Business Loan Agreement

This BUSINESS LOAN AGREEMENT, dated as of this [day] day of [month], [year], by, between, and among [name of borrowing entity], a [state] corporation (herein called "Borrower"), [name of guarantor entity], a [state] corporation (herein called "Guarantor"), and [lender name], a bank organized under the laws of [state] and having an office at [city] (herein called "Lender").

WITNESSETH:

WHEREAS, Borrower has requested the Lender to make a loan to Borrower in the principal amount of [amount] Dollars ($[amount].00), which amount is for the purpose of acquiring a motor vehicle for business and commercial use commonly known as [description of vehicle] (herein called the “Vehicle”);

WHEREAS, it is of benefit to and in the best interest of Guarantor that the Lender make such a loan to Borrower and to induce the Lender to make such a loan Guarantor is willing to guarantee the obligations of Borrower with respect to such loan; and

WHEREAS, subject to the terms and conditions hereinafter set forth, the Lender is willing to make such a loan to Borrower.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. The Loan.
   1. Loan.

The Lender agrees, subject to the terms and conditions hereinafter set forth, to make a loan to Borrower in the aggregate principal amount of [amount] Dollars ($[\_\_\_\_\_].00). The borrowing hereunder shall be made on [date]. The aggregate principal amount borrowed by Borrower from the Lender outstanding at any particular time is herein called a "Loan."

* 1. Note. The loan shall be made against and evidenced by a promissory note of the Borrower dated [date] (herein called the "Note") substantially in the form annexed hereto as Exhibit 1 [annex copy of Secured Promissory Note hereto as Exhibit 1]), which shall be delivered by the Borrower to the Lender on [date].
  2. Maturity Date.

On [date] all sums due and owing under this Agreement and the Subordinated Notes shall be repaid in full (herein called “Maturity Date”). The Borrower acknowledges and agrees that the Lenders have not made any commitments, either express or implied, to extend the terms of the Subordinated Notes past their Maturity Date, and shall not extend such terms beyond the Maturity Date unless the Borrower and the Lender hereafter specifically otherwise agree in writing.

* 1. Interest.
     1. Interest shall be payable monthly on the [day] day of each month, and shall be calculated on the actual number of days elapsed on the basis of a 360-day year.
     2. "Governing rate" shall mean a rate equal to three percent (3%) above the prime rate publicly quoted by [name] Bank and, if at any time such a rate has not been publicly announced, then such prime rate as is announced by such other major [state] banking institution as may be selected by the holder. The initial governing rate shall be three percent (3%) above the prime rate in effect on the date hereof and thereafter the governing rate shall be three percent (3%) above the prime rate in effect on each payment date for the monthly period commencing on such payment date. Notwithstanding the foregoing, at no time shall the governing rate be less than [percent]%.
     3. If the Borrower shall default in the due and punctual payment of any principal of, or interest on, the Loan or the Note, or on any other amount due from the Borrower under this Agreement or any of the Loan Documents, the Borrower shall pay interest thereon and on all such amounts as may be necessary to compensate the Bank for any loss as a consequence of such default as provided in Section 5.2, to the extent permitted by law, on a daily basis for the period from and including the date of such default up to the date of actual payment (after as well as before judgment) at a rate per annum equal to four percent (4%) above the Prime Rate as determined by the Bank prevailing in respect of that day or any substitute rate of interest then in effect, provided, however, that the default interest rate provided by this subsection (d) shall not be less than twelve percent (12%) per annum.
  2. Principal.
     1. The principal amount of the Loan and of the Note shall be repaid along with all accrued but unpaid interest on the Maturity Date.
     2. The Borrower may prepay the Loan and the Note in whole or in part, without premium, provided, however, that (i) the Borrower shall give the Lender not less than ten (10) business days' prior written notice of the date of prepayment; (ii) each prepayment, if less than the total amount outstanding on the Loan shall be in integral multiples of [amount] Thousand Dollars ($[amount],000), and shall be applied to the payment of the remaining installments of principal on the Loan and the Note in inverse order of maturity; and (iii) each prepayment shall be accompanied by the payment of accrued interest on the amount so prepaid.
  3. Payments.
     1. All payments made by the Borrower of principal of, and interest on, the Loan and the Note shall be made in immediately available funds not later than 10:00 a.m. Pacific Standard Time on the first of every month to the Lender at [location].
     2. All sums payable by the Borrower on the Loan or the Note or otherwise under this Agreement or the Loan Documents, whether of principal or interest or otherwise, shall be paid in full without setoff or counterclaim and without any deduction or withholding for or on account of any taxes, duties, levies, imposts, withholdings, restrictions, conditions or charges of any nature, including any interest, fines or penalties with respect thereto, imposed by law upon the Borrower by any political or taxing authority thereof.
  4. Use of Proceeds. The Borrower and Guarantor agree that the proceeds of the Loan shall be used fully and exclusively for the purposes set forth in the second introductory paragraph of this Agreement and for general corporate purposes consistent with Section 3.9 hereof and that the Lender shall have no responsibility for the use of the proceeds of the Loan.
  5. Loan Participations. The Lender shall have the right in its sole discretion to sell or otherwise transfer or grant participations in its participation in the Loan or any part thereof to any bank or financial institution.

