

# Loan Agreement

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## LOAN AGREEMENT

This LOAN AGREEMENT (this "Agreement") is made and entered into as of [DATE], by and between [LENDER NAME], a [ENTITY TYPE] organized under the laws of [STATE] with its principal place of business at [LENDER ADDRESS] ("Lender"), and [BORROWER NAME], a [ENTITY TYPE/INDIVIDUAL] organized/located in [STATE] with its principal place of business/residence at [BORROWER ADDRESS] ("Borrower"). Lender and Borrower are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

### 1. DEFINITIONS

- 1.1 "Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in [GOVERNING LAW STATE] are authorized or required by law to close.
- 1.2 "Collateral" means all property described in [COLLATERAL DESCRIPTION] and any other property pledged or granted as security for the Obligations.
- 1.3 "Default" has the meaning set forth in Section 9.
- 1.4 "Obligations" means all obligations of Borrower to Lender under this Agreement, including repayment of principal, interest, fees, costs, indemnities and any other amounts payable under this Agreement.
- 1.5 Other terms used in this Agreement and not otherwise defined shall have the meanings ascribed to them in the Uniform Commercial Code as in effect in [GOVERNING LAW STATE].

### 2. LOAN; ADVANCE; PURPOSE

- 2.1 Loan. Subject to the terms and conditions of this Agreement, Lender agrees to loan Borrower the principal sum of [LOAN AMOUNT] [CURRENCY] (the "Loan"). The unpaid principal and all accrued but unpaid interest, fees and other sums payable under this Agreement are collectively referred to as the "Outstanding Balance".
- 2.2 Disbursement. The Loan shall be disbursed to Borrower on [DISBURSEMENT DATE] by wire transfer to Borrower's account at [BANK NAME] or by such other means as the Parties may agree in writing.
- 2.3 Purpose. Borrower shall use the Loan proceeds solely for the following purpose(s): [PURPOSE OF LOAN]. Borrower shall not use proceeds for any unlawful purpose.

### 3. INTEREST

- 3.1 Interest Rate. The Outstanding Balance shall bear interest at a rate of [INTEREST RATE]% per annum, calculated [DAILY/MONTHLY/ANNUALLY] on the basis of [DAY COUNT CONVENTION] ("Interest").
- 3.2 Default Rate. Upon the occurrence of an Event of Default, interest shall accrue on the Outstanding Balance at a rate of [DEFAULT INTEREST RATE]% per annum, or the maximum rate permitted by applicable law, whichever is lower.
- 3.3 Interest Accrual and Payment. Interest shall accrue from the date of disbursement and shall be payable in accordance with the repayment schedule set forth in Section 4.

### 4. REPAYMENT

- 4.1 Repayment Schedule. Borrower shall repay the Loan in accordance with the repayment schedule attached hereto as Schedule A ("Repayment Schedule") which may include periodic payments of principal and interest, and a final payment on [MATURITY DATE].
- 4.2 Mandatory Prepayment. Borrower shall prepay the Loan in whole or in part at any time without premium or penalty, subject to any specific prepayment provisions set forth in Schedule A.

4.3 Application of Payments. All payments received by Lender shall be applied first to any fees, costs and expenses then due, second to accrued but unpaid interest, and then to principal unless otherwise agreed in writing.

4.4 Late Payment. Any payment not received within [GRACE PERIOD] days of its due date shall be subject to a late fee of [LATE FEE] or [LATE FEE PERCENTAGE]% of the overdue amount, whichever is greater.

## **5. SECURITY**

5.1 Security Interest. To secure performance of the Obligations, Borrower grants to Lender a continuing security interest in the Collateral described in [COLLATERAL DESCRIPTION]. If the loan is unsecured, insert "This loan is unsecured" in the bracketed security clause.

5.2 Perfection. Borrower shall execute and deliver to Lender all financing statements, security agreements, control agreements and other documents reasonably requested by Lender to perfect, maintain and enforce the security interest in the Collateral.

5.3 No Lien Ranking. Borrower shall not grant any other lien or security interest in the Collateral which is senior to or pari passu with the security interest granted to Lender without Lender's prior written consent.

## **6. REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants to Lender as of the date hereof and as of each disbursement date:

6.1 Organization and Authority. If Borrower is an entity, Borrower is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and Borrower has the power and authority to enter into this Agreement and to perform its obligations hereunder.

6.2 Binding Obligation. This Agreement has been duly authorized, executed and delivered by Borrower and constitutes a legal, valid and binding obligation enforceable against Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency and equitable principles.

6.3 No Conflict. The execution, delivery and performance of this Agreement does not and will not (with or without notice or lapse of time) violate any law, regulation, agreement, covenant, or order applicable to Borrower or Borrower's assets.

