

Lender: **ABC Bank**  
Borrower: **Great Custom, Inc.**  
Property: **123 Best Street, Fort Worth, Texas 76116**  
Order Number: **201210250186**

**PeirsonPatterson, LLP**  
**Loan Transmittal Memorandum**

**[www.ppdocs.com](http://www.ppdocs.com)**

**NOTE TO TITLE COMPANY:** PeirsonPatterson's fee will not change if our warranty deed is not used or is not provided. PeirsonPatterson still needs to review the deed unless this *review* is waived by the lender.

This loan package was prepared by: **Ambra Costner**

Comments:

**Thanks, have a great day!**

**Attorney Invoice****PeirsonPatterson, LLP**

2310 Interstate 20 W, Suite 100

Arlington, TX 76017

Phone: (817) 461-5500 Fax: (817) 856-6060

Invoice To: Joe Rep  
 Your Title Company  
 123 Oak Street  
 Dallas, TX 75205  
 Phone: (214) 555-5555 Fax:  
 GF Number:

Date	Order #	Description	Amount
10/25/2012	201210250186	For professional services in connection with the preparation of real estate documents.	\$150.00

**Lender:**

ABC Bank  
 2310 W Interstate 20, 100  
 Arlington, TX 76017  
 Phone: (817) 461-5500 Fax:  
 Closer: Ambra Costner  
 Loan # 132456

**Property:**

123 Best Street  
 Fort Worth, TX 76116

**Borrower(s):**

Great Custom, Inc.

**Seller(s):**

Billy Seller

TO INSURE PROPER CREDIT, PLEASE RETURN COPY OF INVOICE WITH REMITTANCE AND PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR CHECK.

**MAKE CHECK PAYABLE TO: \* PeirsonPatterson, LLP. - ARLINGTON \*  
 DO NOT MAIL TO DALLAS - MAIL CHECK TO ARLINGTON**

**Note to Settlement Agent:**

If a Warranty Deed is prepared by this office, it must be used in the instant transaction or Seller(s) may submit an alternative Deed to this office for review and approval prior to closing. This is a most important requirement. The dating and proper creation of the Vendor's Lien in said Deed is of the utmost importance to the Lender.

THE ABOVE REFERENCED FEE INCLUDES OUR PREPARATION OF ANY ENCLOSED DEED, IF USED

**OR FOR THE REVIEW OF ANY ALTERNATIVE DEED IF THE ALTERNATIVE DEED IS REVIEWED AND APPROVED BY THIS OFFICE.**

The fee(s) on this invoice must be separately itemized on the closing statement and shown as a fee to the Lender's attorney. Please contact this office immediately should the transaction be cancelled so that our billing department can close this account. Please make your payment within three days following the closing.

Please do not staple checks to this invoice.  
 THANK YOU FOR YOUR BUSINESS.

To Settlement Agent:  
**Your Title Company**  
123 Oak Street  
Dallas, TX 75205  
Attn: **Joe Rep**  
Phone No.: (214) 555-5555  
Fax No.:  
Email:

From Lender:  
**ABC Bank**  
2310 W Interstate 20, 100  
Arlington, TX 76017  
Attn: **Ambra Costner**  
Phone No.: (817) 461-5500  
Fax No.:  
Email: **ambra@ppdocs.com**

## Loan Closing Instructions

### SECTION I. LOAN INFORMATION

Borrower(s): **Great Custom, Inc.**  
Seller(s): **Billy Seller**  
Property Address: **123 Best Street, Fort Worth, TX 76116**  
Loan Amount: **\$309,178.00**  
Loan Type: **First Lien-Other-Construction**

Loan # **132456**  
GF No:  
Order Number: **201210250186**  
Invoice Number: **2-10-03677**  
Closing Date: **November 1, 2012**  
Document Exp. Date:  
First Payment Date: **December 1, 2012**  
Final Payment Date: **November 1, 2013**  
Index: **3.250%**  
Margin: **1.500%**  
Fully Indexed Rate: **4.750%**  
Min Life Rate: **6.000%**

### SECTION II. LOAN FEES AND ESCROWS

Settlement agent fees are provided as an estimate. Final settlement fees must comply with applicable federal laws, rules and regulations; and any applicable state laws or local ordinances.