1. Security.

As security for the payment of the Loan and the Note and interest thereon and all other obligations of the Borrower under this Agreement:

* 1. Security Interest in Vehicle.

The Lender shall hereby have a security interest in the following described vehicle:

Make: [make] Model: [model] Year: [year] Vehicle Identification Number (VIN): [VIN]

This security interest is granted in connection with this loan Agreement between the Borrower and the Lender dated [date], and is intended to secure the Borrower's obligations under this Agreement, including but not limited to the repayment of the loan and any fees or charges related to the financing. The Borrower hereby acknowledges and agrees to the security interest granted herein, and agrees to take all necessary steps to maintain the vehicle in good condition and repair, and to protect the security interest of the Lender in the vehicle. This statement of security interest is effective as of the date of this Agreement, and shall continue in effect until the Borrower has fulfilled all obligations under this Agreement.

* 1. Collateral Account and Insurances.
     1. From and after [date], the Borrower shall maintain a collateral account (herein called the "Collateral Account") at the Lender's [city], [state] office, or any other office designated by the Lender, for the purpose of providing funds for the due and punctual payment of principal of, and interest on, the Loan and the Note whenever such principal and interest becomes due and as security for the obligations of the Borrower under this Agreement and the Security Documents.
     2. Payments (herein called "Collateral Payments") shall be deposited, subject to treatment and application under subsections (c) and (d), promptly upon receipt thereof in the Collateral Account. In the event that an Event of Default (as defined in Section 5.1 hereof) or an event which with the passage of time or giving of notice, or both, would constitute such an Event of Default shall have occurred and be continuing, or the Collateral Account is attached or levied upon by a third-party through any legal proceeding or by order of any court or other authority having jurisdiction, all Collateral Payments shall be paid directly to the Lender and not to the Collateral Account.
     3. Subject to the provisions of subsection (d), at any time and from time to time, the Collateral Payments held in the Collateral Account shall be treated and applied in the manner set forth below:
        1. the Lender may each month deduct from all Collateral Payments held in the Collateral Account, (A) the total amount of the installments of principal of the Loan and the Note then due and payable and/or next becoming due and payable, (B) the total amount of installments of interest on the Loan and the Note due and payable and/or next becoming due and payable, and (C) any and all other amounts then due or payable by the Borrower to the Lender respecting the Loan and the Note under this Agreement or under the Collateral Loan Documents;
        2. the Lender shall apply amounts deducted under clause (1) above to (A) the punctual payment when due of installments of principal of, and interest on, the Loan and the Note and (B) the payment of all other amounts then due and payable by the Borrower to the Lender respecting the Loan and the Note under this Agreement or under the Security Documents; and
        3. to the extent that monies have not been deducted from the Collateral Account under clause (1) or notice of deduction or intention to make deductions of monies in the Collateral Account as provided below has not been given, such monies shall be available promptly to the Borrower.

The Lender shall give telephone notice, later confirmed in writing, to the Borrower in the event that it has deducted or intends to make deductions of Collateral Payments from the Collateral Account under clause (1).

* + 1. In the event that an Event of Default (as defined in Section 5.1 hereof), or an event which with the passage of time or giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, Collateral Payments shall not be available to the Borrower and the Lender may apply all Collateral Payments received by it and all monies held in the Collateral Account as follows:
       1. To the payment of the expenses incurred by the Lender for the protection of its rights and the pursuit of its remedies with respect to the obligations of the Borrower for the Loan and the Note under this Agreement, or any of the Security Documents, and to provide adequate indemnity to the Lender against liens claiming priority over or equality with the liens created by the Security Documents;
       2. To the payment of interest on, and then principal of, the Loan and the Note whether due or not;
       3. To the payment of all other sums payable by the Borrower to the Lender with respect to the Loan and the Note pursuant to this Agreement or any of the Security Documents, whether due or not, and of all damages, liquidated or otherwise, hereunder with respect to said obligations hereunder including, without limitation, the amounts specified in Section 5.2 of this Agreement, together with interest thereon; and
       4. To the payment of any surplus thereafter remaining to the Borrower or to whomsoever may be entitled thereto.
    2. The Borrower hereby grants to the Lender a security interest in and possessory lien on all its respective Collateral Payments, insurance proceeds, and other monies held by the Lender in the Collateral Account and in the proceeds of all of the foregoing, as security for the due and punctual payment of the principal of, and interest on, the Loan and the Note and any and all other amounts due from the Borrower to the Lender under this Agreement and any instrument, agreement, or document referred to herein which shall be in addition to and shall not affect any security interest or statutory or other rights of setoff available to the Lender with respect thereto.

