

MARTIN COUNTY OPPORTUNITY FUND

AGREEMENT

This AGREEMENT made and entered this 23rd day of October, 2012, between MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS, a political subdivision of the State of Florida, (the "COUNTY"), and TURBOCOMBUSTOR TECHNOLOGY, INC. (the "Company"), a Delaware corporation authorized to transact business in the State of Florida.

WITNESSETH:

WHEREAS, the Company has submitted an Application to the COUNTY for a grant from the Martin County Opportunity Fund ("MCOF") as a Qualified Target Industry Business, as a new or expanding business in Martin County that meets the requirements of Section 288.106, Fla. Stat., as hereinafter defined, and creating a significant number of additional Qualifying Jobs, as hereinafter defined;

WHEREAS, the COUNTY and the Company desire to set forth their understanding and agreement as to the payout of the MCOF Grant, the use of the MCOF Grant proceeds, the obligations of the Company regarding Capital Investment and additional Qualifying Job creation, and the repayment by the Company of all or part of the MCOF Grant under certain circumstances;

WHEREAS, the purchase, expansion and operation of TurboCombustor Technology, Inc. operations in Martin County ("the Project") will entail a capital expenditure of approximately sixteen million dollars, (\$16,000,000) of which approximately seven million dollars (\$7,000,000) will be invested in machinery and equipment, approximately eight million dollars (\$8,000,000) will be invested in the purchase of an existing building, and approximately one million dollars (\$1,000,000) will be invested in the retrofit of the building, and will further entail the creation of an additional two hundred (200) Qualifying Jobs at the Project, beyond the 397 positions currently existing at the Project, with a average annual compensation in an amount not less than \$45,000 [which is at least 125% of the estimated prevailing average annual wage as of the date of this Agreement in the Martin County Port St. Lucie Metropolitan Statistical Area (MSA)] as set forth in Exhibit A which is attached hereto; and

WHEREAS, the Company's application has been reviewed by COUNTY for compliance with its Guidelines for the MCOF.

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows.

Section 1. Disbursement of MCOF Grant.

The MCOF Grant in the amount of nine hundred thousand dollars (\$900,000) will be provided to the Company in two disbursements of \$450,000 each as an inducement to the Company to achieve the Targets, as hereinafter defined, at the Project:

A) First Payment. The "Award Conditions" for the first payment of four hundred and fifty thousand dollars (\$450,000) shall be met and this first disbursement shall be made when the following have occurred: a) announcement of the final location of the Project; and b) closing on sale of the building. The first disbursement shall be made in conjunction with the Governor's Quick Action Closing Fund disbursement. B) Second Payment. The "Award Conditions" for the second payment of four hundred and fifty thousand dollars (\$450,000) shall be met and the second disbursement shall be made twelve (12) months from the execution of this agreement provided that the company has delivered to the County an updated job creation commitment schedule for the additional 200 Qualifying Jobs at the Project.

Section 2. Targets; Definitions.

The Company will develop and operate the Project in MARTIN COUNTY, make a Capital Investment of at least eight million dollars (\$8,000,000), and create at least two hundred (200) additional Qualifying Jobs at the Project, as hereinafter defined.

For the purposes of this Agreement, the following terms shall have the following definitions:

a. "Capital Investment" means a capital expenditure in taxable real property improvements, taxable tangible personal property, or both, at the Project after October 23, 2012. (excluding the purchase of land or real property improvements existing as of October 23, 2012).

b. "Capital Investment Target" means Capital Investment totaling eight million dollars (\$8,000,000).

c. "Qualifying Job" means permanent full-time employment of an indefinite duration at the Project for which the standard fringe benefits are paid by the Company for the employee. Each Qualifying Job must involve a minimum schedule of either: (i) an average of 35 hours of an employee's time per week for the entire normal year of the Company's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. The average of the wages (including overtime, vacation, sickness and holiday pay) payable to positions constituting Qualifying Jobs must equal or exceed forty-five thousand Dollars (\$45,000.) calculated on an annualized basis. Further, in order to be included among the Qualifying Jobs, the annualized average of the wages payable (as defined above) to those employees hired after the date of execution of this agreement must equal or exceed forty-five thousand Dollars (\$45,000.)

d. "Job Target" means the creation of an additional two hundred Qualifying Jobs which shall be measured by the existence of a total of 597 Qualifying Jobs at the Project as of the Performance Date.

e. "Performance Date" means December 31, 2016. If the COUNTY deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the

Targets, COUNTY may agree to extend the Performance Date by up to six (6) months. In the event of fire, flood, strike, embargo, unusually severe weather such as a hurricane, outbreak of war, act of God or any other cause of the same character, the performance date shall be extended to reflect the period attributable to such event.

f. "Job Maintenance Performance Date" shall mean each of December 31, 2017; December 31, 2018; December 31, 2019; and December 31, 2020, as utilized in paragraph 4c herein.

