by and among GO TOPEKA, JEDO, BUSINESS and Escrow Agent attached hereto as **Exhibit G**. The Escrow Agent shall disburse the Escrowed Funds to BUSINESS within ten (10) business days after receiving a written request from BUSINESS provided that GO TOPEKA does not object in writing to such disbursement within five (5) business days after receipt of such request from Escrow Agent. GO TOPEKA shall timely fund its obligations under this Agreement even if there are not adequate Escrowed Funds to satisfy such obligations. If GO TOPEKA funds its obligations with monies that are not held in escrow ("Non-Escrowed Funds"), then the payment schedule attached hereto as **Exhibit F** shall be modified to the extent that the Non-Escrowed Funds shall reduce the last Escrowed Funds which are due under the payment schedule. *For example*, if GO TOPEKA is required to pay BUSINESS for 212 Full Time Employment Positions in 2012 (rather than the 106 Full Time Employment Positions budgeted in **Exhibit F**), GO TOPEKA would not need to deposit Escrowed Funds for the 106 Full Time Employment Positions budgeted for 2015 since this obligation would have already been satisfied. The Escrow Agent shall disburse the Escrowed Funds to GO TOPEKA within ten (10) business days after receiving a written statement from GO TOPEKA that an Event of Default of BUSINESS has occurred under this Agreement and that GO TOPEKA is entitled to reimbursement of the Escrowed Funds pursuant to this Agreement; provided that BUSINESS does not object in writing to such disbursement within five (5) business days after receipt of such request from Escrow Agent.

b. JEDO agrees that to the extent that GO TOPEKA is unable to meet its financial obligations under this Agreement to BUSINESS that JEDO shall be obligated to BUSINESS to satisfy GO TOPEKA's financial obligations and shall satisfy such funding obligations to BUSINESS.

12. **Notices.** All notices, demands, consents, approvals, and requests given by either party to the other hereunder shall be in writing and shall be sent by hand delivery, by a nationally recognized overnight courier, or by facsimile (provided that facsimile notices are also promptly delivered by hand or by a nationally recognized overnight courier), to the parties at the following addresses:

To: GO TOPEKA:

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC.
120 SE 6th Avenue, Suite 110
Topeka, KS 66603-3515
Phone: (785) 234-2644
FAX: (785) 234-8656
Contact Person/Title: Steve Jenkins,
Senior Vice President-Economic Development

With a copy to:

Coffman, Defries & Nothern, P.A.
534 S. Kansas Ave., Suite 925
Topeka, KS 66603-3407
Attention: Jeffrey A. Wietharn, Esq.
Facsimile: (785) 234-3363

To: BUSINESS:

Mars Chocolate North America, LLC
800 High Street
Hackettstown, NJ 07840
Attention: Edgar Pew, Esq., Associate General Counsel

With a copy to, upon completion of the Facility:

Mars Chocolate North America, LLC
[insert street address of Facility]
Topeka, KS 66603
Attention: Plant Manager

With a copy to:

Bevan, Mosca, Giuditta & Zarillo, P.C.
222 Mount Airy Road, Suite 200
Basking Ridge, NJ 07920
Attention: Alexandra R. Bratsafolis, Esq. and Richard A. Giuditta, Jr., Esq.
Facsimile: (908) 848-6432

With a copy to:

Arent Fox LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036
Attention: Kimberly A. Wachen, Esq.
Facsimile: (202) 857-6395

To: JEDO:

JOINT ECONOMIC DEVELOPMENT ORGANIZATION
c/o Richard Eckert, Shawnee County Counselor
200 SE 7th St. Room 100
Topeka, KS 66603-3971

With a copy to:

Attn: City Attorney
215 SE 7th, Room 353
Topeka, KS 66603-3914

or to such other address and to the attention of such other person as either party may from time to time designate in writing. Notices properly given as described above shall be effective upon receipt or, if received on a date that is not a business day or after normal business hours in the location delivered, the following business day. Refusal to accept delivery shall constitute receipt.

13. **Miscellaneous.** The following miscellaneous provisions shall apply to this Agreement:

- a. BUSINESS shall have a one time right to delay the construction and operation of the Facility for a period not to exceed twenty-four (24) months by notifying GO TOPEKA of such delay in writing by no later than December 31, 2013. All time periods in this Agreement shall be extended by the extension of time set forth in BUSINESS's notice (the "Extension Period"). Notwithstanding the foregoing, the time periods and the amount to be escrowed set forth in Section 11(a) and **Schedule F** attached hereto for GO TOPEKA to escrow funds shall not be extended unless there has been an extension of the Shawnee County, Kansas retailers' sales tax in the amount of one-half of one cents past December 31, 2016 for the amount of the Extension Period. If BUSINESS exercises its rights to delay the construction and operation of the Facility by twelve (12) months or greater pursuant to this Section 13(a) and if GO TOPEKA can demonstrate to the satisfaction of BUSINESS, in its sole discretion, that GO TOPEKA would be able to escrow all of the funds relating to the Washburn Institute of Technology incentive set forth in Section 4(e) which were originally scheduled to be funded in 2011 and 2012 pursuant to **Schedule F**, to the years 2012 and 2013 with such escrowed funds to be deposited quarterly in the amounts to be determined by BUSINESS so that by December 31, 2013, the \$1,700,000 incentive fee set forth in Section 4(e) would be fully escrowed.
- b. BUSINESS agrees to participate in a public event with GO TOPEKA at the Facility celebrating the location of the Facility and employment expansion contemplated by this Agreement at such date and time mutually agreeable to the parties. Such event would include general recognition of GO TOPEKA's involvement in the project and BUSINESS shall determine in its sole discretion its representatives from the BUSINESS to appear at such event.