1. Representations and Warranties by the Borrower and the Guarantor.

The Borrower and the Guarantor hereby jointly and severally represent and warrant that:

* 1. Corporate Existence, Power and Authority of the Borrowers. The Borrower is a corporation, duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation and is duly licensed or qualified in each jurisdiction where the character of the property owned by it, or the nature of the business transacted by it requires such licensing or qualification. No proceeding looking toward the dissolution, merger, or amendment of charter has been commenced with respect to the Borrower. The Borrower has all requisite power, authority, and legal right: to own the subject Vehicle; to conduct its business as it is now being conducted; and to enter into, consummate and perform all the provisions of this Agreement, and any instrument, agreement or document referred to herein or therein to which it is or shall be a party, and the transactions contemplated hereby and thereby. All transactions contemplated by this Agreement, and any applicable instrument, agreement, or document referred to herein to which the Borrower is or shall be a party, have been duly authorized by all corporate and other required actions, and this Agreement constitutes, and any instrument, agreement, or document referred to herein to which the Borrower is or shall be a party when duly executed and delivered will constitute binding obligations of the Borrower, enforceable in accordance with their terms, creating, in the case of subject Vehicle and Section 2.1 of this Agreement, a valid first perfected lien on and security interest in the property, assets and revenues covered thereby.
  2. Corporate Existence, Power, and Authority of the Guarantor. The Guarantor is a corporation, duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation or formation and is duly licensed or qualified in each jurisdiction where the character of the property owned by it, or the nature of the business transacted by it requires such licensing or qualification. The Guarantor has all requisite power, authority, and legal right to own its shares of the capital stock of the Borrower and to guarantee the obligations of the Borrower hereunder and in connection herewith pursuant to the Guarantee. The Guarantor has all requisite power, authority, and legal right to conduct its business as it is now being conducted and to enter into, consummate, and perform all of the provisions of this Agreement and any instrument, agreement, or document referred to herein to which it is or shall be a party, and the transactions contemplated hereby and thereby. All transactions contemplated by this Agreement and any applicable instrument, agreement, or document referred to herein or therein to which the Guarantor is or shall be a party, including but not limited to the Guarantee, have been duly authorized by all corporate and other required actions, and this Agreement constitutes, and any instrument, agreement, or document referred to herein to which the Guarantor is or shall be a party when duly executed and delivered will constitute binding obligations of the Guarantor, enforceable in accordance with their respective terms.
  3. Stock Ownership. The capital stock of the Borrower consists of [number] authorized shares, par value of $[amount] per share, all of which are issued and outstanding. All of the outstanding shares of the Borrower have been duly authorized and validly issued and are fully paid and non-assessable and such shares are owned of record and beneficially by the Guarantor. There are no outstanding warrants, options, agreements, convertible securities or other agreements pursuant to which the Borrower is or may become obligated to issue shares of capital stock or other securities.
  4. No Conflict. The execution, delivery and performance by the Borrower and the Guarantor of this Agreement, the Note, the Guarantee, or any other instrument, agreement or document referred to herein to which any thereof is or shall be a party, does not and will not result in any violation of, or be in conflict with, any term or provision of the Articles of Incorporation or By-Laws of the Borrower or the Guarantor, or of any statute, governmental regulation or order, judgment, decree, agreement, indenture or any instrument applicable to any thereof, or result in the creation of any lien pursuant to any such term or provision (other than as contemplated by this Agreement) upon any of the properties, assets or revenues of any thereof, and no such existing term or provision adversely affects, or in the future, to the present knowledge or belief of the Borrower or the Guarantor, will materially adversely affect the assets, properties, liabilities, business or financial condition of any thereof or the ability of any thereof to carry out any of the provisions of this Agreement and any instrument, agreement or document referred to herein to which any thereof is or shall be a party or the transactions contemplated hereby and thereby.
  5. Authorizations. All governmental approvals, licenses, authorizations, consents, filings and registrations (other than filings and registrations relating to the security), if any, required for the execution, delivery and performance, by the Borrower and the Guarantor, of this Agreement and any applicable instrument, agreement or document referred to herein to which any thereof is or shall be a party including, without being limited to, the Note, and the Guarantee, and the transactions contemplated hereby or thereby, have been obtained or made, and are in full force and effect, and are final and are not subject to review or appeal or, to the knowledge or belief of the Borrower or the Guarantor, the subject of any pending or threatened attack or appeal by direct proceedings or otherwise, and all fees payable in connection therewith, if any, have been paid, and there has been no default in the performance of the terms and conditions of any thereof.
  6. Litigation. There is no action, suit, proceeding, investigation, or claim pending or threatened in law, admiralty, equity or otherwise which either (a) questions the validity of this Agreement or any instrument, agreement, or document referred to herein or any action taken or to be taken pursuant hereto or thereto, or (b) if adversely determined might directly or indirectly result in a materially adverse change in the assets, properties, liabilities, business, or financial condition, on an individual or a consolidated basis, of the Borrower or the Guarantor. There are no adverse orders, writs, injunctions, decrees, or demands of any court or administrative body, or of any other governmental agency or instrumentality outstanding against either the Borrower or the Guarantor.
  7. Taxes. The Borrower and the Guarantor have each filed all tax returns which [to its knowledge] were required to be filed on or before the date of this Agreement and paid all taxes that were due on or before the date of this Agreement, including interest thereon and penalties with respect thereto except those which are being contested in good faith and in respect of which adequate reserves are being maintained in accordance with generally accepted accounting principles in the United States, and except for taxes which in the opinion of the Borrower or the Guarantor are not properly chargeable against it or are not customarily paid without express demand by the appropriate authority, but as to which no material penalties have been incurred or are likely to be incurred by reason of nonpayment, provided that the Borrower or the Guarantor, as the case may be, will each pay any such taxes and/or penalties for which any thereof are actually held liable by such taxing authority as soon as they accrue or attach. Neither the Borrower nor the Guarantor have any material contingent obligations or material liabilities for taxes other than those incurred in the ordinary course of business and in respect of which adequate reserves are being maintained by the Borrower or the Guarantor, as the case may be.
  8. Financial Condition. The consolidated and consolidating balance sheets of the Borrower and the Guarantor, respectively, as of December [day], [year], and the related consolidated and consolidating statements of income, retained earnings, capital surplus and changes in financial condition for the twelve-month period then ended, certified by [firm name], independent certified public accountants, copies of which have been delivered to the Lender, were prepared in accordance with generally accepted accounting principles in the United States consistently applied, and fairly present the financial condition of the Borrower and the Guarantor, respectively, as of such date and the results of their respective operations for the period then ended, and neither Borrower nor Guarantor had any material contingent obligations or material liabilities for taxes or otherwise as of the date of said balance sheet and statements of income, retained earnings, corporate surplus, and changes in financial condition which were not fully disclosed by or reserved against therein, and since December [day], [year], there has been no material adverse change in the condition, financial or otherwise, of the Borrower, the Guarantor, respectively.
  9. Use of Proceeds. Neither the Borrower nor the Guarantor is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock or margin securities (within the meaning of the Regulations of the Board of Governors of the Federal Reserve System) and the Loan is not for the purpose of and no part of the proceeds of the Loan will be used for the purpose of purchasing or carrying any such margin stock or margin securities or of extending credit to others for the purpose of purchasing or carrying the same, or of reducing or retiring indebtedness originally incurred for such purpose.