Section 3. State and Local Incentives.

The COUNTY has committed to provide the following incentive, as local financial support for a contribution from the Governor's Quick Action Closing Fund, for the Project:

<u>Category of Incentive:</u>	<u>Total Amount</u>
Martin County Opportunity Fund	\$900,000

Section 4. Repayment Obligation.

(a) *General:* This Agreement requires that the Company meet the Capital Investment Target and the Job Target at the Project in order to be eligible for the MCOF Grant. If the Company fails to meet either of these eligibility requirements by the Performance Date, the MCOF Grant is subject to repayment, as defined below.

(b) *Repayment Provisions:* For purposes of repayment, the MCOF Grant is to be allocated as four hundred and fifty thousand dollars (\$450,000) (50%) for the Company's Capital Investment Target and four hundred and fifty thousand dollars (\$450,000) (50%) for its Job Target (collectively, the "Targets"). If the Company has met at least ninety percent (90%) of both of the Targets at the Performance Date, then and thereafter, except as noted in subsection (c) below, the Company is no longer obligated to repay any portion the MCOF Grant. If the Company has not met at least ninety percent (90%) of either or both of its Targets, the Company shall repay to the COUNTY that part of the MCOF Grant that is proportional to the Target or Targets for which there is a shortfall, in accordance with the terms below. For example, if at the Performance Date, the Capital Investment is only six million four hundred thousand dollars \$6,400,000 (i.e., eighty percent of the Capital Investment Target), the Company shall refund to the COUNTY twenty percent (20%) of the moneys allocated to the Capital Investment Target (i.e., ninety thousand dollars (\$90,000) assuming full funding of the MCOF Grants), and if at the Performance Date, the Company has only 557 Qualifying Jobs located at the Project (i.e., eighty percent (80%) of the Job Target), the Company shall refund to the COUNTY twenty percent (20%) of the moneys allocated to the Job Target (i.e., ninety thousand dollars (\$90,000) assuming full funding of the MCOF Grants).

(c) *Further Performance Target for the Job Target:* If the Company had no repayment obligation under subsection (b) above as to the Job Target, the Company shall still have a repayment obligation (as to a portion of the \$450,000 allocated to the Job Target) if it has not maintained at least 90% of the Job Target from the Performance Date through each of the Job Maintenance Performance Dates. Specifically, as of each succeeding Job Maintenance Performance Date, beginning on December 31, 2017, the aggregate amount subject to repayment

(calculated as provided in subsection (b) above) shall be reduced by twenty-five percent (25%). In addition, there will be no double counting or double payment with respect to amounts required to be repaid by the Company. (For the avoidance of doubt, and by way of example, the maximum amount subject to repayment on December 31, 2017 shall be three hundred thirty seven thousand five hundred dollars \$337,500; the maximum amount subject to repayment on December 31, 2018 shall be two hundred twenty-five thousand dollars (\$225,000)). If the number of Qualifying Jobs has been reduced from the Performance Date to the next succeeding Job Maintenance Performance Date (or from a Job Maintenance Performance Date to a succeeding Job Maintenance Performance Date), then the Company shall repay to the County that part of the then remaining amount subject to repayment that is proportional to the shortfall from the preceding measurement date.

(d) *Abandonment of the Project:* If the COUNTY reasonably determines based upon objective evidence at any time prior to the Performance Date (a "Determination Date") that the Company has abandoned its operations associated with the Project (which for purposes hereof shall mean that the Company ceases operations in Martin County); the COUNTY shall promptly notify the Company of such determination, and the Company must repay the entire MCOF Grant to the COUNTY.

(e) *Repayment Dates:* To the extent that repayment is required pursuant to the foregoing, such repayment shall be due from the Company to the COUNTY within thirty days of the Performance Date, a Job Maintenance Performance Date, or the Determination Date, as applicable.

Section 5. Security for Repayment Obligation.

In consideration of the County's providing a Martin County Opportunity Fund Grant, the Company agrees to secure, for the benefit of the County, a Surety Bond securing the total repayment obligation at any time outstanding under this Agreement (or such other means of substitute security (such as a Letter of Credit or Performance Bond) that may be requested by the Company in a form acceptable to and approved by the County, with such approval not to be unreasonably withheld. Upon written request by Company, the COUNTY, in its sole and complete discretion, may reduce or waive the requirement that security be provided by the Company. The amount of the security shall not exceed the portion of the MCOF Grant which has been funded by the County. If the Capital Investment Target is met, on or before the Performance Date, the County agrees to the reduction of the Surety Bond (or other Security agreed to as provided above) in the amount of \$450,000 (the amount attributed to Capital Investment).

