

# CITY OF PEORIA

## BUSINESS DEVELOPMENT FUND LOAN AGREEMENT

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Inasmuch as CPO Group Holdings LLC hereinafter called the "Borrower," has satisfied all conditions precedent to the award of a Business Development Fund loan, the City of Peoria, Illinois, hereinafter called "City," is hereby making a loan available to the Borrower in the amount of One hundred fifty thousand dollars (\$150,000.00). This loan is for the purchase of facility, equipment, and working capital for this business expansion.

### ARTICLE I DEFINITIONS

The following definitions are used herein:

"Borrower" means CPO Group Holdings LLC located at 741 West Main St. and 712 W. Russell St., Peoria, IL 61606

"City" means the CITY OF PEORIA, ILLINOIS, an Illinois Municipal Corporation whose address is 419 Fulton Street, Peoria, Illinois, 61606.

"Collateral" means a UCC filing on business equipment assets and inventory on CPO Group Holdings LLC, a mortgage on property located at 741 West Main St. and 712 W. Russell, Peoria, IL 61606 and a personal guarantee from Amit Bhanti and Donald Goertzen (business owners).

"Loan" means the advance by the City to the Borrower of One hundred fifty thousand dollars (\$150,000.00) pursuant to the terms of this Agreement evidenced by the Note.

"Note" means the Note executed by the Borrower, substantially in the form attached hereto as "EXHIBIT 1" and made a part hereof, evidencing the debt of the Borrower to the City in the amount of One hundred fifty thousand (\$150,000.00), and dated as of the date of this Agreement.

"Project" means construction of new facility and purchase of equipment for the business at 741 W. Main Street, and 712 W. Russell, Peoria, IL, 61606 Approximately 15 FTE jobs will be created over the next 12 – 18 months as part of this project.

ARTICLE II  
THE LOAN

**Section 2.01: Purpose of the Loan**

The Borrower agrees that it will apply the funds received by it under this Agreement for the purpose of purchasing equipment for the business located at 741 West Main Street, Peoria, IL 61606 as described in Article I.

**Section 2.02: Loan, Note and Rate**

Subject to the terms and conditions of this Agreement and its supporting documents, the City hereby agrees to lend the Borrower, the amount of One hundred fifty thousand dollars (\$150,000.00) at the annual interest rate of four percent (4.0%) and the Borrower hereby agrees to repay the City or its assignees. The obligation of the Borrower to repay the Loan shall be evidenced by the Note of the Borrower dated of even date herewith.

**Section 2.03: Term and Repayment**

The Loan shall be repaid in ~~60~~ 120 monthly installments, amortized over 10 years, of principal and interest in the amount of \$1,518.68 commencing on The 1<sup>st</sup> of July, 2010 and on the 1<sup>st</sup> day of each succeeding month thereafter until June 1, 2015 2020., upon which time a balloon payment of approximately \$82,462.75 will become due in full.

**Section 2.04: Legally Binding Instruments**

When this Agreement is executed by the Borrower and the City, and when the Note is executed and delivered by the Borrower for value, the instrument shall constitute the legal, valid, and binding obligation of the Borrower in accordance with the terms.

**Section 2.05: Compliance with Laws and Regulations**

This Agreement and the Note shall be interpreted in accordance with Illinois law.

**Section 2.06: Compliance With Business Development Fund Requirements**

The Borrower will comply with all requirements of the City's Business Development Fund.

Labor Standards

The Borrower agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Borrower agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5.

The Borrower shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Borrower agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Borrower of its obligation, if any, to require payment of the higher wage. The Borrower shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

ARTICLE III  
CONDITIONS PRECEDENT TO DISBURSEMENT

**Section 3.01: Conditions Precedent**

Prior to the advance of the Loan proceeds from the City to the Borrower, the City shall receive from the Borrower the fully executed Note.

