

# LOAN AGREEMENT

This LOAN AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, between \_\_\_\_\_

with an address of \_\_\_\_\_

(the "Borrower") and TD Bank, N.A., a National Association, with an address of 444 Madison Avenue, 11th Floor, New York, New York 10017 (the "Bank").

FOR VALUE RECEIVED, and in consideration of the granting by the Bank of financial accommodations to or for the benefit of the Borrower, including without limitation respecting the Obligations (as hereinafter defined), the Borrower represents and agrees with the Bank, as of the date hereof and as of the date of each loan, credit and/or other financial accommodation, as follows:

## 1 THE LOAN

1. Revolving Loans. Bank agrees, in its sole discretion, to make revolving loans (the "Revolving Loans") to or for the account of Borrower, upon Borrower's request therefor, in an aggregate amount of up to \_\_\_\_\_ (\$ \_\_\_\_\_) (the "Revolving Loan Amount") and subject to the terms and conditions set forth herein. The Revolving Loans shall be evidenced by that certain Revolving Demand Note, of even date herewith (the "Revolving Note"), by Borrower in favor of the Bank in the face amount of the Revolving Loan Amount. This Agreement, the Revolving Note, and any and all other documents, amendments or renewals executed and delivered in connection with any of the foregoing are collectively hereinafter referred to as the "Loan Documents".
2. Limitation on Borrowings. The aggregate outstanding Revolving Loans, up to the Revolving Loan Amount, shall not at any time exceed the aggregate Advance Value (as such term is defined below) of certain Collateral (as such term is defined below) pledged by Borrower pursuant to that certain Pledge Agreement, dated the date hereof (the "Pledge Agreement") given by Borrower in favor of Bank. When used herein, the terms "Advance Value" and "Collateral" shall have the meaning ascribed to such term in the Pledge Agreement. If at any time the value requirements herein are not satisfied, then Borrower shall take such action as required under the Pledge Agreement in order to comply with the requirements herein. The Pledge Agreement is included in the definition of Loan Documents hereunder.
3. Revolving Loan Account. An account shall be opened on the books of Bank in which account a record will be kept of all Revolving Loans, and all payments thereon and other appropriate debits and credits as provided by this Agreement.
4. Interest. Interest respecting the Revolving Loans will be charged to Borrower on the principal amount from time to time outstanding at the interest rate specified in the Revolving Note in accordance with the terms of the Revolving Note. If not specified in the Revolving Note, interest will be charged at the highest rate per annum charged by Bank to Borrower on any other Obligation based on a 360-day year and the actual number of days elapsed.
5. Demand and Annual Review. All loans and advances made respecting the Revolving Loans shall be payable to Bank on DEMAND, notwithstanding the inclusion of any defaults herein and whether or not any defaults have occurred under this Agreement or any of the Loan Documents. Notwithstanding that all loans and advances made by Bank to Borrower under or pursuant to this Agreement respecting the Revolving Loans shall be due and payable ON DEMAND, the Bank's agreement to advance funds respecting the Revolving Loans shall be subject to review from time to time in Bank's sole discretion; and there shall be no further advances respecting the Revolving Loans unless the Bank, in its sole discretion, determines that it shall continue to make advances after any such review; provided, that notwithstanding such review as provided in this paragraph, all loans and advances made shall be due and payable ON DEMAND.
6. Overadvances. Any Revolving Loans that may be made, at the Bank's sole discretion, in excess of the Revolving Loan Amount shall not limit the obligations of Borrower or any of the Bank's rights or remedies hereunder or under the Loan Documents or otherwise; all such Revolving Loans shall be due and payable to the Bank in accordance with the terms of the Revolving Note, and shall bear interest at the rate set forth in the Revolving Note. All checks or other items paid by Bank which cause an overdraft in any deposit account maintained by Borrower with Bank shall, at the option of the Bank, constitute an advance to Borrower pursuant to this Agreement respecting the Revolving Loans, repayable on demand.
7. Collateral. In consideration of Bank's extension of credit to Borrower, and as security therefor, Borrower agrees that the Bank shall have a first lien and security interest in and to certain Collateral, as set forth in the Pledge Agreement, as security for the Obligations of Borrower hereunder.
8. Authorized Persons; Advances. In the event Borrower is anything but a natural person, any person duly authorized by a general borrowing resolution of the Borrower, or in the absence of such a resolution, the President, Treasurer or any Vice President of the Borrower, or any person otherwise authorized in this paragraph, may request discretionary loans hereunder, either orally or otherwise, but the Bank at its option may require that all requests for loans hereunder shall be in writing. The Bank shall incur no liability to Borrower in acting upon any request referred to herein which the Bank believes in good faith to have been made by an authorized person or persons. Each loan hereunder may be credited by Bank to any deposit account of Borrower with Bank or with any other Bank with which Borrower maintains a deposit account, or may be paid to Borrower (or as Borrower instructs) or may be applied to any Obligations, as Bank may in each instance elect.
9. Monthly Statement. At the option of the Bank, after the end of each month, Bank will render to Borrower a statement of the Revolving Loan account, showing all applicable credits and debits. Each statement shall be considered correct and to have been accepted by Borrower and shall be conclusively binding upon Borrower in respect of all charges, debits and credits of whatsoever nature contained therein respecting the Revolving Loans, and the closing balance shown therein, unless Borrower notifies Bank in writing of any discrepancy within twenty (20) days from the mailing by Bank to Borrower of any such monthly statement.