Section 6. Company Reporting.

The Company shall provide, at the Company's expense, a report to the County evidencing progress against the Targets, specifying the total dollar value of Capital Investments made and the number of Qualifying Jobs achieved. Such progress reports will be provided annually, starting the report covering the year ending December 31, 2014 (with such reports to be provide within 30 days following the end of the year) and concluding with the final report due within 30

days following the last Job Maintenance Performance Date. Supporting documentation shall be made reasonably available to the County for the purposes of the verification of such progress reports.

Section 7. Notices.

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

if to the Company, to:

with a copy to:

TurboCombustor Technology, Inc.
3651 SE Commerce Avenue
Stuart, Florida 34997
772.287.7770
Attention: Greg Bennett

Attention:

if to the COUNTY, to:

with a copy to:

Taryn Kryzda
County Administrator
241 SE Monterey Road
Stuart, Florida 34996

County Attorney
2401 SE Monterey Road
Stuart, Florida 34996

Section 8. Miscellaneous.

(a) This Agreement is neither a general obligation of the COUNTY, nor is it backed by the full faith and credit of the COUNTY. Payment of the job creation grant funds are conditioned on and subject to specific annual appropriations by the Martin County Board of County Commissioners. Notwithstanding any provision contained in this Agreement to the contrary, the Company's repayment obligations under Section 4 of this Agreement are expressly conditioned upon full funding of the grants by the COUNTY pursuant to this Agreement, and if the COUNTY fails to fund any portion of such grants to the Company, the Company shall have no obligation to repay any amounts to the COUNTY pursuant to Section 4 of this Agreement, or to provide security for repayment pursuant to Section 5 of this Agreement (and upon any such failure by the COUNTY to fund any portion of the grants when due, all security previously delivered by the Company shall be cancelled and returned to the Company).

(b) *Forum: Venue.* This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement will be held in Martin County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise. No

single or partial exercise by any party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

(c) No Discrimination Certification. The Applicant warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation and in accordance with all applicable federal and state laws and regulations.

(d) Attorneys' Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the parties expressly agree that each party will bear its own attorney's fees incurred in connection with this Agreement.

The parties expressly and specifically hereby waive the right to a jury trial as to any issue in any way connected with this Agreement.

(e) Assignment. The Applicant shall not assign this Agreement to any other persons or firm without first obtaining County's written approval.

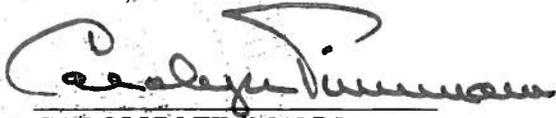
(f) Amendment. This agreement may be amended only by written agreement of the parties. A party requesting amendment of the Agreement must propose such amendment in writing to the other party prior to the proposed effective date of the amendment.

(g) This Agreement incorporates and includes all prior and contemporaneous negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior contemporaneous representatives or agreements, whether oral or written.

(h) If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent be held invalid or unenforceable for the remainder of this Agreement, then the application of such term or provision to person or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

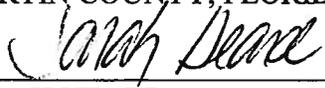
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

ATTEST:



CAROLYN TIMMANN
CLERK OF THE CIRCUIT COURT

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA



SARAH HEARD
CHAIR

2/21/13

APPROVED AS TO FORM AND
CORRECTNESS

Sarah W. Woods
SARAH W. WOODS
SENIOR ASSISTANT COUNTY ATTORNEY

Date: 2-21-13

[COMPANY]TURBOCOMBUSTOR TECHNOLOGY, INC.

By Greg Bennett

Name: GREG BENNETT

Title: President + CEO

Date: 2-13-13

STATE OF ~~FLORIDA~~ (AAB) Massachusetts
COUNTY OF ~~MARTIN~~ ESSEX

The foregoing instrument was acknowledged before me this 13th day of February 2013
by Greg Bennett, of TurboCombustor Tech. He is [] personally known to me or
[] has produced Florida drivers License as identification, and
acknowledged the execution thereof to be his free act and deed as such officer for the use and
purpose therein mentioned, and that such instrument is the act and deed of such company.

NOTARY PUBLIC

(Seal) Alan A. Bondjoukdjian

Name Printed: Alan A. Bondjoukdjian
State of ~~Florida~~ at Large

My Commission Expires: June 18, 2015

(AAB) Massachusetts



ALAN A. BONDJOUKDJIAN
Notary Public
Commonwealth of Massachusetts
My Commission Expires
June 18, 2015