- c. The parties agree that no public release or announcement concerning this Agreement, the agreements contemplated in Section 5, the Facility, the project or anything that could create an obligation for BUSINESS shall be issued by any party without the prior written consent of the other party, except as required by law or applicable regulations. GO TOPEKA agrees that it will obtain the consent from a Senior Manager of Mars Chocolate Corporate Affairs on all external or public announcements and releases relating to the Facility or this Agreement. If GO TOPEKA receives the consent of Mars Chocolate Corporate Affairs Senior Manager relating to a public release or announcement relating to the Facility or this Agreement, then BUSINESS shall be deemed to consent under this Section 13(c). As of the date of this Agreement, Jessica Graves (contact information: Jessica.graves@effem.com, 908-619-0782) is the Mars Chocolate Corporate Affairs Senior Manager who should be contacted by GO TOPEKA for purposes of this Section 13(c).
- d. This Agreement and the agreements contemplated under Section 5 (Other Incentives) contain the entire agreements reached between the parties hereto with respect to the subject matter hereof, and this Agreement may be amended only in writing, duly executed by all parties concerned.
- e. This Agreement shall be interpreted under the laws of the State of Kansas. In the event if any provision is found to be unenforceable or unconstitutional, all other provisions shall remain in full force and effect.
- f. Time is of the essence of this Agreement.
- g. By signing this Agreement, the parties affirm that they have the authority of their respective entities to enter into this Agreement and bind their respective entities.
- h. This Agreement shall bind and inure to the benefit of the parties to this Agreement, their heirs, legal representatives, assignees, transferors and successors.
- i. No failure by a party to insist on prompt performance by the other party of its obligations hereunder shall constitute a waiver of rights under the Agreement. Similarly, the waiver by a party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.
- j. This Agreement may be executed in counterparts, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one agreement, which shall be binding upon and effective as to all parties.
- k. The parties acknowledge and agree that BUSINESS shall not assign, transfer, hypothecate or otherwise encumber this Agreement and its rights hereunder, without the prior written approval of GO TOPEKA.
- l. GO TOPEKA makes no representation as to the taxability or tax effect of this Agreement and the incentive payments hereunder.
- m. In carrying out the terms and provisions of this Agreement, BUSINESS shall not unlawfully discriminate against any employee, applicant for employment, recipient of service or applicant to receive or provide services because of race, color, religion, sex, age, disability, national origin or any other status protected by applicable federal or state law or local ordinance.

- n. Every duty, right, or obligation contained in this Agreement imposes an obligation of good faith in its performance or enforcement. For the purposes of the Agreement, "good faith" dealing means honesty in fact in the conduct or the transaction concerned.
- o. Nothing herein contained shall be construed or held to make any party a partner, joint venturer or associate of another party in the conduct of its business, nor shall either party be deemed the agent of the other. It being expressly understood and agreed that the relationship between the parties hereto is and shall at all times remain contractual as provided by the terms and conditions of this Agreement.
- p. The parties agree to execute and deliver such other documents, agreements or instruments as may be necessary or convenient to effect the purposes of this Agreement and to comply with any of the terms hereof.
- q. All incentives contemplated under this Incentive Agreement are for the sole purpose of inducing BUSINESS to locate its operations in Topeka, Shawnee County, Kansas, and to expand the Facility in the future. GO TOPEKA, JEDO, KDOT, KEOIF, KDOC and any other governmental entity are not providing the incentives in consideration for any goods or services rendered or as a subsidy. Moreover, any payments made by non-governmental entities unrelated to BUSINESS or its affiliates or subsidiaries provide only indirect and intangible benefits to the payors and were not made to achieve a business purpose of the payor.
- r. The divisions of this Agreement into sections and subsections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect whatsoever in construing the provisions of this Agreement.
- s. BUSINESS understands the importance of local sourcing. The design, engineering and construction of the Facility; the design, engineering, and installation of the machinery and equipment; and other portions of this project relating to the Facility are highly proprietary and specialized. As a result BUSINESS shall only be obligated to hire or use those companies or people that BUSINESS believes, in its sole discretion, meet the strict qualifications necessary to complete the work or obtain the materials necessary to meet BUSINESS's standards and qualifications. BUSINESS will work with local companies and people when appropriate and consistent with BUSINESS's standards and qualifications.
- t. There shall be no third party beneficiaries to this Agreement and no party other than GO TOPEKA, JEDO and BUSINESS and its affiliates shall have any rights under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

“BUSINESS”

MARS CHOCOLATE NORTH AMERICA, LLC
A Delaware limited liability company

By: _____
Name: _____
Title: _____

“GO TOPEKA”

GROWTH ORGANIZATION OF TOPEKA/SHAWNEE COUNTY, INC.

By: _____
Name: _____
Title: _____

“JEDO”

JOINT ECONOMIC DEVELOPMENT ORGANIZATION

By: _____
Name: _____
Title: _____