

**GRANT AGREEMENT
by and between
the Hamilton County Industrial Development Agency (IDA)**

and

Grant Agreement

Agreement entered into this _____ day of _____ 2012, by and between the Hamilton County Industrial Development Agency, existing under and by virtue of the laws of the State of New York and having its legal address as PO Box 205, Lake Pleasant, New York 12108 and, hereinafter called the "IDA". And also referred to as the Grantor and James R and Kathy B. Martin , a sole proprietor doing business as _____ Or James R. Martin doing business as _____ a limited liability company (LLC) or J R Martin, Inc. a New York Corporation, with offices at _____ New York, 12108 (hereinafter called "Grantee")

WITNESETH:

WHEREAS, Hamilton County is the recipient of a New York State Homes and Community Renewal Community Development Block Grant (CDBG) economic development program grant award of \$200,000 to implement a micro-enterprise assistance program; and

WHEREAS, the County has entered into subrecipient agreement with the Hamilton County Industrial Development Agency (IDA) which provides that the IDA will administer the grant on behalf of the County and shall take the steps necessary to utilize the grant funds and implement the micro-enterprise program as described in the County's approved application for grant funds; and

WHEREAS, micro-enterprise Program includes funds for entrepreneurial training and \$164,200 for direct financial assistance to eligible businesses; and

WHEREAS, the intent of the program is to provide grants to asset micro-enterprises in Hamilton County and to provide grant funding for start up businesses seeking to locate in Hamilton County; and

WHEREAS, the purpose of this agreement is to specify the grant award to _____ and to identify the terms and conditions of that grant award and the responsibilities and obligations of both the IDA and the Grantee in making this award; and

NOW, THEREFORE, in consideration of the representation and agreements hereinafter contained the parties do hereby agree as follows:

SECTION 1. DEFINITIONS

Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement:

- 1.01 “Application” means the application submitted to the Hamilton County IDA by the Grantee dated [DATE] for CDBG funds, and any additional submittals by Grantee to support the application; such application and submittals being incorporated herein by reference and made a part hereof.
- 1.02 “HUD” means the United States Department of Housing and Urban Development.
- 1.03 “Project” means the activities described in the Grantee s application and in this grant agreement which are to be undertaken by the Grantee.
- 1.04 “CDBG Funds” means Community Development Block Grant funds, including funds in the form of grants under 24 CFR Part 570, Subpart F and Program Income as defined at CFR 570.500(a).
- 1.05 “CDBG Economic Development Activities” means those CDBG activities, which are for the purpose of assisting businesses in expanding or retaining employment opportunities.
- 1.06 “New York State Community Development Block Grant (CDBG) Program” means the Small Cities CDBG Program of the U.S. Department of Housing and Urban Development as administered through the Office of Community Renewal (OCR) as the representative of the NYS Housing Trust Fund Corporation, which is the direct recipient of the Federal Small Cities CDBG funds in New York State.
- 1.07 “Micro-enterprise” means a business having five or fewer employees one or more of whom own the business.

SECTION 2. THE PROJECT

Project Description:

SECTION 3. GRANT AWARD

- 3.01 The Commitment. Subject to the terms and conditions of this Agreement, and subject to Grantors receipt of sufficient CDBG funds, pursuant to the IDA's subrecipient agreement with Hamilton County, the IDA agrees to make a grant to the Grantee in the amount up to but not exceeding the sum of \$_____ (hereinafter the "Grant") to be used for the "Project" as described in Section 2 and in the Grantees application for grant funds submitted to the IDA.
- 3.02 Disbursement of Grant Funds. The Grant proceeds shall be disbursed directly to the Grantee subject to the following:
- a) At Grantor's option, a written request by Grantee for all or a portion of the grant proceeds, detailing the proposed use of such proceeds.
 - b) Receipt of Evidence Satisfactory to the Grantor that grant proceeds are to be used to reimburse the Grantee for paid or accrued expenses which are eligible project costs outlined in the Grantees application and the project as described in Section 2 of this agreement or for eligible project costs to be incurred if approved by the Grantee.
 - c) Receipt of evidence satisfactory to the Grantor that the Grantee has or will complete the entrepreneurial training and education course work as specified by the Grantor or as otherwise approved by Grantor.
 - d) Grantor shall have the right, at its sole option, to disburse all or any portion of the Grant proceeds by making payment directly to a contractor, subcontractor or vendor to pay accrued expenses of Grantee which represent eligible project costs, where such costs have not been paid by Grantee.

SECTION 4. CONDITIONS OF GRANT AWARD/OBLIGATIONS OF THE GRANTEE

- 4.01 Job Creation. The grant award to the Grantee through the Community Development Block Grant (CDBG) program is subject to the requirements of that program and is in part based on the projected job creation benefits of the project and /or that the assistance provided to an income eligible person or household.