## 1 THE LOAN - Continued

### 10. Definitions. The following definitions shall apply:

- a. "Code" shall mean the New York Uniform Commercial Code.
- b. "Bank Affiliate" shall mean any "Affiliate" of the Bank including, without limitation, TD Ameritrade Clearing, Inc., TD Ameritrade, Inc. and its Affiliates. The term "Affiliate" shall mean with respect to any Person, (a) any Person which, directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such Person, or (b) any Person who is a director or officer (i) of such Person, (ii) of any subsidiary of such Person, or (iii) any person described in clause (a) above. For purposes of this definition, control of a Person shall mean the power, direct or indirect, (x) to vote 5% or more of the Capital Stock having ordinary voting power for the election of directors (or comparable equivalent) of such Person, or (y) to direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Control may be by ownership, contract, or otherwise.
- c. "Entity" shall mean any corporation, partnership, trust, limited liability company and limited partnership.
- d. "Obligation(s)" shall mean, without limitation, all loans, advances, indebtedness, notes, liabilities, rate swap transactions, basis swaps, forward rate transactions, commodity swaps, commodity options, equity or equity index swaps, equity or equity index options, bond options, interest rate options, foreign exchange transactions, cap transactions, floor transactions, collar transactions, forward transactions, currency swap transactions, cross-currency rate swap transactions, currency options (provided, however, that if and only if the Borrower is not an "eligible contract participant" (as defined in the Commodity Exchange Act (7 U.S.C. § 1 et seq.) and any applicable rules, as amended), then to the extent applicable law prohibits such Borrower from entering into an agreement to secure any obligations in respect of a "swap" (as defined in the Commodity Exchange Act and any applicable rules, as amended, and referred to herein as a "Swap"), Obligations shall not include obligations of the Borrower to Bank under any Swap) and amounts, liquidated or unliquidated, owing by the Borrower to the Bank or any Bank Affiliate at any time, of each and every kind, nature and description, whether arising under this Agreement or otherwise, and whether secured or unsecured, direct or indirect (that is, whether the same are due directly by the Borrower to the Bank or any Bank Affiliate; or are due indirectly by the Borrower to the Bank or any Bank Affiliate as endorser, guarantor or other surety, or as borrower of obligations due third persons which have been endorsed or assigned to the Bank or any Bank Affiliate, or otherwise), absolute or contingent, due or to become due, now existing or hereafter arising or contracted, including, without limitation, payment when due of all amounts outstanding respecting any of the Loan Documents. Said term shall also include all interest and other charges chargeable to the Borrower or due from the Borrower to the Bank or any Bank Affiliate from time to time and all costs and expenses referred to in this Agreement, as well as any other debts, liabilities or obligations owing to Bank or any Bank Affiliate in connection with any lockbox, cash management, or other services (including electronic funds transfers or automated clearing house transactions).
- e. "Person" or "party" shall mean individuals, partnerships, corporations, limited liability companies and all other entities.
- f. "Control Agreement" shall mean any agreement between Borrower, Bank, and any third-party Securities intermediary, including but not limited to TD Ameritrade Clearing, Inc., relating to the custody and control of assets pledged as collateral to secure the Revolving Loan

All words and terms used in this Agreement other than those specifically defined herein shall have the meanings accorded to them in the Code.