#### A. Fees Paid at Closing.

The following fees must be indicated on the HUD-1 Settlement Statement. Collect same unless indicated as "POC" (Paid Outside Closing). Show all "POC"s as such on the HUD-1 Settlement Statement.

HUD Line # / Description	Paid To	Borrower (\$)	Seller (S)	Others (S)
801 Loan Origination Fee	ABC Bank	3,091.78		
803 Appraisal Fee	Appraisal Group	375.00		
813 Wire Fee	ABC Bank	10.00		
816 Flood Certification	Flood Company	12.00		
1105 Document preparation	PeirsonPatterson, LLP	150.00		

#### B. Per Diem Interest and Escrows:

Per Diem Interest is **not prepaid**. Do not collect per diem interest. Lender will bill Borrower(s) post closing.

#### C. Issuance of Separate Checks:

Lender requires the issuance of additional separate checks for the following, which have not been deducted from the loan proceeds.

- **PeirsonPatterson, LLP: \$150.00 Document preparation.**

### SECTION III. LOAN DOCUMENTS

We are enclosing the following documents in connection with the above-referenced loan. Do not allow anyone to execute the loan documents before the date indicated on the Note. ALL PAPERS MUST BE SIGNED AS THE LEGAL DOCUMENTATION HAS BEEN TYPED. IF YOU HAVE INFORMATION THAT THE TYPED NAMES OR OTHER FACTUAL INFORMATION ARE

Loan Closing Instructions

INCORRECT, PLEASE CONTACT LENDER IMMEDIATELY. All documents requiring execution in the presence of a notary public shall be so executed, and this notary shall complete the proper notary acknowledgment and affix the proper seal to such documents. If there is any question as to the identity of the person executing any document, the responsibility of determining that person's identity is that of the notary public and the Settlement Agent. No corrections, erasures, changes or substitutions may be made to the documents without Lender's prior written approval. Such documents are conditionally delivered to Settlement Agent only for loan settlement and should under no circumstances leave Settlement Agent's possession or control except for delivery to Lender unless Settlement Agent is in receipt of written instructions otherwise from Lender. Powers of Attorney are not allowed unless specifically approved in writing by Lender. If you have information that the typed names are incorrect, please contact Lender immediately. Please follow the respective instructions for the disposition of each document.

#### Loan Transmittal Memorandum

Attorney Invoice Return with payment to PeirsonPatterson, LLP. @ 2310 W. Interstate-20, Suite 100, Arlington, Texas, 76017-1668.

Loan Closing Instructions Originals to be signed by Settlement Agent and returned to Lender.

Note Borrower(s) must sign Original and initial each page. Return Original and one (1) certified copy to Lender. Give Borrower(s) one (1) copy.

Deed of Trust (Security Agreement, Financing Statement) The indicated Borrower(s) must sign original Security Instrument (Mortgage / Deed of Trust). Obtain acknowledgements and file original. After recording, return original and one (1) certified copy to Lender. Give Borrower(s) one (1) copy.

Warranty Deed: General (V.L. to extent of) The law firm of PeirsonPatterson, LLP has prepared the enclosed draft deed to be used in this transaction. If consistent with the agreement between Seller and Borrower, it can be used. If another deed is used, send that proposed deed to PeirsonPatterson, LLP for their review and approval. Because it takes longer for PeirsonPatterson to review another's deed than to prepare their proposed deed, PeirsonPatterson, LLP WILL NOT reduce their fee if their deed if it is not used. The deed used must be executed, notarized, filed and returned to Borrower(s). Return one (1) certified copy to Lender with closing package. Give Seller(s) and Borrower(s) each a copy after closing.

Residential Construction Loan Agreement - Builder's Name (1st Copy) All indicated Parties must sign. Return original to Lender. Give each Party one (1) copy.

Flood Insurance Coverage Subject to Possible Change Borrower(s) must sign. Return original to Lender. Give Borrower(s) one (1) copy.

Affidavit of Non-Commencement Borrower(s) and Contractor must sign. Signatures must be notarized. Return original to Lender. Give Borrower(s) and Contractor one (1) copy.

Attorney Representation Notice Borrower(s) and Seller(s) must sign. Return original to Lender. Give Borrower(s) and Seller(s) one (1) copy.

Certificate of Resolutions (Corp Borrower) All indicated Parties must sign. Return original to Lender. Give each Party one (1) copy.

Document Correction Agreement Borrower(s) must sign. Return original to Lender. Give Borrower(s) one (1) copy.