For the grant assistance to be provided to _____ the "Grantee" will be responsible for creating _____ new jobs. At least 51% of the new positions created will be made available to low/mod

income households. Qualifications for positions available to low/mod households will be a High School Diploma. The positions made available to low/mod persons will include:

The obligation to create jobs and the requirements related thereto are further specified in Section 7 Employment.

- 4.02 Completion of the "Project". For the grant assistance received the grantee shall be responsible for completing the Project substantially as summarized in Section 2 and as further described in the Grantee's application to the IDA dated_____.
- 4.03 Job Reporting Requirements. The Grantee agrees to cooperate and assist the IDA and/or its representative in producing and providing all necessary information relating to job creation and/or retention. This will involve tracking not only absolute numbers of new hires and retained employees, but also documenting job positions, whether the job was held by taken by or made available to a low and moderate income person and the full time equivalency status of each job.

SECTION 5 REPRESENTATIONS AND WARRANTIES

In order to induce the IDA to enter into this Agreement and to make the grant herein provided for, the "Grantee" hereby represents and warrants to the IDA:

- 5.01 Legal Existence. The Grantee is duly organized, validly existing and in good standing under the laws of the State of New York, and has legal power to own its assest and to transact the business in which it is presently engaged.
- 5.02 Agency Power and Authorization The Grantee has the power, authority and legal right to make, deliver and preform this Agreement.

SECTION 6. AFFIRMATIVE COVENANTS

The Grantee hereby covenants that so long as the job creation requiremetns of this agreement Loan remain outstanding the Grantee will unless other wise consented to in writing by the IDA:

- 6.01 Payment of Obligations. Pay and discharge at or before maturity, all of their respective obligations and liabilities, including without limitation tax liabilities, except where the same may be contested in good faith, and will maintain, in accordance with generally accepted accounting principles, appropriate reserves for the accrual of any of the same.

- 6.02 Maintenance of Properties; Insurance. Keep all properties useful and necessary in the business of the Grantee in good working order and condition; maintain, with financially sound and reputable insurance companies, insurance on all of its properties in such amounts as the Grantee deems proper in accordance with sound business practices against such risks as are usually insured against in the same general area and by companies engaged in the same or a similar business; and furnish to the IDA, upon written request, full information as to the insurance carried.
- 6.03 Taxes. Pay and discharge all taxes, assessments and governmental charges or levies imposed upon it or on its income or profits or on any of its property prior to the date on which any penalties attach thereto, provided that the Grantee shall not be required by this to pay any such tax, assessment, charge or levy, the payment of which is being contested in good faith by proper proceedings.
- 6.04 Corporate Existence. Maintain its corporate or legal existence (as the case may be) and authority to do business in New York State.
- 6.05 Compliance with Federal Statutes. The Grantee shall comply with all of the following requirements as applicable:
- (a) Title VI of the Civil Rights Act of 1964 {42 U.S.C. 2000d et seq.}, which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
 - (b) Section 109 of the Housing and Community Development Act of 1974 (the "Act"), as amended, and the implementing regulations at 24 CFR 570.602, which require that no person in the United States shall on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with community development funds made available pursuant to the Act. Section 109 of the Act, and the implementing regulations at 24 CFR Part 146 and 24 CFR Part 8 further provide for the prohibition of discrimination on the basis of age under the Age Discrimination Act of 1975 {42 U.S.C. 6101 et seq.}, or with respect to an otherwise qualified handicapped person as provided in section 504 of the Rehabilitation Act of 1973 {29 U.S.C. 794}.
 - (c) Section 3 of the Housing and Urban Development Act of 1968 {12 U.S.C. 1701u}, which requires that to the greatest extent feasible opportunities for training and employment be given to low and moderate income persons residing in the area in which the project is located, and that contracts for work in connection with the project be awarded to eligible business concerns which

are located in, or owned in substantial part by persons residing in the same area as the project.

