

CONSTRUCTION LOAN AGREEMENT (ALABAMA)

THIS AGREEMENT made effective as of the ____ day of _____, _____.

BETWEEN:

[NAME OF BORROWER]
An Alabama Corporation
[address]
("Borrower")

- and -

[NAME OF LENDER]
[address]
("Lender")

WHEREAS, Borrower has applied for a loan from Lender, such loan to be used to finance a construction project as set forth herein.

AND WHEREAS, Lender has agreed to make such a loan on the terms and conditions contained herein, and Borrower has agreed to borrow from Lender an amount not to exceed the principal amount of the Loan.

NOW THEREFORE, the parties hereto agree as follows:

1. Interpretation

1.1 The following terms, as used in this Agreement, shall have the meanings set forth below, unless the context requires otherwise.

- (a) *Advances* means the advances of the Loan made by Lender to Borrower in accordance with the provisions of Section 3.
- (b) *Applicable Environmental Law* means any applicable laws, rules or regulations pertaining to health or the environment, petroleum products, radon radiation, or oil or hazardous substances, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), as codified at 42 U.S.C. §9601 et seq., as amended, the Resource Conservation and Recovery Act of 1976, as amended ("RCRA") and the Federal Emergency Planning and Community Right-To-Know Act of 1986.

The terms *hazardous substance* and *release* shall have the meanings specified in CERCLA. The terms *solid waste*, *disposal*, *dispose*, and *disposed* shall have the meanings specified in RCRA, the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act, 49 U.S.C. §6901, et seq., as amended; the Federal Water Pollution Control Act, 33 U.S.C. §1251, et seq., as amended; the Clean Air Act, 42 U.S.C. §741, et seq., as amended; the Clean Water Act, 33 U.S.C. §7401, et seq., as amended; the Toxic Substances Control Act, 15 U.S.C. §2601-2629, as amended; the Safe Drinking Water Act, 42 U.S.C. §300f-300j, as amended, except that if such acts are amended to broaden the meanings thereof, the broader meaning shall apply herein prospectively from and after the date of such amendments.

Notwithstanding the foregoing, provided, to the extent that the laws of the state where the Property is located establish a meaning for *hazardous substance* or *release* which is

broader than that specified in CERCLA, as CERCLA may be amended from time to time, or a meaning for *solid waste, disposal, and disposed* which is broader than specified in RCRA, as RCRA may be amended from time to time, such broader meanings under said state law shall apply in all matters relating to the laws of such state.

- (c) *Business Day* means any day other than Saturday, Sunday, or a day on which Lender is closed for business.
- (d) *Closing Date* means the first date on which all or any part of the Loan is first disbursed by Lender to Borrower.
- (e) *Collateral* means the Deed of Trust, which grants Lender a security interest in all of Borrower's right, title and interest in and to any and all equipment, fixtures, and building materials now or hereafter located on the Property, or used in connection with the Property or the Improvements, together with the rents and profits accruing from the Property, and the Guaranty executed by the Guarantor.
- (f) *Construction Contract* means the Agreement between Borrower and General Contractor, as approved by Lender, whereby General Contractor shall construct (or cause the construction of) the Improvements.
- (g) *Cost Budget* means the line item project budget pursuant to which Lender will make Advances, as set out in Schedule A, attached hereto.
- (h) *Deed of Trust* means that certain Construction Mortgage, Deed of Trust, Security Agreement and Fixture Filing dated the _____ day of _____, _____ from Borrower for the use and benefit of Lender, securing the Loan and granting to Lender a first lien upon Borrower's interest in and to the Property and the Improvements to be constructed thereon, together with certain other personal property as described therein, as the same may be amended hereafter.
- (i) *Default* means the occurrence or existence of any event which would constitute an event of Default (as set forth in Section 6).
- (j) *GAAP* means, as in effect from time to time, generally accepted accounting principles, consistently applied, as promulgated by the American Institute of Certified Public Accountants.
- (k) *General Contractor* means a general contractor duly licensed in the State of Alabama and acceptable to Lender, at Lender's reasonable discretion.
- (l) *Guaranty* means that certain Guaranty of Payment and Performance dated the _____ day of _____, _____ from _____ [insert name of Guarantor] (the "Guarantor") in favor of Lender, together with any amendments thereto.
- (m) *Hard Costs* means any costs of the Property and actual physical construction of the Improvements (including labor and material).
- (n) *Improvements* means _____ [insert description of the Improvements to be made] to be constructed in accordance with the Plans and Specifications.
- (o) *Indemnity Agreement* means that certain Indemnity Agreement dated the _____ day of _____, _____ from Borrower and Guarantor in favor of Lender, together with any amendments thereto.

- (p) *Lender's Inspector* means the independent consultant retained by Lender to make periodic inspections of the Improvements, to review the Plans and Specifications, construction contracts, and other construction related items and all draw requests (attached hereto as "Schedule D"). Lender's Inspector shall be _____ [*insert name of company*].
- (q) *Loan* means the loan to be made by Lender to Borrower in the principal sum of _____ dollars (\$_____).
- (r) *Loan Documents* means the Note, Deed of Trust, this Loan Agreement, the Indemnity Agreement, the Guaranty, and any and all other documents executed in connection with the Loan.
- (s) *Note* means that certain Promissory Note dated the _____ day of _____, _____ from Borrower payable to the order of Lender, together with any and all modifications and amendments thereto, evidencing Borrower's promise to repay the Loan together with interest at the rate set forth therein.
- (t) *Plans and Specifications* means the plans and specifications for the Improvements to be constructed by Borrower, as approved by Lender and Lender's Inspector as the same may hereafter be modified or amended.
- (u) *Property* means the property located in _____ County, Alabama, which is more particularly described in "Schedule B" (attached hereto) upon which the Improvements are to be made with the proceeds of the Loan.
- (v) *Retainage* means the amount of the Loan to be retained by Lender pending completion of the Improvements, and shall be _____ percent (_____%) of the value of the completed construction of the Improvements.
- (w) *Scheduled Completion Date* means the date by which the Improvements are to be completed.
- (x) *Soft Costs* means any and all development costs other than Hard Costs, including, but not limited to, operating deficits, closing costs, permits and governmental fees, leasing costs, closing costs, legal and architectural fees, and construction interest.
- (y) *Title Company* means the title company insuring the Deed of Trust, which shall be _____ [*insert name of title company*].
- 1.2 In this Agreement, any terms used in the singular shall include the plural and vice versa, as the context requires. Any terms of the masculine gender shall include the feminine and neuter and vice versa, as the context requires.
- 1.3 Any and all references to other documents or instruments shall be deemed to refer to such documents or instruments as they may hereafter be extended, renewed, modified or amended, as well as any and all replacements and substitutions therefor.
- 1.4 All headings used in this Agreement are for ease of reference only and shall not affect the construction or interpretation hereof.
- 2. Conditions of the Loan**
- 2.1 Any Advance to Borrower by Lender shall only be made upon fulfillment of all of the following:
- (a) Payment by Borrower of any and all fees and expenses in accordance with this Loan Agreement, including, but not limited to, a commitment fee equal to

_____ dollars (\$_____) with all actual out-of-pocket expenses incurred by Lender or with respect to the Loan.

- (b) Execution, delivery, and recording or filing (if required) of this Agreement, the Note, the Collateral, and any and all other documents evidencing or securing the Loan, and all other documents required by this Agreement. Such documents shall be in a form satisfactory to Lender.

THIS IS A 25-PAGE DOCUMENT, INCLUDING SCHEDULES.