## 2 REPRESENTATIONS AND WARRANTIES

### 1. Entity Representations and Warranties: If the Borrower is anything other than a natural person:

- a. Organization and Qualification. Borrower is a duly organized and validly existing Entity under the laws of the State of its organization with the exact legal name set forth in the first paragraph of this Agreement. Borrower is in good standing under the laws of said State, has the power to own its property and conduct its business as now conducted and as currently proposed to be conducted, and is duly qualified to do business under the laws of each state where the nature of the business done or property owned requires such qualification.
- b. Subsidiaries. Borrower has no subsidiaries other than as previously specifically consented to in writing by the Bank, if any, and the Borrower has never consolidated, merged or acquired substantially all of the assets of any other entity or person other than as previously specifically consented to in writing by the Bank, if any.
- c. Corporate Records. Borrower's corporate charter, articles or certificate of organization or incorporation and all amendments thereto have been duly filed and are in proper order. All outstanding capital stock issued by the Borrower was and is properly issued and all books and records of the Borrower, including but not limited to its minute books, bylaws and books of account, are accurate and up to date and will be so maintained.
2. Title to Properties; Absence of Liens. Borrower has good and clear record and marketable title to all of its properties and assets, and all of its properties and assets are free and clear of all mortgages, liens, pledges, charges, encumbrances and setoffs, except those mortgages, deeds of trust, leases of personal property and security interests previously specifically consented to in writing by the Bank.
3. Places of Business. If Borrower is anything other than a natural person, Borrower's chief executive office is correctly stated in the preamble to this Agreement, or if Borrower is a natural person, Borrower's principal residence and domicile is correctly stated in the preamble to this Agreement, and Borrower shall, during the term of this Agreement, keep the Bank currently and accurately informed in writing of each of its other places of business or principal residence, as the case may be, and, in the case of Borrower other than a natural person, shall not change the location of such chief executive office or open or close, move or change any existing or new place of business without giving the Bank at least thirty (30) days prior written notice thereof.
4. Valid Obligations. The execution, delivery and performance of the Loan Documents have been duly authorized by all necessary corporate action and each represents a legal, valid and binding obligation of Borrower and is fully enforceable according to its terms, except as limited by laws relating to the enforcement of creditors' rights.
5. Conflicts. There is no provision in Borrower's organizational or charter documents, if any, or in any indenture, contract or agreement to which Borrower is a party which prohibits, limits or restricts the execution, delivery or performance of the Loan Documents.
6. Governmental Approvals. The execution, delivery and performance of the Loan Documents does not require any approval of or filing with any governmental agency or authority.
7. Litigation, etc. There are no actions, claims or proceedings pending or to the knowledge of Borrower threatened against Borrower which might materially adversely affect the ability of Borrower to conduct its business or to pay or perform the Obligations.
8. Financial Statements. The Borrower has furnished to the Bank one or more financial statements each of which fairly presents the condition of the Borrower at the date thereof and the results of the operations of the Borrower for the period indicated, all in conformity with generally accepted accounting principles, consistently applied.
9. Changes. Since the date of the financial statements, there have been no changes in the assets, liabilities, financial condition or business of the Borrower, other than changes in the ordinary course of business, the effect of which have, in the aggregate, been materially adverse.
10. Taxes. The Borrower has filed all Federal, state and other tax returns required to be filed (except for such returns for which current and valid extensions have been filed), and all taxes, assessments and other governmental charges due from the Borrower have been fully paid. The Borrower has established on its books reserves adequate for the payment of all Federal, state and other tax liabilities (if any).