6.4 Title to Collateral. Borrower has good and marketable title to the Collateral, free and clear of all liens, encumbrances and adverse claims except as disclosed to Lender in writing and accepted by Lender.

6.5 Financial Statements. All financial statements and information furnished to Lender by Borrower are true, complete and correct in all material respects as of their respective dates.

## **7. COVENANTS**

Borrower covenants and agrees that, until all Obligations have been indefeasibly paid in full:

7.1 Use of Proceeds. Borrower will use the Loan proceeds only for the purposes set forth in Section 2.3.

7.2 Maintenance of Collateral. Borrower will maintain the Collateral in good condition and not permit any waste.

7.3 Compliance with Law. Borrower will comply with all applicable federal, state and local laws, rules and regulations.

7.4 Insurance. Borrower will maintain insurance on the Collateral as reasonably required by Lender and provide certificates of insurance upon request.

7.5 Financial Reporting. Borrower shall deliver to Lender financial statements, tax returns, and other reports as set forth in Schedule B or as otherwise reasonably requested by Lender.

## **8. CONDITIONS PRECEDENT**

The obligation of Lender to disburse funds under this Agreement is subject to the satisfaction of the following conditions precedent, among others:

8.1 Execution of Agreement. Lender shall have received a fully executed counterpart of this Agreement

and all required ancillary documents.

8.2 No Default. No Event of Default shall exist or be continuing.

8.3 Perfection Documents. Borrower shall have executed and delivered such security documents and financing statements as Lender may require to perfect its security interest in the Collateral.

## **9. EVENTS OF DEFAULT**

9.1 Events of Default. Each of the following shall constitute an "Event of Default":

(a) Borrower fails to pay any principal, interest or other amount when due and such failure continues for more than [CURE PERIOD] days after the due date;

(b) Borrower breaches any other covenant or agreement contained in this Agreement and such breach continues for more than [CURE PERIOD] days after written notice from Lender;

(c) Any representation or warranty made by Borrower in this Agreement is false or misleading in any material respect when made or deemed made;

(d) Borrower becomes insolvent, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they mature, or a receiver, custodian or similar officer is appointed for Borrower or for a substantial part of Borrower's property, or a petition in bankruptcy or insolvency is filed by or against Borrower and not dismissed within [BANKRUPTCY CURE PERIOD] days;

(e) Any material adverse change in Borrower's business, assets, liabilities, financial condition or prospects as reasonably determined by Lender.

## **10. REMEDIES**

10.1 Acceleration. Upon the occurrence of any Event of Default, Lender may declare the entire Outstanding Balance immediately due and payable.

10.2 Enforcement of Security Interest. If an Event of Default occurs and the Loan is secured, Lender may exercise all rights and remedies of a secured party under the Uniform Commercial Code of [GOVERNING LAW STATE], including foreclosure on the Collateral.

10.3 Collection Costs. Borrower shall pay all reasonable costs and expenses (including attorneys' fees and legal expenses) incurred by Lender in enforcing this Agreement or collecting any of the Obligations.

10.4 Remedies Cumulative. The remedies provided in this Agreement are cumulative and are in addition to any other rights and remedies available at law or in equity.

## **11. FEES; TAXES; WITHHOLDING**

11.1 Fees. Borrower shall pay Lender the fees set forth in Schedule C.

11.2 Taxes. Borrower shall be responsible for all taxes (other than taxes based upon Lender's net income) assessed or levied in connection with the transactions contemplated by this Agreement.

11.3 Withholding. Borrower shall make all required withholdings and deductions under applicable law and shall remit such amounts to the proper authorities.

## **12. CONFIDENTIALITY**

12.1 Confidential Information. Each Party agrees to hold confidential and not disclose to any third party any non-public information obtained from the other Party in connection with this Agreement, except as required by law or with the other Party's prior written consent.

## **13. INDEMNIFICATION**

13.1 Indemnity. Borrower shall indemnify, defend and hold harmless Lender and its affiliates, officers, directors, agents and employees from and against any and all losses, liabilities, claims, damages and expenses (including reasonable attorneys' fees) arising out of or relating to Borrower's breach of this Agreement or Borrower's use of the Loan proceeds, except to the extent directly resulting from Lender's gross negligence or willful misconduct.

## **14. ASSIGNMENT; SUCCESSORS**

14.1 Assignment by Lender. Lender may assign its rights and obligations under this Agreement in whole or in part without Borrower's consent; provided that any assignment does not increase Borrower's obligations or liabilities.