1. Covenants of the Borrower and the Guarantor.
   1. Payment of Note. The Borrower agrees to pay, or cause to be paid, the principal of, and interest on, the Loan and the Note as and when the same shall become due, whether at maturity, by acceleration or otherwise.
   2. Financial and Other Covenants. The Borrower agrees that for so long as the Notes or any other sums due from the Borrower to the Lender under this Agreement or any of the Security Documents, or interest thereon, remain unpaid, the Borrower:
      1. Shall remain a corporation, duly incorporated and in good standing under the laws of its respective jurisdiction of incorporation; shall not change its chief place of business or its office for the keeping of its records relating to this Agreement and any security referred to herein; and shall maintain a fiscal year ending December 31;
      2. Shall pay, or cause to be paid, the principal of, and the interest on, all indebtedness permitted under Section 4.2(c), heretofore or hereafter incurred or assumed by it, or in respect of which it shall otherwise be or become liable when and as the same shall become due and payable and will faithfully observe, perform and discharge all of the covenants, conditions, and obligations which are imposed on it by any and all indentures and other agreements or documents evidencing or securing such indebtedness or pursuant to which such indebtedness is issued, and will not permit to occur any act or omission which is or may be declared to be a default under any such indenture, agreement, or document;
      3. Shall not, without the prior written consent of the Lender:
         1. Declare or pay any dividend in cash or otherwise make any other distribution on or with respect to shares of its capital stock, or set apart or cause or permit to be set apart any sums or property for such purpose, or redeem, purchase or otherwise acquire directly or indirectly any shares of its capital stock;
         2. Make any loan or advance to any other person, firm, corporation, or enterprise or assume, guarantee, endorse, agree to purchase, or repurchase or provide funds in respect of, or otherwise become or be or remain, directly or contingently liable upon any indebtedness, obligation, or dividend of, any other person, firm, corporation, or enterprise, except for endorsement of negotiable instruments for deposit or collection in the ordinary course of business;
         3. Purchase or otherwise acquire or invest in any obligation, stock, or other security of (other than marketable direct obligations of the United States and the agencies thereof, or certificates of deposit, time deposits, or bankers' acceptances of prime banks denominated in dollars), or make any capital contribution to, any other person, firm, corporation, or enterprise;
         4. Create, assume, incur, or in any manner become or remain liable in respect of (A) any indebtedness for borrowed money, (B) any rental or lease payments under leases of property for periods in excess of twelve (12) months or (C) any obligation for the deferred purchase price of property or any commitment or obligation of a capital nature except for repairs and replacement parts for, or additions to, any real property owned by the Borrower and except (X) indebtedness to the Lender incurred pursuant to the terms of this Agreement or (Y) indebtedness to the Guarantor provided such indebtedness to the Guarantor is by its terms subordinated, upon the happening of an Event of Default (as defined in Section 5.1 below), to the prior payment in full of the Loan and the Note, and any other indebtedness of the Borrower to the Lender pursuant to the terms of this Agreement and no payment on account of such indebtedness to the Guarantor shall be made by the Borrower so long as an Event of Default or an event which with the passage of time or the giving of notice or both would constitute an Event of Default, shall have occurred and be continuing.
         5. Create, assume, incur, or permit to exist any security interest, lien, charge, or encumbrance on, or enter into any pledge or sale or conditional sale, or title retention agreement with respect to the Vehicle;
         6. Consolidate with or merge into any other person, firm or corporation or permit any other person, firm, or corporation to consolidate with or merge into it, or sell, lease, assign, transfer, or otherwise dispose of (other than by a transaction permitted under clause (2)), whether in one transaction or a series of transactions, any of its assets if the aggregate value thereof represents a material part of the aggregate value of all of its assets; or
         7. Issue or sell any of its authorized but unissued capital stock to any person, other than the Guarantor;
      4. Shall:
         1. Keep proper books of record and accounts in which full and correct entries shall be made of all dealings or transactions in relation to this Agreement, and any applicable instrument, agreement or document referred to herein to which it is, or it shall be a party, and its properties, business and affairs in accordance with generally accepted accounting principles consistently applied;
         2. Permit the Lender, or its authorized representatives, promptly upon request, to make such reasonable, material, and pertinent inspection, examination and audit of its properties, books, records, and accounts, and to take such information therefrom and to make such transcripts and copies thereof, as such Lender, or its authorized representatives, may reasonably deem necessary or appropriate in connection with the performance of its duties and functions under this Agreement, and any applicable instrument, agreement, or document referred to herein to which it is or it shall be a party;
         3. Permit the Lender, or its authorized representatives, promptly upon request, to discuss the Borrower's affairs with its officers and representatives;