Loans To One Borrower Certificate Borrower(s) must sign. Return original to Lender. Give Borrower(s) one (1) copy.

Loans To One Borrower Certificate Borrower(s) must sign said copy. Return signed copy to Lender. Give Borrower(s) one (1) copy.

Mineral Rights Acknowledgment Borrower(s) must sign. Return original to Lender. Give Borrower(s) one (1) copy.

Mortgage Fraud Warning FBI Borrower(s) must sign. Return original to Lender. Give Borrower(s) one (1) copy.

Notice of No Oral Agreements All Parties must sign. Return original to Lender. Give each Party one (1) copy.

Notice to Cosigner or Guarantor and Guaranty Cosigner/Guarantor to sign and date. Obtain acknowledgment and return original to Lender. Give Cosigner/Guarantor one (1) copy.

Collateral Protection Insurance Notice (Texas) Borrower(s) must sign. Return original to Lender. Give Borrower(s) one (1) copy.

Request for Taxpayer Identification Number and Certification - Borrower 1 Each Borrower must complete and sign a separate W-9. Return Original(s) to Lender.

Request for Taxpayer Identification Number and Certification - Guarantor 1 Each Guarantor must complete and sign a separate W-9. Return Original(s) to Lender.

## **SECTION IV. ADDITIONAL REQUIREMENTS**

### **Title Insurance.**

**Loan Title Policy Binder on Interim Construction Loan (T-13) ("Interim Binder") - to be issued in favor of Lender in accordance with the terms, conditions, coverages and exceptions set forth in the Commitment for Title Insurance ("Commitment") previously issued by Settlement Agent and its Underwriter and delivered to Lender in connection with this loan transaction, subject however, to the various deletions, changes, corrections, endorsements and other revisions thereto**

### **Loan Closing Instructions**

required by Lender which are listed below, all of which are to be reflected in a revised Commitment to be issued and delivered to Lender prior to the date of Closing. The Interim Binder (which shall be issued by Settlement Agent and its Underwriter and delivered to Lender not later than 10 days after the date of Closing) shall insure Lender that the lien(s) securing this loan is/are valid first lien(s) on the fee simple title to the real property described in the Commitment and as described in the Deed of Trust and other of the Loan Documents listed above and delivered herewith;

**Lender's Requirements.** Lender makes the following requirements ("Requirements") in connection with the issuance of the revised Commitment and the Interim Binder, each such Requirement being equally applicable to both such forms when prepared and issued unless one or more of the following Requirements specifies to the contrary:

\* The "insured" named in Schedule A must read: "[Lender's name as appearing in the Note] and each successor in ownership of the indebtedness secured by the insured mortgage except a successor who is an obligor under the provision of Section 12(c) of these Condition and Stipulations;"

\* The "Effective Date" on Schedule A must be the date the Deed of Trust is recorded;

\* Fee simple title to the real property described in the Deed of Trust must be shown by the Binder to be vested in Borrower;

\* There can be no exception for reversionary rights of any kind in Schedule B;

\* There can be no exceptions in Schedule B for "parties in possession;"

\* Item 3 of Schedule B must be modified to read "and subsequent assessments, for prior years due to change in land usage or ownership," and must except only to taxes, assessments and stand-by fees for the current calendar year (if taxes for the current year are due and payable when the Closing occurs) and subsequent years, not yet due and payable;

\* All curative matters in Schedule C of your Commitment shall be resolved to your satisfaction and not carried on as exceptions in the Binder;

**Corrected Title Commitment.** In addition to the requirements contained in the Master Closing Instructions, if provided, the Commitment must be amended as follows: (WE REQUIRE THE FOLLOWING ITEMS WITHIN TWENTY-FOUR HOURS OF THE EXECUTION OF THE DOCUMENTATION.)

**Schedule A: Proposed Insured to read "ABC Bank".**

**Schedule A: Reflect our Loan Amount of \$309,178.00.**

**Schedule A: Borrower(s) name(s) to read exactly as Legal Documents are drawn.**

**Schedule B: Reflect Tax Deletion. Guarantee all taxes are paid current.**

**Schedule C: Clear ALL Items. All Liens MUST be paid in full and released.**

**Provide all applicable Endorsements @ Borrower's expense.**

**Guarantee all HOA dues are paid current and all liens are subordinate to our 1st lien.**

**Provide an amended, original and countersigned Title Commitment, updated within 30 days of closing.**

**Builder's Risk Insurance.** The insurance must provide 100% coverage of the proposed Improvements and must contain the standard mortgagee clause in the name of the Lender as a named insured.