14.2 Assignment by Borrower. Borrower may not assign any of its rights or delegate any of its obligations under this Agreement without Lender's prior written consent.

14.3 Successors. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

## **15. NOTICES**

15.1 Method. Any notice required or permitted under this Agreement shall be in writing and shall be deemed given when delivered personally, sent by certified mail (return receipt requested), nationally recognized overnight courier, or by email with confirmation to the addresses set forth below (or to such other address as a Party designates by written notice):

If to Lender: [LENDER NAME]

Attention: [CONTACT NAME]

Address: [LENDER ADDRESS]

Email: [LENDER EMAIL]

If to Borrower: [BORROWER NAME]

Attention: [CONTACT NAME]

Address: [BORROWER ADDRESS]

Email: [BORROWER EMAIL]

## **16. GOVERNING LAW; JURISDICTION**

16.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of [GOVERNING LAW STATE], excluding its choice-of-law rules.

16.2 Jurisdiction. Each Party irrevocably consents to the exclusive jurisdiction and venue of the state and federal courts located in [COUNTY], [GOVERNING LAW STATE] for any action arising out of or relating to this Agreement and waives any objection based on forum non conveniens.

## **17. WAIVER; REMEDIES CUMULATIVE**

17.1 No Delay or Waiver. No delay or failure by either Party to exercise any right or remedy shall operate as a waiver of that right or remedy. No single or partial exercise of any right or remedy shall preclude any other or further exercise of that or any other right or remedy.

## **18. SEVERABILITY**

18.1 Invalidity. If any provision of this Agreement is held invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

## **19. ENTIRE AGREEMENT; AMENDMENT**

19.1 Entire Agreement. This Agreement, together with all schedules and exhibits attached hereto, constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes all prior agreements and understandings, both written and oral.

19.2 Amendment. This Agreement may be amended or modified only by a written instrument signed by both Parties.

## **20. COUNTERPARTS; ELECTRONIC SIGNATURES**

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

20.2 Electronic Signatures. Signatures delivered by electronic means (including facsimile or .pdf) shall be deemed original signatures.

## **21. MISCELLANEOUS**

21.1 Headings. Section headings are for convenience only and shall not affect the interpretation of this Agreement.

21.2 Survival. All representations, warranties, covenants and indemnities shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby to the extent they are intended to survive.

## **22. OPTIONAL GUARANTY (IF APPLICABLE)**

22.1 Guaranty. If applicable, [GUARANTOR NAME] ("Guarantor") hereby absolutely and unconditionally guarantees to Lender the prompt payment and performance when due of all Obligations of Borrower (the "Guaranty"). Guarantor's obligations under this Guaranty are independent of Borrower's obligations and may be enforced against Guarantor without first pursuing remedies against Borrower or any other party.

## **23. ACKNOWLEDGMENT**

23.1 Borrower acknowledges receipt of a copy of this Agreement and acknowledges that Borrower has had the opportunity to obtain independent legal advice prior to executing this Agreement.

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

### **LENDER:**

[LENDER NAME]

By: \_\_\_\_\_

Name: [LENDER SIGNATORY NAME]

Title: [LENDER SIGNATORY TITLE]

Date: [DATE]

### **BORROWER:**

[BORROWER NAME]

By: \_\_\_\_\_

Name: [BORROWER SIGNATORY NAME]

Title: [BORROWER SIGNATORY TITLE]

Date: [DATE]

GUARANTOR (IF APPLICABLE):

[GUARANTOR NAME]

By: \_\_\_\_\_

Name: [GUARANTOR SIGNATORY NAME]

Title: [GUARANTOR SIGNATORY TITLE]

Date: [DATE]

## **SCHEDULE A – REPAYMENT SCHEDULE**

[INSERT DETAILED REPAYMENT SCHEDULE: PAYMENT AMOUNTS, PAYMENT DATES, FINAL MATURITY PAYMENT, ANY BALLOON PAYMENT, PREPAYMENT TERMS]

## **SCHEDULE B – FINANCIAL REPORTING REQUIREMENTS**

[DESCRIBE PERIODIC FINANCIAL STATEMENTS, AUDIT REQUIREMENTS, TAX RETURNS, ETC.]

**SCHEDULE C – FEES**

[DESCRIBE OR LIST ANY ORIGINATION FEES, ADMINISTRATIVE FEES, LATE FEES, RECORDING FEES, OR OTHER CHARGES]

NOTARY ACKNOWLEDGMENT (OPTIONAL)

State of [STATE]

County of [COUNTY]

On this [DATE] before me, the undersigned notary public, personally appeared [LENDER SIGNATORY NAME] and [BORROWER SIGNATORY NAME], personally known to me or proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: [DATE]

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