ARTICLE IV  
FINANCIAL MANAGEMENT AND FINANCIAL STATEMENTS

**Section 4.01: Financial Management**

The Borrower's financial management system shall be structured to provide for accurate, current and complete disclosure of the financial results of the Borrower's operation of its business. The Borrower is accountable for all funds received under this Agreement. The Borrower shall maintain effective control and accountability over all funds, equipment, property, and other assets under this Loan as required by the City. The Borrower shall keep records sufficient to permit the tracking of funds to a level of expenditure adequate to insure that funds are not spent unlawfully.

**Section 4.02: Financial Statements and Income Tax Returns**

The Borrower must procure, manage and pay for annual financial statements, and annual state and federal income tax returns. The Borrower shall supply the City with a copy of said financial statements or tax returns upon request throughout the term of this agreement.

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ARTICLE V  
ASSURANCES

To induce the City to enter into the Agreement, the Borrower represents and warrants as follows:

**Section 5.01: Duly Organized**

The Borrower is an LLC and has the power to enter into this Agreement and to borrow hereunder. The majority shareholders and officers of this Corporation are Amit Bhanti, President (50%) and Donald Goertzen Vice President (50%).

**Section 5.02: Duly Authorized**

The making and performance by the Borrower of this Agreement and the execution and delivery of the Note have been duly authorized and will not violate any law, rule, regulation, order, writ, judgment, decree, determination or award presently in effect having applicability to the Borrower, or result in a breach of or constitute a default under any indenture or bank loan or credit agreement or any other agreement or instrument to which the Borrower is a party or by which it or its property may be bound or affected.

**Section 5.03: No Legal Suits**

There are no legal actions, suits, or proceedings pending, or to the knowledge of the Borrower, threatened against Borrower before any court or administrative agency, which, if determined adversely to the Borrower, would have a material adverse effect on the financial condition or business of the Borrower.

**Section 5.04: Not in Default**

The Borrower is not in default of any obligation, covenant, or condition contained in any bond, debenture, note or other evidence of indebtedness or any mortgage or collateral instrument securing the same.

**Section 5.05: Taxes are Paid**

The Borrower has filed all tax returns which are required and has paid or made provision for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessments levied against the Borrower or its personal or real property by any taxing agency, federal, state or local, and shall continue to do so throughout the term of this Agreement. No tax liability has been asserted by the Internal Revenue Service or other taxing agency, federal, state or local, for taxes materially in excess of those already provided for and the Borrower knows of no basis for any such deficiency assessment.

### **Section 5.06: No Adverse Change**

There has been no adverse change since the date of Loan application in the financial condition, organization, operation, business prospects, fixed properties or personnel of the Borrower.

### **Section 5.07: Governmental Approval**

The Borrower has secured all necessary approvals or consents, if required, of any mortgagee, creditor or other party having any financial interest in the Borrower or governmental bodies having jurisdiction with respect to this transaction.

### **Section 5.08: Bribery Certification**

Neither the Borrower nor the Borrower's employees have been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or City of Peoria, nor has the Borrower made an admission of guilt of such conduct which is a matter of record.

### **Section 5.09: Instruments and Documents**

Except as to collateral pledged to the City, at the time the Borrower creates a security interest in, pledges, sells, assigns, or transfers to the City any instrument, document of title, security, chattel paper or other property, or any interest therein, since the Borrower shall be the lawful owner thereof and shall have the right to create a security interest in, pledge, sell, assign, or transfer the same; none of such property shall have been pledged, sold, assigned or transferred to any person other than the City, nor shall any other security interest have been created therein, excepting that the Central Illinois Bank is to have first priority and security interest upon all business assets, furniture, fixtures and equipment, receivables, inventory of CPO Group Holdings LLC, located at 741 West Main St. and 712 W. Russell, Peoria, IL, nor shall such property have been in any way encumbered; and the Borrower shall defend the same against the lawful claims and demands of all persons.