## 2 REPRESENTATIONS AND WARRANTIES - Continued

11. Use of Proceeds. No portion of any loan is to be used for the purpose of purchasing or carrying any "margin security" or "margin stock" as such terms are used in Regulation U of the Board of Governors of the Federal Reserve System, 12 C.F.R. 221. The Borrower will not use loan proceeds for the purpose of financing farming or ranching activities or purchasing agricultural property unless otherwise agreed to by the Bank in a writing which makes explicit reference to this Agreement.
12. Anti-Terrorism Laws.
  - a. Neither Borrower nor any Affiliate of Borrower is in violation of any statute, treaty, law (including common law), ordinance, regulation, rule, order, opinion, release, injunction, writ, decree or award of any Governmental Authority relating to terrorism or money laundering, including Executive Order No. 13224 and the USA Patriot Act (collectively, "Anti-Terrorism Law") or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.
  - b. Neither Borrower nor any Affiliate of Borrower, or to Borrower's knowledge, any of its respective agents acting or benefiting in any capacity in connection with the Loans, Letters of Credit or other transactions hereunder, is any of the following (each a "Blocked Person"):
    - I. a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224;
    - II. a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224;
    - III. a Person with which Bank is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;
    - IV. a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order No. 13224;
    - V. a Person that is named as a "specially designated national" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list; or
    - VI. a Person who is affiliated with a Person listed above.
13. Customer Identification Program. The Bank is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56) (signed into law October 26, 2001)) (the "Act") and hereby notifies the Borrower or any Affiliate of Borrower that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Borrower or any Affiliate of Borrower, which information includes the name and address of the Borrower or any Affiliate of Borrower and other information that will allow Bank to identify the Customer in accordance with the Act.