**Lender's Privacy Requirements.** Maintaining public confidence is important to the success and well-being of Lender. Additionally, Lender is bound by certain state and federal laws and regulations that require Lender and Lender's employees to transact business mindful that information shall be properly safeguarded. These closing instructions hereby put Settlement Agent on notice that the laws, regulations and safeguards that apply to Lender and its employees equally apply to vendors, agents and service providers [VASPs] of Lender. In conducting the business of Lender, certain customer information is obtained, used, created, stored and disposed. It is expected and required that all persons or entities with access to Lender's customer information shall keep that information confidential. VASPs are not authorized to access Lender's customer information except as is minimally necessary to complete assigned work. VASPs are not to make unauthorized copies of customer information. VASPs are not to discuss customer information with anyone other than authorized persons. Casual conversation about customers and customer information is prohibited and should be avoided even with other VASPs or Lender employees. VASPs shall not sell or otherwise share any customer information with any third party persons or companies. It is understood by Settlement Agent that Lender's customer information shall only be obtained, used, stored and disposed by methods and means that are necessary and permitted in order to conduct the business of Lender and Settlement Agent. All such access shall be in a safe guarded manner consistent with Lender's business practices and generally accepted professional business standards.

**Other Items:**

- **Borrower(s) must complete Social Security Number(s) or Tax ID number on any applicable documents.**

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**Loan Closing Instructions**

- Provide any and all other state specific documents necessary to properly close and insure this transaction.
- HUD-1 must reference SETTLEMENT AGENT NAME, ADDRESS and PHONE NUMBER in Section H "Settlement Agent" and at least SETTLEMENT AGENT ADDRESS in "Place of Settlement" box.
- ABC Bank requires two forms of ID at closing.

**SECTION V: LOAN FUNDING**

All papers must be signed as the legal documentation has been typed. If you have information that the typed names or other factual information are incorrect, please contact Lender immediately. All fees and charges required to be paid and known by Settlement Agent must be reflected on the Settlement Statement. The Settlement Statement must be faxed to Lender for approval prior to Closing. After Lender approval, no charges or fees can be added to the Settlement Statement without lender's written consent. The loan must close and fund by the Document Expiration Date indicated on page one of these Instructions. Do not file the Deed of Trust prior to Lender's funding authorization. The Closing of this loan is contingent upon the Sales Price captioned herein being true and correct. Should you have information indicating a lesser Sales Price or any secondary financing not shown above, do not close this loan and contact Lender immediately.

- **No Table Funding. Entire closed loan package must be returned for Lender review and approval prior to funding. Immediately after closing return closed package to Affiliated Bank. Loan proceeds check/draft/wire transfer will be available upon receipt and approval of original documents. HUD-1, Signature Page of Note and Deed of Trust, Hazard Insurance**

The escrow agent shall prepare the HUD-1 Settlement Statement in accordance with these instructions and provide it to us for our approval at least 24 hours before the real estate settlement transaction is closed. Then, the escrow agent shall close the transaction and disburse funds only in accordance with the approved HUD-1 Settlement Statement. If any party to the transaction requests that his/her funds be disbursed in any manner different from the approved HUD-1, the escrow agent shall advise us of the request and obtain prior approval from us before any funds are disbursed in a manner different from the approved HUD-1 Settlement Statement.

SUBJECT TO ANY LIMITATIONS IMPOSED BY PROCEDURAL RULE P-35 OF THE BASIC MANUAL OF TITLE INSURANCE IN THE STATE OF TEXAS, THE UNDERSIGNED AS AUTHORIZED AGENT FOR SETTLEMENT AGENT HEREBY ACKNOWLEDGES RECEIPT OF AND AGREES TO FOLLOW ALL THE TERMS AND REQUIREMENTS CONTAINED IN THESE CLOSING INSTRUCTIONS, AND THE REVISED COMMITMENT FOR TITLE INSURANCE ISSUED FOR THIS LOAN WHICH ARE INCORPORATED HEREIN BY REFERENCE PRIOR TO THE REQUEST FOR LOAN FUNDING, UNLESS OTHERWISE AUTHORIZED HEREIN. THIS ACKNOWLEDGEMENT DOES NOT OTHERWISE IMPLY A CERTIFICATION OR GUARANTY OF FACT, INSURANCE COVERAGE OR CONCLUSION OF LAW.