### **Section 5.10: Environmental Statutes**

Borrower acknowledges that it is responsible for compliance with all state and federal environmental laws, including, but not limited to, Asbestos Abatement Act, the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") and Resources Conservation Recovery Act ("RCRA") (collectively referred to as "the Environmental Statutes").

Borrower covenants and agrees that it will manage and operate the premises in compliance with all laws, rules, regulations, and ordinances regulating, without limitation, air pollution, water pollution, and the use, generation, storage, handling, or disposal of hazardous or toxic substances or other materials, including, without limitation, raw materials, products, supplies or wastes. Borrower shall send to City, within five (5) days of receipt or completion thereof, any report, citation, or other writing, including, without limitation, hazardous waste disposal

manifests, by, to or from any governmental authority empowered to regulate any of the foregoing activities. Borrower shall remove from premises and properly dispose of such hazardous or toxic substances or other materials when and as required by applicable laws, rules, regulations and ordinances.

### **Section 5.11: Financial Information**

Subject to any limitations stated therein or in connection therewith, all balance sheets, earning statements and other financial data which have been or may hereafter be furnished to the City do or shall fairly represent the financial condition of the Borrower as of the dates and the results of its operations for the periods for which the same are furnished, and all other information, reports and other papers and data furnished to the City are or shall be at the time the same are so furnished accurate and correct in all material respects and complete insofar as completeness may be necessary to give the City a true and accurate knowledge of the subject matter.

## **ARTICLE VI** **AFFIRMATIVE COVENANTS**

### **Section 6.01: Execution and Delivery of Note and Loan Agreement**

The Borrower shall have executed and delivered to the City this Agreement and the Note in a form satisfactory to the City.

### **Section 6.02: Execution and Certification of Resolution**

The Borrower shall have executed and delivered to the City a duly certified copy of a Resolution of the Owner(s) authorizing the execution and delivery by the Borrower of this Agreement and the Note.

### **Section 6.03: Payment of the Loan**

The Borrower shall pay punctually all principal and interest on the Note according to its terms and conditions and to pay punctually any other amounts that may become due and payable to the City under or pursuant to the terms of this Agreement or Note. Moreover, the Borrower agrees to pay punctually all principal and interest due on any other indebtedness now or hereafter assumed by the Borrower.

### **Section 6.04: Worker's Compensation, Social Security, Retirement Benefits, Health Insurance Benefits and Taxes**

The Borrower shall provide Worker's Compensation insurance where the same is required, and shall accept full responsibility for the payment of unemployment insurance, premiums for Worker's Compensation, Social Security and retirement benefits and health insurance benefits, as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees.

### **Section 6.05: Maintain Existence**

The principals of the Borrower will not permit without the written permission of the City any material change in the ownership structure, control or operation of the Borrower, including but not limited to:

- A. Merger into or consolidation with any other entity;
- B. Significant change in the ownership of the Corporation;
- C. Changing the nature of its business as carried on at the date hereof; and
- D. Substantial distribution, liquidation or other disposition of the Borrower's assets to the Stockholders.

### **Section 6.06: Right to Inspection**

The Borrower agrees to grant the City, until the Note has been fully repaid with interest, the right at all reasonable hour's free access to the Borrower's premises for the purpose of inspection to determine the condition of the premises. The Borrower will, as often as deemed necessary by the City, permit the City, or its duly authorized representatives to have full access to and the right to examine any pertinent books, documents, papers and records of the Borrower until the Note is fully repaid.

## ARTICLE VII NEGATIVE COVENANTS OF THE BORROWER

The Borrower covenants and agrees that, from the date thereof until payment in full of the Note, unless the City shall otherwise consent in writing, it will not enter into any agreement or other commitment the performance of which would constitute a breach of any of the covenants and agreements contained in this Agreement.