- (d) Section 110 of the Act, which requires that all laborers and mechanics employed by contractors or subcontractors on construction work financed in whole or in part with assistance received under the Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended {40 U.S.C. 276a to a-5}, and which further requires compliance with the Contract Work Hours and Safety Standards Act {40 U.S.C. 327 *et seq.*}.
- (e) Executive Order 11246, as amended by Executive Order 12086, and the regulations issued pursuant thereto [41 CFR Chapter 60] which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or federally assisted construction contracts. The Developer's compliance shall include causing all contractors and subcontractors providing labor or services for the Project to comply with the provisions of Executive Order 11246, as amended by Executive Order 12086.
- (f) The Copeland "Anti-Kickback" Act {18 U.S.C. 874} as supplemented in Department of Labor regulations {29 CFR Part 3}.
- (g) The Federal regulations at 24 CFR 570.609 which prohibit the use of CDBG or Section 108 funds to employ, award contracts to, or otherwise engage the service of any contractor during a period of the contractor's debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.
- (h) The flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 {42 U.S.C. 4012a}.
- (i) The requirements of the Americans With Disabilities Act of 1990, as amended.
- (j) The Housing and Community Development Act of 1974, as amended, and the implementing regulations at 24 CFR Part 570.
- (k) The Federal Statutes popularly referred to as the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), the Superfund Amendments and Reauthorization Act of 1986 (SARA), the Resource Conservation and Recovery Act (RCRA), and Article 17 and 23 of the New York State Environmental Conservation Law.

SECTION 7. EMPLOYMENT

7.01 Definitions. Unless specifically provided otherwise or the context otherwise requires, when used in this Section:

- (a) "Covered Jobs" means any and all employment positions created as a direct result of the Project, notwithstanding any estimates of covered jobs by the Grantee.
- (b) "Employment and Reporting System" means those forms and instructions provided to the Grantee by the IDA.
- (c) "Family" means all persons living in the same household who are related by birth, marriage or adoption.
- (d) "Household" means all the persons who occupy a housing unit.
- (e) "HUD" means the United States Department of Housing and Urban Development.
- (f) "Low and Moderate Income Person" means a member of a family having an income equal to or less than the applicable Section 8 lower income limit established by HUD. Unrelated individuals shall be considered as one person families for this purpose.

7.02 Compliance with Federal Requirements. The Grantee acknowledges that the grant evidenced by this Agreement is subject to the requirements of Federal statute and regulation relative to the use of Community Development Block Grant funds, and that the Grantee's agreement to accept the grant pursuant to this Agreement requires the Grantee's compliance with regulations set forth in 24 CFR Part 570, and policies and procedures implemented thereunder by the United States Department of Housing and Urban Development, the United States Department of Labor, and such other Federal agencies as are or may in the future be charged with the responsibility of monitoring both the Grantee's and the IDA's compliance with low and moderate income benefit requirements.

7.03 Employment Undertaking. The Grantee agrees to make a minimum of 51% of the Covered Jobs available to Low and Moderate Income Persons. For the purpose of this Agreement, a Covered Job will be considered to be available to Low and Moderate Income Persons if all of the following apply:

- (a) The Covered Job does not require special skills that can only be acquired with substantial training, work experience, or education beyond high school (unless the Grantee agrees to provide appropriate training to unqualified persons);
- (b) The Grantee uses a hiring practice which encourages Low and Moderate

Income Persons to be applicants; and

- (c) The Grantee gives first consideration in hiring to qualified Low and Moderate Income Persons.
- (d) The Grantee agrees to work with the IDA and/or its representatives to ensure that 51% of the jobs created will benefit low or moderate income persons by using hiring practices that encourage low and moderate income persons to be applicants and to give first consideration in hiring to qualified low and moderate income persons.

7.04 Job Calculation. In calculating Covered Jobs and the availability of Covered Jobs to Low and Moderate Income Persons, the following will apply:

- (a) Only permanent jobs will be counted; temporary and construction jobs will not be counted.
- (b) Jobs of 35 or more hours per week will be considered as one full-time job. Part-time permanent jobs of less than 35 hours per week will be converted to full-time equivalent jobs by dividing the number of part-time hours by 40.
- (c) Seasonal jobs will be considered to be permanent jobs if the employee will have the right to retain the job from season to season.

7.05 Employment and Reporting System. The Grantee agrees to work the IDA and/or its representatives in developing a means to accurately report on Covered Jobs, including utilizing and maintaining employee questionnaires that provide required information to document grant compliance with employment requirements. At the IDA request the Grantee shall submit employment information to the IDA.

7.06 Schedule of Employment Positions. The Grantee represents that _____ Covered Jobs will be created as a result of the Project, and are expected to be in the following job categories:

- _____
- _____

The grantee further agrees to meet the employment obligations as specified in this agreement prior to _____ or such other date as mutually agreed between the IDA and the Grantee.

7.07 Materiality of Grantee's Employment Undertaking. The Obligations of the Grantee set forth in this Section 7 are material obligations the breach of which shall constitute an Event of Default under Section 8 of this Agreement.

SECTION 8. DEFAULT

8.01 Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder:

- (a) Failure by the Grantee to meet the job creation and reporting responsibilities as outlined in Section 4 of this Agreement.
- (b) Failure of the Grantee, to provide evidence satisfactory to the IDA that the "Project" as described in Section 2 of this Agreement and as more fully described in the Grantee's grant application to the IDA dated _____ has been or will be completed substantially as described in the application.