## 3 AFFIRMATIVE COVENANTS

1. Payments and Performance. Borrower will duly and punctually pay all Obligations becoming due to the Bank and will duly and punctually perform all Obligations on its part to be done or performed under this Agreement.
2. Books and Records; Inspection. If the Borrower is anything other than a natural person, Borrower will at all times keep proper books of account in which full, true and correct entries will be made of its transactions in accordance with generally accepted accounting principles, consistently applied and which are, in the opinion of a certified public accountant acceptable to Bank, adequate to determine fairly the financial condition and the results of operations of Borrower. Borrower will at all reasonable times make its books and records available in its offices for inspection, examination and duplication by the Bank and the Bank's representatives and will permit inspection of all of its properties by the Bank and the Bank's representatives. Borrower will from time to time furnish the Bank with such information and statements as the Bank may request in its sole discretion with respect to the Obligations.
3. Financial Statements. Borrower will furnish to Bank:
  - a. from time to time, such financial data and information about Borrower as Bank may reasonably request; and
  - b. any financial data and information about any guarantors of the Obligations as Bank may reasonably request.
4. Conduct of Business. If the Borrower is anything other than a natural person, the Borrower will maintain its existence in good standing and comply with all laws and regulations of the United States and of any state or states thereof and of any political subdivision thereof, and of any governmental authority which may be applicable to it or to its business; provided that this covenant shall not apply to any tax, assessment or charge which is being contested in good faith and with respect to which reserves have been established and are being maintained.
5. Contact with Accountant. The Borrower hereby authorizes the Bank to directly contact and communicate with any accountant employed by Borrower in connection with the review and/or maintenance of Borrower's books and records or preparation of any financial reports delivered by or at the request of Borrower to Bank.
6. Taxes. Borrower will promptly pay all real and personal property taxes, assessments and charges and all franchise, income, unemployment, retirement benefits, withholding, sales and other taxes assessed against it or payable by it before delinquent; provided that this covenant shall not apply to any tax assessment or charge which is being contested in good faith and with respect to which reserves have been established and are being maintained.
7. Maintenance. Borrower will keep and maintain its properties, if any, in good repair, working order and condition. Borrower will immediately notify the Bank of any loss or damage to or any occurrence which would adversely affect the value of any such property.
8. Insurance. Borrower will maintain in force property and casualty insurance on any property of the Borrower, if any, against risks customarily insured against by companies engaged in businesses similar to that of the Borrower containing such terms and written by such companies as may be satisfactory to the Bank, such insurance to be payable to the Bank as its interest may appear in the event of loss and to name the Bank as insured pursuant to a standard loss payee clause; no loss shall be adjusted thereunder without the Bank's approval; and all such policies shall provide that they may not be canceled without first giving at least Thirty (30) days written notice of cancellation to the Bank. In the event that the Borrower fails to provide evidence of such insurance, the Bank may, at its option, secure such insurance and charge the cost thereof to the Borrower. At the option of the Bank, all insurance proceeds received from any loss or damage to any property shall be applied either to the replacement or repair thereof or as a payment on account of the Obligations. From and after the occurrence of Bank making Demand under the Note, the Bank is authorized to cancel any insurance maintained hereunder and apply any returned or unearned premiums, all of which are hereby assigned to the Bank, as a payment on account of the Obligations.
9. Intentionally Omitted.
10. Notification of Material Litigation. Borrower will immediately notify the Bank in writing of any litigation or of any investigative proceedings of a governmental agency which would or might be materially adverse to the financial condition of Borrower or any guarantor of the Obligations.
11. Pension Plans. With respect to any pension or benefit plan maintained by Borrower, or to which Borrower contributes ("Plan"), the benefits under which are guaranteed, in whole or in part, by the Pension Benefit Guaranty Corporation created by the Employee Retirement Income Security Act of 1974, P.L. 93-406, as amended ("ERISA") or any governmental authority succeeding to any or all of the functions of the Pension Benefit Guaranty Corporation ("Pension Benefit Guaranty Corporation"), Borrower will (a) fund each Plan as required by the provisions of Section 412 of the Internal Revenue Code of 1986, as amended; (b) cause each Plan to pay all benefits when due; (c) furnish Bank (i) promptly with a copy of any notice of each Plan's termination sent to the Pension Benefit Guaranty Corporation (ii) no later than the date of submission to the Department of Labor or to the Internal Revenue Service, as the case may be, a copy of any request for waiver from the funding standards or extension of the amortization periods required by Section 412 of the Internal Revenue Code of 1986, as amended and (iii) notice of any Reportable Event as such term is defined in ERISA; and (d) subscribe to any contingent liability insurance provided by the Pension Benefit Guaranty Corporation to protect against employer liability upon termination of a guaranteed pension plan, if available to Borrower.
12. Margin Securities. The use of the loan proceeds to purchase of Margin Securities (Reg.U) is not allowed.



#### 4 NEGATIVE COVENANTS

1. Sale of Interest. If the Borrower is anything other than a natural person, there shall not be any sale or transfer of ownership of any interest in the Borrower without the Bank's prior written consent unless such transfer shall not result in change in control of Borrower.
2. Loans or Advances. Borrower shall not make any loans or advances to any individual, partnership, corporation, limited liability company, trust, or other organization or person, including without limitation its officers and employees; provided, however, that Borrower may make advances to its employees, including its officers, with respect to expenses incurred or to be incurred by such employees in the ordinary course of business which expenses are reimbursable by Borrower; and provided further, however, that Borrower may extend credit in the ordinary course of business in accordance with customary trade practices.
3. Dividends and Distributions. If the Borrower is anything other than a natural person, Borrower shall not, without prior written consent of the Bank, pay any dividends on or make any distribution on account of any class of Borrower's capital stock in cash or in property (other than additional shares of such stock), or redeem, purchase or otherwise acquire, directly or indirectly, any of such stock, except, so long as Borrower is not in default hereunder, if Borrower is a Subchapter S corporation, under the regulations of the Internal Revenue Service of the United States, distributions to the Stockholders of Borrower in such amounts as are necessary to pay the tax liability of such Stockholders due as a result of such Stockholders' interest in the Borrower.
4. Merger. If Borrower is anything but a natural person, Borrower will not merge or consolidate or be merged or consolidated with or into any other entity.
5. Capital Expenditures. If Borrower is anything but a natural person, the Borrower shall not, directly or indirectly, make or commit to make capital expenditures by lease, purchase, or otherwise, except in the ordinary and usual course of business for the purpose of replacing machinery, equipment or other personal property which, as a consequence of wear, duplication or obsolescence, is no longer used or necessary in the Borrower's business.
6. Sale of Assets. If the Borrower is anything other than a natural person, Borrower shall not sell, lease or otherwise dispose of any of its assets, except in the ordinary and usual course of business and except for the purpose of replacing machinery, equipment or other personal property which, as a consequence of wear, duplication or obsolescence, is no longer used or necessary in the Borrower's business, provided that fair consideration is received therefor; provided, however, in no event shall the Borrower sell, lease or otherwise dispose of any equipment purchased with the proceeds of any loans made by the Bank.
7. Restriction on Liens. Borrower shall not grant any security interest in, or mortgage of, any of its properties or assets. Borrower shall not enter into any agreement with any person other than the Bank that prohibits the Borrower from granting any security interest in, or mortgage of, any of its properties or assets.
8. Other Business. If the Borrower is anything other than a natural person, Borrower shall not engage in any business other than the business in which it is currently engaged or a business reasonably allied thereto.
9. Change of Name, etc. If the Borrower is anything other than a natural person, Borrower shall not change its legal name or the State or the type of its organization, without giving the Bank at least 30 days prior written notice thereof.