### **Section 7.01: Encumber the Collateral**

Except as to the collateral pledged to the City, the Borrower will neither create nor suffer to exist any mortgage, pledge, lien, charge or encumbrance on the collateral, other than a mortgage, pledge, lien, charge or encumbrance in favor of Central Illinois Bank to secure a loan in the principal sum of \$1,400,000.00 together with interest thereon and to the Small Business Administration to secure a loan in the principal sum of \$720,804 together with interest thereon and to Peoria County to secure a loan in the principal sum of \$150,000.00 together with interest thereon and to the City of Peoria to secure a loan in the principal sum of \$150,000.00 together with interest thereon.

### **Section 7.02: Sell the Collateral**

The Borrower will not sell, convey or suffer to be conveyed, lease, assign, transfer or otherwise dispose of the collateral unless approved in writing by the City or permitted pursuant to this Agreement.

## **ARTICLE VIII** **EVENTS OF DEFAULT**

The entire unpaid principal of the Note, and the interest then accrued thereon, shall become immediately due and payable upon the written demand of the City, without any other notice or demand of any kind or presentment of protest, if any one of the following events (hereinafter an "Event of Default") shall occur and be continuing at the same time of such demand, whether voluntarily or involuntarily, or without limitation, occurring or brought about by the operation of law or pursuant to or in compliance with regulations of any administrative or governmental body, provided, however, that such sum shall not be then payable if Borrower's payments have been waived or the time for making the Borrower's payments has been extended by the City:

### **Section 8.01: Non-Payment of Loan**

If the Borrower shall fail to make payment when due of any installment of interest on the Note, and if the default shall remain unremedied for thirty (30) days after written notice.

### **Section 8.02: Non-Payment of Other Indebtedness**

If default shall be made in the payment when due of any installment of principal or interest on any of the Borrower's other indebtedness and if such default shall remain unremedied for sixty (60) days after written notice.

### **Section 8.03: Incorrect Representation or Warranty**

If any representation or warranty contained in, or made in connection with the execution and delivery of, this Agreement, or in any certificate furnished pursuant hereto, shall prove to have been incorrect when made in any material respect.

### **Section 8.04: Default in Covenants**

If the Borrower shall default in the performance of any term, covenant or agreement contained in this Agreement, and such default shall continue unremedied for thirty (30) days after either:

- A. It becomes known to the Borrower; or
- B. Written notice thereof shall have been given to the Borrower by the City.



### **Section 8.05: Voluntary Insolvency**

If the Borrower shall become insolvent or shall cease to pay its debts as they mature or shall voluntarily file a petition seeking reorganization, or the appointment of a receiver, trustee or liquidator for it or a substantial portion of its assets or to effect a plan or other arrangement with creditors, or shall be adjudicated bankrupt, or shall make a voluntary assignment for the benefit of creditors.

### **Section 8.06: Involuntary Insolvency**

If an involuntary petition shall be filed and allowed against the Borrower under any bankruptcy, insolvency or similar law or seeking reorganization or the appointment of any receiver, trustee or liquidator for the Borrower, or of a substantial part of the property of the Borrower, or a writ or warrant of attachment or similar process shall be issued against a substantial part of the property of the Borrower and such petition shall not be dismissed, or such writ or warrant of attachment or similar process shall not be released or bonded, within sixty (60) days after filing or levy.

### **Section 8.07: Judgments**

If any final judgment for the payment of money that is not fully covered by liability insurance and is in excess of One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) shall be rendered against the Borrower, and within sixty (60) days shall not be discharged, or an appeal there from taken and execution thereon effectively stayed pending such appeal and, if such judgment be affirmed on such appeal, and the same shall not be discharged within sixty (60) days.

### **Section 8.08: Business Relocation**

If the Borrower, during the life of this loan, relocates the business outside of the corporate limits of the City of Peoria the Note will be called.

### **Section 8.09: Failure to Perform to City Requirements**

If the Borrower fails to utilize its best efforts to perform to any and all standards established as a part of this Agreement the note can be called.