      5. Shall deliver to the Lender, in as many copies as the Lender shall reasonably request, the following:
         1. Within one hundred twenty (120) days after the end of each fiscal year, its balance sheet as of the end of such fiscal year, and the related statements of income, retained earnings, capital surplus, and changes in financial position for such fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles consistently applied, fairly presenting its financial condition as of each such date and the results of operations for the period then ended, accompanied by a report of [firm name] or other independent certified public accountants acceptable to the Lender certifying that they have examined such balance sheet and statements and giving their opinion thereof; such report shall also be accompanied by a statement of such independent certified public accountants that in making the examination necessary in connection with such report, they have obtained no knowledge of any default in the fulfillment of the terms, covenants and conditions of this Agreement, or any applicable instrument, agreement or document referred to herein to which it is or shall be a party, or if such independent certified public accountants shall have obtained from such examination knowledge of any such default, they shall disclose in such statement the default or defaults and the nature thereof;
         2. Within ninety (90) days after each quarter of each fiscal year, its balance sheet as of the end of such quarter, and the related statements of income, retained earnings and capital surplus for the period then ending, all in reasonable detail prepared in accordance with generally accepted accounting principles in the United States consistently applied, fairly presenting its financial condition as of each such date and the results of operations for the period then ended, unaudited but certified as correct by the principal accounting officer of the Borrower [or of the Guarantor] to the best of their knowledge and belief;
         3. Such other information relating to its financial condition and operations, and to any other matters pertaining to this Agreement, or any applicable instrument, agreement, or document referred to herein to which it is or shall be a party, or to the real estate, as the Lender shall, in its sole judgment, from time-to-time reasonably request;
         4. Within sixty (60) days after each quarter of each fiscal year, a certificate, executed by a duly authorized officer of the Borrower, in form and substance satisfactory to the Lender, to the effect that the Borrower is in full compliance with this Article IV and that no Event of Default and no event which with the passage of time or giving of notice, or both, would constitute such an Event of Default shall have occurred and be continuing;
      6. Shall take any and all action as may be required to maintain as true and correct at all times the representations and warranties made in Section 3.5 and Section 3.7; and
      7. Shall promptly give notice in writing to the Lender of all litigation and of all proceedings before any governmental or regulatory agency which, if adversely determined, would materially affect its condition, financial or otherwise.
   3. Costs and Expenses. The Borrower and the Guarantor shall jointly and severally pay all costs, fees, and expenses incurred by the Lender in connection with (including, without being limited to, the exercise of its rights under) this Agreement, or any instrument, agreement, or document referred to herein and the transactions contemplated hereby and thereby, whether or not this Agreement or such instruments, agreements, documents, or transactions are consummated as contemplated and whether or not such costs and expenses are incurred as a result of the Borrower's default in payment of principal of, or interest on, the Loan and the Note. Such costs, fees, and expenses shall include, without being limited to, any sums arising out of or in connection with any and all fees and disbursements of special counsel for the Lender, costs of preparing and reproducing this Agreement or any instrument, agreement or document referred to herein, recording fees and taxes which may be incurred in connection with the execution, delivery, and recording of this Agreement and of any of the instruments, agreements or documents referred to herein. The Borrower and the Guarantor will each indemnify and hold the Lender harmless against any and all liability with respect to brokerage and finders' fees that may be payable in connection with this Agreement, or any transactions contemplated hereby and which arise out of any action on the part of either the Borrower or the Guarantor. Any and all amounts payable by the Borrower pursuant to this Section 4.3 shall be secured by each of the security arrangements described in Section 2.1 through 2.2 of this Agreement.
   4. Offices and Records.
      1. Neither the Borrower nor the Guarantor shall establish or maintain an executive office or a place of business within the United States of America, its territories or possessions (including the Commonwealth of Puerto Rico) other than at [location] in the City of [city] and the State of [state].
      2. The Borrower and the Guarantor shall maintain all records relating to, and executed copies of, this Agreement, or the subject matter of any thereof, at [location] in the City of [city] and the State of [state].
2. Events of Default; Remedies.
   1. Events of Default. In case any one or more of the following events (herein called individually an "Event of Default" and collectively "Events of Default") shall occur, that is to say, in case:
      1. Default shall be made in the payment of any expenses to be reimbursed by the Borrower to the Lender hereunder and such payment shall not have been made within five (5) days after receipt by the Borrower of notice from the Lender; or