#### 5 DEMAND

1. Acceleration. In accordance with Section 1.5 herein, all Obligations shall become immediately due and payable on DEMAND. In the event of the institution by or against the Borrower or any guarantor of the Obligations of any proceedings under the Bankruptcy Code 11 USC §101 et seq. or any other law in which the Borrower or any guarantor of the Obligations is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Borrower or any guarantor of the Obligations of an assignment for the benefit of creditors or the granting by the Borrower or any guarantor of the Obligations of a trust mortgage for the benefit of creditors then all Obligations shall automatically become immediately due and payable without notice or demand. If the Obligations are not immediately paid upon DEMAND, then the Bank shall have all rights and remedies available to it under the Loan Documents or at law.
2. Nonexclusive Remedies. All of the Bank's rights and remedies not only under the provisions of this Agreement but also under any other agreement or transaction shall be cumulative and not alternative or exclusive, and may be exercised by the Bank at such time or times and in such order of preference as the Bank in its sole discretion may determine.

#### 6 MISCELLANEOUS

1. Waivers. The Borrower waives notice of intent to accelerate, notice of acceleration, notice of nonpayment, notice of strict compliance, demand, presentment, protest or notice of protest of the Obligations, and all other notices, consents to any renewals or extensions of time of payment thereof, and generally waives any and all suretyship defenses and defenses in the nature thereof.
2. Waiver of Homestead. To the maximum extent permitted under applicable law, the Borrower hereby waives and terminates any homestead rights and/or exemptions respecting any of its property under the provisions of any applicable homestead laws, including without limitation, Section 5206 of the Civil Practice Law and Rules of New York.
3. Severability. If any provision of this Agreement or portion of such provision or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Agreement (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.
4. Deposit Collateral. The Borrower hereby grants to the Bank a continuing lien and security interest in any and all deposits or other sums at any time credited by or due from the Bank or any Bank Affiliate to the Borrower and any cash, securities, instruments or other property of the Borrower in the possession of the Bank or any Bank Affiliate, whether for safekeeping or otherwise, or in transit to or from the Bank or any Bank Affiliate (regardless of the reason the Bank or Bank Affiliate had received the same or whether the Bank or Bank Affiliate has conditionally released the same) as security for the full and punctual payment and performance of all of the liabilities and obligations of the Borrower to the Bank or any Bank Affiliate and such deposits and other sums may be applied or set off against such liabilities and obligations of the Borrower to the Bank or any Bank Affiliate at any time, whether or not such are then due, whether or not demand has been made and whether or not other collateral is then available to the Bank or any Bank Affiliate.
5. Indemnification. The Borrower shall indemnify, defend and hold the Bank and its directors, officers, employees, agents and attorneys (each an "Indemnitee") harmless of and from any claim brought or threatened against any Indemnitee by the Borrower, any guarantor or endorser of the Obligations, or any other person (as well as from reasonable attorneys' fees and expenses in connection therewith) on account of the Bank's relationship with the Borrower, or any guarantor or endorser of the Obligations (each of which may be defended, compromised, settled or pursued by the Bank with counsel of the Bank's election, but at the expense of the Borrower), including but limited to any claim arising out of the ordinary negligence of the Bank, and excluding any claim arising out of the gross negligence or willful misconduct of the Bank. The within indemnification shall survive payment of the Obligations, and/or any termination, release or discharge executed by the Bank in favor of the Borrower.
6. Costs and Expenses. The Borrower shall pay to the Bank on demand any and all costs and expenses (including, without limitation, receiver's fees, reasonable attorneys' fees and disbursements, court costs, litigation and other expenses) incurred or paid by the Bank in establishing, maintaining, protecting or enforcing any of the Bank's rights or the Obligations, including, without limitation, any and all such costs and expenses incurred or paid by the Bank in defending the Bank's security interest in, title or right to any collateral or in collecting or attempting to collect or enforcing or attempting to enforce payment of any Obligation.
7. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute but one agreement.