## **ARTICLE IX** **REMEDIES**

### **Section 9.01: Waivers**

The Borrower waives demand, notice, protest, notice of acceptance of this Agreement, notice of loans made, credit extended, Collateral received or delivered, or other action taken in reliance

hereon, and all other demands and notices of any description unless otherwise required herein. With respect to both the Note, the Loan pursuant hereto and Collateral, the Borrower agrees to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of collateral, to the addition or release of any party or person primarily or secondarily liable, to the acceptance of partial payments thereon, or the settlement, compromise or adjustment thereof, all in such manner and at such time or times as the City may deem advisable. The City shall have no duty as to the collection or protection of Collateral or any income thereon, nor as to the preservation of any rights pertaining thereto beyond the safe custody thereof. The City may exercise its rights with respect to Collateral without resorting or regard to other Collateral or source of reimbursement. No delay or omission on the part of the City in exercising any right shall operate as a waiver of such rights or any other right. A waiver on any one occasion shall not be construed as a bar to or waiver of any right on any future occasion. All rights and remedies of the City on the Note or Collateral or pursuant hereto, whether evidenced by this Agreement or by any other instrument or papers, shall be cumulative and may be exercised singularly or concurrently.

### **Section 9.02: Expenses and Proceeds of Collateral**

The Borrower shall pay to the City on demand any and all expenses, including reasonable counsel fees, incurred or paid by the city in protecting or enforcing its rights upon or under the Loan or Collateral hereunder. After deducting all such expenses, the residue of any proceeds of collection or sale of liabilities or Collateral shall be applied to the payment of principal or interest on the Loan hereunder in such order of preference as the City may determine and any excess shall be returned to the Borrower and the Borrower shall remain liable for any deficiency.

## **ARTICLE X** **MISCELLANEOUS**

### **Section 10.01: Notices**

All notices, consents, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given to a party hereto if mailed to the City at its address set forth below, and to the Borrower at the address set forth below or at such other addresses as any party has designated in writing to any other party hereto:

City of Peoria  
Attn: Department of Economic Development  
419 Fulton Street, Suite 403  
Peoria, IL 61602

and

CPO Group Holdings, LLC  
Amit Bhanti & Donald Goertzen  
741 West Main St.  
Peoria, IL 61606

### **Section 10.02: Survival of Representations and Warranties**

All agreements, representations and warranties made by the Borrower herein or any other document or certificate delivered to the City in connection with the transaction contemplated by this Agreement shall continue in full force and effect so long as the Note is outstanding.

### **Section 10.03: Successors and Assigns**

This Agreement shall be binding upon the Borrower, its successors and assigns, except that the Borrower may not assign or transfer its rights without prior written consent of the City. This Agreement shall inure to the benefit of the City, its successors and assigns and, except as otherwise expressly provided in particular provisions hereof, all subsequent holders of the Note.

### **Section 10.04: Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

### **Section 10.05: Article and Section Headings**

Headings used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

### **Section 10.06: Monitoring and Evaluation**

The City will monitor and evaluate the Borrower's performance under this Agreement. The Borrower will be monitored for compliance with rules, regulations and requirements applicable to this Agreement.

### **Section 10.07: Severance Clause**

The Borrower agrees that, in the event that any provision of this Agreement or any other instrument executed at closing or the application thereof to any person or circumstances shall be declared null and void, invalid or held for any reason to be unenforceable by a court of competent jurisdiction, the remainder of such Agreement shall nevertheless remain in full force and effect and, to this end, the provisions of all covenants, conditions and agreements described herein are deemed separate.

### **Section 10.08: Integration Clause**

It is agreed between the parties that this Agreement, with attachments, as written, is the full and complete Agreement between the parties and that there are no oral agreements or understandings between the parties other than what has been reduced to writing herein.

### **Section 10.09: Expenses and Closing Costs**

The Borrower agrees to pay recording and filing fees payable in connection with this transaction and with the enforcement of this Agreement and Note.

### **Section 10.10: Indemnification**

The Borrower shall save the City harmless against any and all claims, demands and actions with respect to or resulting from this Agreement.