      2. Default shall be made in the payment of interest on the Loan and the Note, when and as the same shall be due and payable, and such default shall continue for a period of five (5) days; or
      3. Default shall be made in the payment of principal of the Loan and the Note, when and as the same shall be due and payable, whether at maturity, upon acceleration, or otherwise;
      4. Any representation or warranty made by the Borrower or the Guarantor hereunder, or made in writing in connection herewith, shall have been incorrect in any material respect on the date on which made, in the case of a representation, or shall be breached materially, in the case of a warranty; or
      5. Any representation or warranty made by the Borrower or the Guarantor under the Guarantee or made in writing in connection therewith shall have been incorrect in any material respect on the date on which made, in the case of a representation, or shall be breached materially, in the case of a warranty; or
      6. Default shall be made by the Borrower or the Guarantor in the due, punctual and faithful performance or observance of any other term, provision, covenant, agreement or condition in this Agreement, the Guarantee or any other instrument, agreement, or document contemplated hereby or thereby, and such default shall continue for a period of fifteen (15) days; except that, if the matter that is the subject of the notice is of such a nature that it cannot reasonably by cured within [days] days, then no default shall be deemed to have occurred if the Borrower promptly upon the receipt of the notice of default commences to take steps to cure the default and diligently pursues the same to completion; or
      7. Default shall occur with respect to the payment when due of (i) any (A) indebtedness for borrowed money, (B) rental or lease payments under leases of property for periods in excess of twelve (12) months or (C) obligation for deferred purchase price of property or any commitment or obligation of a capital nature of the Borrower or the Guarantor, or any indebtedness with respect to which the Borrower or the Guarantor shall become directly or indirectly liable as a guarantor or as to which it has joint and several liability, or in the performance of any other agreement or obligation incurred in connection with any such indebtedness, if the effect of such default is to permit the holders thereof to accelerate the maturity of such indebtedness, which acceleration or action by such holder is not being contested by appropriate proceedings; or (ii) any other obligations to pay money within thirty (30) days after it shall have become due of the Borrower or the Guarantor, which such other obligations under this clause are not being contested in good faith by appropriate proceedings; or
      8. A final judgment against the Borrower or the Guarantor shall be rendered and, within thirty (30) days after entry thereof, such judgment shall not have been discharged or execution stayed or, within thirty (30) days after the expiration of any such stay, such judgment shall not have been discharged; or
      9. Either the Borrower or the Guarantor shall cease to be a corporation duly organized and in good standing under the laws of its respective jurisdiction of incorporation; or
      10. Either the Borrower or the Guarantor shall be dissolved or shall lose its corporate or legal status by forfeiture or by any judicial, extra-judicial, or administrative proceeding; or
      11. Any change in the management or management policies or practices of the Borrower or the Guarantor shall have occurred which change, in the judgment of the Lender, is or would be materially adverse; or
      12. The Borrower or the Guarantor, shall (i) apply for or consent to the appointment of or the taking possession by a receiver, trustee, liquidator, assignee, custodian, sequestrator or the like thereof of itself or of all or a substantial amount of its property, (ii) fail generally to pay its debts as they mature, (iii) become insolvent, (iv) make a general assignment for the benefit of creditors, (v) commence a voluntary case under the bankruptcy laws of any jurisdiction, as they are now or may hereafter be constituted, or (vi) file a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any insolvency law or an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding, or (vii) take corporate or other action for the purpose of effecting any of the foregoing; or
      13. An order for relief shall be entered with respect to the Borrower or the Guarantor in any voluntary case under the bankruptcy laws of any jurisdiction, as they are now or may hereafter be constituted, or an order, judgment, or decree shall be entered, without the application, approval, or consent of the Borrower or the Guarantor, respectively, by any court or governmental agency of competent jurisdiction, approving a petition seeking reorganization thereof, or appointing a receiver, trustee, liquidator, assignee, custodian, sequestrator, or the like thereof, of or over the Borrower or the Guarantor, or over all or a substantial part of its assets, and such order, judgment, or decree shall continue unstayed and in effect for any period of sixty (60) consecutive days; or
      14. The Lender shall for any reason not have a valid first perfected security interest in and lien as contemplated by this Agreement upon any property, assets and revenues of the Borrower covered by the Security Interest or the Collateral Account, subject to no equal or prior security interest, lien, encumbrance, or right; or
      15. Default shall be made in the performance of any agreement, covenant, warranty, condition, or other undertaking of the Borrower or the Guarantor in any waiver granted by the Lender under this Agreement or any document or instrument referred to herein; or