**6 MISCELLANEOUS - Continued**

8. **Complete Agreement.** This Agreement and the other Loan Documents constitute the entire agreement and understanding between and among the parties hereto relating to the subject matter hereof, and supersedes all prior proposals, negotiations, agreements and understandings among the parties hereto with respect to such subject matter.
9. **Binding Effect of Agreement.** This Agreement shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and shall remain in full force and effect (and the Bank shall be entitled to rely thereon) until released in writing by the Bank. The Bank may transfer and assign this Agreement and deliver it to the assignee, who shall thereupon have all of the rights of the Bank; and the Bank shall then be relieved and discharged of any responsibility or liability with respect to this Agreement. The Borrower may not assign or transfer any of its rights or obligations under this Agreement. Except as expressly provided herein or in the other Loan Documents, nothing, expressed or implied, is intended to confer upon any party, other than the parties hereto, any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.
10. **Further Assurances.** Borrower will from time to time execute and deliver to Bank such documents, and take or cause to be taken, all such other or further action, as Bank may request in order to effect and confirm or vest more securely in Bank all rights contemplated by this Agreement and the other Loan Documents (including, without limitation, to correct clerical errors) or to comply with applicable statute or law. The Borrower agrees to execute, re-execute, cause any Guarantor(s) or other third party(ies) involved in the loan transaction to execute and/or re-execute and to deliver to Bank or its legal counsel, as may be deemed appropriate, any document or instrument signed in connection with the Loan(s) which was incorrectly drafted and/or signed, as well as any document or instrument which should have been signed at or prior to the closing of the Loan(s), but which was not so signed and delivered. Borrower agrees to comply with any written request by Bank within ten (10) days after receipt by Borrower of such request. The Borrower authorizes the Bank to make any credit inquiries Bank deems necessary and authorizes any person or credit reporting agency to give Bank a copy of the Borrower's credit report and any other financial information it may have.
11. **Amendments and Waivers.** This Agreement may be amended and Borrower may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if Borrower shall obtain the Bank's prior written consent to each such amendment, action or omission to act. No waiver alteration or modification of any terms, provisions, or rights hereunder shall be valid except with the prior written consent of the Bank, which consent makes explicit reference to this Agreement. No course of dealing and no delay or omission on the part of Bank in exercising any right hereunder shall operate as a waiver of such right or any other right and waiver on any one or more occasions shall not be construed as a bar to or waiver of any right or remedy of Bank on any future occasion. In particular, the Bank's previous acceptance of late payments, or waiver of any charges, penalties or fees to which it might otherwise be entitled, shall not prevent the Bank from making demand on the Note, including directing the holder of the collateral subject to the Pledge Agreement to satisfy any unpaid balances under the Loan Documents, including those which the Bank may have deemed immediately due and payable.
12. **Terms of Agreement.** This Agreement shall continue in full force and effect so long as any Obligations or obligation of Borrower to Bank shall be outstanding, or the Bank shall have any obligation to extend any financial accommodation hereunder, and is supplementary to each and every other agreement between Borrower and Bank and shall not be so construed as to limit or otherwise derogate from any of the rights or remedies of Bank or any of the liabilities, obligations or undertakings of Borrower under any such agreement, nor shall any contemporaneous or subsequent agreement between Borrower and the Bank be construed to limit or otherwise derogate from any of the rights or remedies of Bank or any of the liabilities, obligations or undertakings of Borrower hereunder, unless such other agreement specifically refers to this Agreement and expressly so provides. This Agreement shall terminate if the Borrower elects to terminate the Control Agreement.
13. **Notices.** Any notice under or pursuant to this Agreement shall be a signed writing or other authenticated record (within the meaning of Article 9-A of the Code). Any notices under or pursuant to this Agreement shall be deemed duly received and effective if delivered in hand to any officer or agent of the Borrower or Bank, or overnight courier to the Borrower or Bank at the address set forth in this Agreement or as any party may from time to time designate by written notice to the other party. Notwithstanding the foregoing, notices to the Bank with respect to accounting and collateral release and notices to the Trustee pursuant to a Deed of Trust shall be sent to the Bank as follows: Attention: VP Loan Servicing, Loan Services, 6000 Atrium Way, Mt. Laurel NJ 08054.
14. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York. To the extent that Bank has greater rights or remedies under federal law, whether as a national bank or otherwise, this paragraph shall not be deemed to deprive Bank of such rights and remedies as may be available under federal law.
15. **Reproductions.** This Agreement and all documents which have been or may be hereinafter furnished by Borrower to the Bank may be reproduced by the Bank by any photographic, photostatic, microfilm, xerographic or similar process, and any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business).
16. **Cancellation Fees.** All fees required to cancel, satisfy or terminate the collateral documents securing this Loan and any security interests of record shall be paid by Borrower at the time of payoff of the Loan