8.02 Remedies on Default. Whenever any Event of Default referred to in Section 8.01 hereof shall have occurred and be continuing, the IDA will have the right to take one or more of the following actions:

Grant Payback Obligation

- (a) The IDA or its Assigns, upon written notice to the Grantee, may cause the entire grant, or a pro-rated portion of the grant to be immediately repaid without any other notice or demand of any kind or any presentment or protest. If the Grantee only partially meets its job creation obligation, the IDA may at its option demand the repayment of a portion of the grant if such partial repayment would result in the IDA being in compliance with the HUD rules regulations and requirements as set forth in the County's grant agreement with the NYS Housing Trust Fund Corporation.
- (b) The IDA or its Assigns may take whatever action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce the performance or observance of any obligations, agreements, or covenants of the Grantee under this Agreement.

8.03 Remedies Cumulative. The rights and remedies of the IDA under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the IDA allowed by law with respect to any default under this Agreement. Failure by the IDA to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Grantee hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandamus or other appropriate legal remedy a strict compliance by the Grantee with all of the covenants and conditions hereof, or of the rights to

exercise any such rights or remedies.

- 8.04 No Additional Waiver Implied. In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the IDA and the Grantee or any delay or omission of the IDA in exercising any rights hereunder shall operate as a waiver.
- 8.05 Effect on Discontinuance of Proceedings. In case any proceeding taken by the IDA under this Agreement on account of any Event of Default hereunder shall have been discontinued or abandoned for any reason or shall have been determined adversely to the IDA, then and in every such case, the IDA shall be restored, respectively, to its former position and rights hereunder, and all rights, remedies, powers, and duties of the IDA shall continue as in effect prior to the commencement of such proceedings.
- 8.06 Agreement to Pay Attorney's Fees and Expenses. In the event that the Grantee shall default under any of the provisions of this Agreement and the IDA should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Grantee herein contained, the Grantee agrees that it will, on demand, therefore pay to the IDA the reasonable fees and disbursements of such attorneys and such other expenses so incurred.

SECTION 9. MISCELLANEOUS

- 9.01 Notices. All notices, requests and demands to or upon the respective parties hereto shall be deemed to have been given or made when deposited in the mail, postage prepaid, in the case of telegraphic notice, when delivered to the telegraph company, or in the case of tested telex, upon confirmation of the receipt, addressed as set forth below or to such other address as may be hereafter designated in writing by the respective parties hereto:

The Grantee: _____

The Town: _____
Chairman, Hamilton County IDA
PO Box 205
Lake Pleasant, NY 12108

- 9.02 Captions. The captions of the various sections and subsections of this Agreement have been inserted only for the purpose of convenience, and shall not be deemed in any manner to modify, explain, enlarge or restrict any of the

provisions of this Agreement.

- 9.03 Exhibits. Exhibits shall constitute an integral part of this Agreement.
- 9.04 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Grantee and the IDA and their respective successors and assigns, except that the Grantee may not transfer or assign any of its rights or interests hereunder without the prior written consent of the IDA.
- 9.05 Governing Law. This Agreement and the rights and obligations of the parties hereunder and thereunder shall be governed by, and construed and interpreted in accordance with the laws of the State of New York. If any of the provisions of this Agreement shall be or become illegal or unenforceable under any law, the other provisions shall remain in full force and effect.
- 9.06 Amendments. This Agreement may be amended only with the written consent of the IDA and the Grantee or their duly authorized agents in writing.

IN WITNESS WHEREOF, the parties hereto have hereunto signed their names as of the date first written above.

Grantor:
Hamilton County Industrial Development Agency

By: _____,
Chairman

STATE OF NEW YORK)
COUNTY OF HAMILTON) SS:

On the ____ Day of _____, 2012, before me came _____, to me known, who, being duly sworn, did depose and say that he resides in Hamilton County, New York; that he is the Chairman of the Hamilton County Industrial Development Agency, and that he executed the above instrument as Chairman and caused the seal of Hamilton County Industrial Development Agency to be thereunto affixed, in accordance with the authorization of the Hamilton County Industrial Development Agency.

Notary Public
My Commission Expires: _____

Grantee:

By: _____

STATE OF NEW YORK)
COUNTY OF HAMILTON) SS:

On the ___ day of _____, 2012, before me, the undersigned a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is subscribed to within the foregoing instrument, and acknowledged to me that the individual executed the same in the individual's capacity, and that by the individual's signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

Notary Public
My Commission Expires: _____