      16. Any material adverse change in the assets, property, liabilities, business or financial condition of the Borrower or the Guarantor or material adverse development which threatens the validity, enforceability, or performance of this Agreement or any instrument, agreement, or document referred to herein or any action taken or to be taken pursuant hereto or thereto, which, in the judgment of the Lender would materially impair the ability of the Borrower or the Guarantor to pay the indebtedness incurred or guaranteed by it hereunder; then, in any such case and at any time thereafter during the continuance thereof any of the remedies of Section 5.2 shall be exercisable as therein provided. The Borrower shall promptly notify the Lender in writing if an Event of Default or an event which with the passage of time or giving of notice, or both, would constitute such an Event of Default has occurred.
   2. Remedies. Upon the occurrence of an Event of Default and at any time thereafter during the continuance thereof:
      1. The Lender may declare by written notice to the Borrower the outstanding principal amount of the Loan and the Note and all amounts otherwise due or owing by the Borrower to the Lender under this Agreement or the Security Documents, to be immediately due and payable, whereupon the same, together with interest thereon and all additional amounts as may be necessary to compensate the Lender for any loss and any expense (including the expenses of any sale, the expenses of any taking, attorney’s fees, court costs, and any other expenses or advances made or incurred by the Lender in the protection of its rights or the pursuit of its remedies under this Agreement, the Note, and the Guarantee), accrued to the date of declaration, shall become and be immediately due and payable, without presentment, demand, protest, or notice of any kind, all of which are hereby waived by the Borrower, and the Borrower agrees that upon such declaration with respect to the Loan it will immediately pay its obligations hereunder to the Lender, and thereafter such total amount (including such accrued interest and additional amounts) and such further amounts as may be necessary to compensate the Lender for any such loss or expense incurred after the date of such declaration or by reason of any Event of Default occurring after the date of such declaration shall bear interest, to the extent permitted by law, at the rate provided for in Section 1.4 until paid.
      2. The Lender may apply all Collateral Payments held in the Collateral Account as provided in Section 2.2(d);
      3. The Lender may exercise any and all rights and remedies provided for in or pursuant to the Security Interest and the Guaranty;
      4. The Lender may exercise any right of counterclaim, setoff, banker's lien, or otherwise which it may have with respect to monies of the Borrower held by it; and
      5. The Lender may, to the extent permitted by applicable law, bring suit at law, in equity, in admiralty, and/or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement, or any instrument, agreement, or document referred to herein, for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby, or by law, to recover judgment for any and all amounts due on the Loan and the Note, or under this Agreement or the Security Documents.
   3. Remedies Cumulative. Each and every right, power, and remedy given to the Lender in this Agreement, or any instrument, agreement, or document referred to herein, shall be cumulative and shall be in addition to every other right, power, and remedy herein or therein specifically given or now or hereafter existing at law, in equity, in admiralty, or by statute, and each and every right, power, and remedy whether specifically herein or therein given or otherwise existing may be exercised from time to time and as often and in such order as may be determined by the Lender, and the exercise or the beginning of the exercise of any right, power, or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power, or remedy. No delay or omission by the Lender in the exercise of any right, power, or remedy shall impair any such right, power, or remedy or be construed to be a waiver of any default or to be an acquiescence therein; nor shall the acceptance by the Lender of any security or of any payment of or on account of any loans, advances, obligations, expenses, interest, or fees maturing after a default on or of any payment on account of any past default be construed to be a waiver of any right to take advantage of any future default or of any past default not completely cured thereby.
3. Jurisdiction.
   1. [State] Jurisdiction.THIS INSTRUMENT CANNOT BE CHANGED OR TERMINATED ORALLY AND WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS GUARANTEE (EACH, A “PROCEEDING”), EACH GUARANTOR IRREVOCABLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS HAVING JURISDICTION IN THE CITY OF [city], COUNTY OF [county] AND STATE OF [state], AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS GUARANTEE SHALL PRECLUDE LENDER FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION. EACH GUARANTOR FURTHER AGREES AND CONSENTS THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY PROCEEDING IN ANY [state] STATE OR UNITED STATES COURT SITTING IN THE CITY OF [city] AND COUNTY OF [county] MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO BORROWER AT THE ADDRESS INDICATED IN THIS GUARANTEE, AND SERVICE SO MADE SHALL BE COMPLETE UPON RECEIPT; EXCEPT THAT IF BORROWER SHALL REFUSE TO ACCEPT DELIVERY, SERVICE SHALL BE DEEMED COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.