### **Section 10.11: Expenses of Enforcement**

In case suit or action is instituted to enforce compliance with any of the terms, covenants or conditions of this Agreement and Note the losing party agrees to pay such sum as the trial court may adjudge reasonable as attorney's fees to be allowed the prevailing party in such suit or action and in the event any appeal is taken from any judgment or decree in such suit or action, the losing party agrees to pay such further sum as the appellate court shall adjudge reasonable as prevailing party's attorney's fees on such appeal.

### **Section 10.12: Non-Discrimination**

The Borrower shall comply with all applicable federal, state and local laws, rules and regulations prohibiting discrimination on the basis of race, sex, religion, national origin, sexual orientation age or handicap.

### **Section 10.13: City Affirmative Action**

The Borrower will not discriminate against any employee or applicant for employment because of race, color, religion, sex, ancestry, national origin, place of birth, sexual orientation or a physical handicap, which would not interfere with the efficient performance of the job in question.

### **Section 10.14: Prohibition Against Assignment**

The Borrower may not assign or in any way transfer its rights and benefits under this Agreement without the prior written permission of the City.

IN WITNESS WHEREOF, this Loan Agreement has been executed this \_\_\_\_ day of June 2010.

CITY OF PEORIA, ILLINOIS

BORROWER

By: \_\_\_\_\_  
Its City Manager

CPO Group Holdings, LLC

By: \_\_\_\_\_  
Amit Bhanti, Joint Owner

ATTEST: \_\_\_\_\_  
Its City Clerk

ACCEPTED AS TO CONTENT:

CPO Group Holdings, LLC

By: \_\_\_\_\_  
Its City Attorney

By: \_\_\_\_\_  
Donald W. Goertzen, Joint Owner

ACCEPTED AS TO FORM:

By: \_\_\_\_\_  
Economic Development Management

**EXHIBIT 1**

**CITY OF PEORIA, ILLINOIS**

**PROMISSORY NOTE**

Date: June 15, 2010

For value received, CPO GROUP HOLDINGS LLC, promises to pay to the order of the City of Peoria, at its office, in Peoria, Illinois, or at City's option, at such other place as may be designated from time to time by City, **One hundred fifty thousand Dollars (\$150,000.00)**, with interest at a rate of **Four percent (4.00%)** per annum on unpaid principal. The Loan evidenced by this Note shall be paid in **60 120 monthly installments**, amortized over **10 years**, of principal and interest in the amount of **\$1,518.68** commencing on the **1<sup>st</sup> day of July, 2010** and on the **first (1<sup>st</sup>)** of each succeeding month thereafter until the end of the ~~60~~ 120 month repayment period. ~~At that time the remaining loan balance of approximately \$82,462.75 is due on the 1<sup>st</sup> day of June, 2015.~~

This Note may be prepaid without penalty or premium in whole or in part of the principal hereof prior to maturity.

The undersigned hereby:

- A. Waives presentment of this Note for payment, notice of dishonor, protest and notice of protest;
- B. Acknowledges that repayment of this Note is secured by means of a UCC filing on business equipment assets and inventory of CPO Group Holdings LLC, a mortgage on the property located at 741 W. Main St, and 712 W. Russell St., Peoria, IL and a personal guarantee from Amit Bhanti and Donlad Goertzen, joint owners. Any breach by the undersigned of any of the conditions of said instruments and the Loan Agreement shall constitute a default under this Note and all sums due pursuant to this Note and Loan Agreement, together with any principal arrearages thereon, may, at the option of the Holder thereof, become immediately due and payable, without notice, and shall be collectible immediately at any time after such default.
- C. The undersigned will pay on demand all costs and expenses of collection plus reasonable attorney's fees paid or incurred in enforcing this Note, including all such costs, expenses and fees incurred in connection therewith.

CPO Group Holdings LLC

CPO Group Holdings LLC

By: \_\_\_\_\_  
Amit Bhanti, Joint Owner

By: \_\_\_\_\_  
Donald W. Goertzen, Joint Owner