**JURISDICTION AND VENUE.** BORROWER IRREVOCABLY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF ANY FEDERAL OR STATE COURT SITTING IN NEW YORK, OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. BORROWER IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO UNDER APPLICABLE LAW, ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT AND ANY CLAIM THAT THE SAME HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. BORROWER HEREBY CONSENTS TO ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING, (I) BY MAILING A COPY THEREOF BY REGISTERED AND CERTIFIED MAIL, POSTAGE PREPAID, RETURN RECEIPT REQUESTED, TO THE BORROWER'S ADDRESS SHOWN IN THIS AGREEMENT OR AS NOTIFIED TO THE BANK AND (II) BY SERVING THE SAME UPON THE BORROWER IN ANY OTHER MANNER OTHERWISE PERMITTED BY LAW, AND AGREES THAT SUCH SERVICE SHALL IN EVERY RESPECT BE DEEMED EFFECTIVE SERVICE UPON BORROWER.

**JURY WAIVER.** THE BORROWER AND BANK EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, (A) WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS AGREEMENT, THE OBLIGATIONS, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HERewith AND (B) AGREE NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE, OR HAS NOT BEEN, WAIVED. THE BORROWER CERTIFIES THAT NEITHER THE BANK NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE BANK WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of \_\_\_\_\_, 20\_\_\_\_\_.

*If Borrower is an individual, please sign here:*

_____ Borrower	_____ Date	_____ Borrower	_____ Date	_____ Borrower	_____ Date
_____ Borrower	_____ Date	_____ Borrower	_____ Date	_____ Borrower	_____ Date

*If Borrower is a Trust, please sign here:*

_____ Name of Trust	_____ Trustee	_____ Date
_____ Trustee	_____ Date	_____ Trustee
_____ Name of Trust	_____ Trustee	_____ Date
_____ Trustee	_____ Date	_____ Trustee

RECEIVED AND ACCEPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

STATE OF \_\_\_\_\_ :  
SS.

COUNTY OF \_\_\_\_\_ :

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20 \_\_\_\_\_, 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 whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
TYPE OR PRINT NAME

*Accepted: TD Bank, N.A.*

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

Name: \_\_\_\_\_

Its: Duly Authorized Representative