   2. Agent for Service. The Borrower and the Guarantor, for itself and its respective successors and assigns, each hereby irrevocably designates and appoints [name], [address], and its successors and assigns, and at any time upon the written request of the Lender, the Borrower and the Guarantor will each irrevocably designate and appoint another person, firm or corporation and such other person's, firm's or corporation's successors and assigns, as its or their respective lawful agent and attorney-in-fact (herein called the "Agent") upon whom all process against either the Borrower or the Guarantor in any action, suit or proceeding in respect of any matter as to which it has submitted to jurisdiction under Section 6.1 may be served, with the same effect as if the Borrower or the Guarantor were a corporation organized under the laws of the State of and had lawfully been served with such process in such State. At or prior to [date], the Borrower and the Guarantor shall each cause the Agent irrevocably to accept such designation and appointment and to furnish to the Lender evidence satisfactory to the Lender of such acceptance.
4. Miscellaneous.
   1. Notices. All notices, statements, reports, and other communications hereunder shall be in writing (unless otherwise specifically provided) and shall be deemed given when mailed by first class registered or certified mail (postage prepaid) or transmitted by tested telex or cable (charges prepaid) confirmed by letter as aforesaid: (a) if to the Lender at [address], Attn. [name], or at such other address as may have been furnished to the Borrower and the Guarantor by the Lender in writing; (b) if to the Borrower or the Guarantor c/o [name], [address] or at such other address as may have been furnished to the Lender by the Borrower or the Guarantor in writing.
   2. Severability. If any word, phrase, sentence, paragraph, provision, or section of this Agreement, or any instrument, agreement, or document provided for herein or executed in connection herewith, shall be held, declared, pronounced, or rendered void, voidable, invalid, unenforceable, or inoperative for any reason by any court of competent jurisdiction, governmental authority, or otherwise, such holding, declaration, pronouncement, or rendering shall not adversely affect any other word, phrase, sentence, paragraph, provision, or section of this Agreement, or any such instrument, agreement, or document, which shall otherwise remain in full force and effect and be enforced in accordance with its terms, and the effect of such holding, declaration, pronouncement, or rendering shall be limited to the jurisdiction in which made.
   3. Survival. All agreements, representations, warranties, and conditions contained in this Agreement or made pursuant to the provisions hereof shall survive the execution and delivery of this Agreement and until (a) the Loan and the Note and interest thereon shall have been paid in full in accordance with the terms of the Loan, the Note and this Agreement, (b) any and all other monies, payments, obligations, and liabilities which the Borrower or the Guarantor shall have made, incurred or become liable for pursuant to the terms of this Agreement and any instrument, agreement or document referred to herein shall have been paid in full, and (c) all other agreements, representations, warranties, terms, and conditions in this Agreement, and any instrument, agreement, or document referred to herein, expressed or implied, shall have been performed, observed, and complied with. All statements contained in any certificate or other instrument delivered pursuant to the provisions hereof by the Borrower or the Guarantor shall constitute representations and warranties by such Borrower and the Guarantor, as the case may be, hereunder.
   4. Lawful Interest. No provision herein or in any instrument, agreement, or document referred to herein shall require or permit the collection of interest in excess of the maximum lawful rate which a Borrower may stipulate and agree to pay as determined by a court of competent jurisdiction over the holder of the Note. If it is so determined that any excess interest is provided for, then this Section 7.4 shall govern and such excess shall be applied first to any other amounts not constituting interest due or which may become due from such Borrower under this Agreement or any instrument, agreement, or document referred to herein, and the balance, if any, shall be held by, and the Borrower hereby pledges such balance to, the Lender as security for the full and faithful performance by the Borrower of its obligations under this Agreement and the Security Documents; provided, however, that in no event shall such Borrower be obligated to pay, and the Lender hereby waives payment of, the amount of interest to the extent it is in excess of the amount permitted by applicable law.
   5. General. All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that neither the Borrower nor the Guarantor may assign any of their rights or obligations hereunder. This Agreement embodies the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof. Neither this Agreement nor any provisions hereof may be changed, waived, discharged, or terminated orally but only by an instrument in writing. The captions and headings in this Agreement are for purposes of reference only and shall not restrict or affect any of the terms or provisions hereof. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. This Agreement and the rights and obligations of the parties hereunder and under the Note shall be governed by and construed in accordance with the laws of the State of [state].

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered as of the date first above written.

[BORROWER CORPORATION]

|  |  |  |
| --- | --- | --- |
| By |  |  |
| Its | [title] |  |

[GUARANTOR CORPORATION]

|  |  |  |
| --- | --- | --- |
| By |  |  |
| Its | [title] |  |

LENDER

|  |  |  |
| --- | --- | --- |
| By |  |  |
| Its | [title] |  |