**Your Title Company**

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

Settlement Agent Signature

[ORIGINAL SIGNATURE, NOT STAMP, REQUIRED AS A CONDITION OF FUNDING.]

# NOTE

**THIS LOAN IS PAYABLE IN FULL AT MATURITY. YOU MUST REPAY THE ENTIRE PRINCIPAL BALANCE OF THE LOAN AND UNPAID INTEREST THEN DUE. THE LENDER IS UNDER NO OBLIGATION TO REFINANCE THE LOAN AT THAT TIME. YOU WILL, THEREFORE, BE REQUIRED TO MAKE PAYMENT OUT OF OTHER ASSETS THAT YOU MAY OWN, OR YOU WILL HAVE TO FIND A LENDER, WHICH MAY BE THE LENDER YOU HAVE THIS LOAN WITH, WILLING TO LEND YOU THE MONEY. IF YOU REFINANCE THIS LOAN AT MATURITY, YOU MAY HAVE TO PAY SOME OR ALL OF THE CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW LOAN EVEN IF YOU OBTAIN REFINANCING FROM THE SAME LENDER.**

Loan # 132456

**November 1, 2012**  
[Date]

**Dallas**  
[City]

**TX**  
[State]

**123 Best Street, Fort Worth, TX 76116**  
[Property Address]

## 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. **\$309,178.00**, or the unpaid principal balance outstanding from all sums advanced against this Note, less any amounts repaid, whichever amount is less (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is **ABC Bank**. I will make all payments under this Note in the form of cash, check, money order or electronic funds transfer. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder." This Note anticipates multiple advances. The principal amount of this Note shall be advanced incrementally according to the agreement with Lender. Interest shall accrue and be charged only upon the amount of outstanding principal as it changes from time to time.

## 2. INTEREST RATE AND PAYMENTS

### (A) Interest Rate

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of **6.000%**. The interest rate I will pay may change in accordance with Section 2(D) of this Note. The interest rate required by this Section 2 is the rate I will pay both before and after any default described in this Note.

### (B) Payments

#### (1) Place of Payments

I will make my **monthly** payments at **2310 W Interstate 20, 100, Arlington, TX 76017** or at a different place if required by the Note Holder.

#### (2) Amount and Time of Payments

I will make payments as follows:

**The principal is due and payable on or before November 1, 2013 (the "Maturity Date") and the interest is payable monthly as it accrues on the first day of each month beginning December 1, 2012. TIME IS OF THE ESSENCE.**

### (C) Accrual Method

#### (1) Actual / 360 Day Base Method

All payments of interest shall be computed on the per annum basis of a year of 360 days and for the actual number of days elapsed unless such calculation would result in a usurious rate, in which case interest shall be calculated on the per annum basis of a year of 365 or 366 days, as the case may be.

#### (2) True Daily Earnings Method

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Note

Interest will be computed according to the true daily earnings method. The true daily earnings method is a method to compute an interest charge by applying a daily rate to the unpaid balance of the amount financed. The earned finance charge is computed by multiplying the daily rate by the number of days the actual principal balance is outstanding. The daily rate is the equivalent contract rate for a year with the number of days indicated in (C)(1) above.

**(D) Interest Rate and Payment Changes**

**(1) Change Dates**

The interest rate I will pay may change on the **Second** day of **November, 2012**, and on that day every **day** thereafter. Each date on which my interest rate could change is called a "Change Date."

**(2) The Index**

Beginning with the first Change Date, my interest rate will be based on an Index. The Index is **the Wall Street Journal Prime Rate, the base rate on corporate loans posted by at least 70% of the nation's 10 largest banks**. Information about the Index is **published in the Money Rates section of The Wall Street Journal**. The most recent Index figure available **as of each Change Date** is called the Current Index. If the Index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.

**(3) Calculation of Changes**

Before each Change Date, the Note Holder will calculate my new interest rate by adding **One and One Half** percentage point(s) (**1.500%**) to the Current Index. Subject to the limits stated in Section 2(D)(4) below, this will be my new interest rate until the next Change Date. The Note Holder will then determine the amount of the **monthly** payment.

**(4) Limits on Interest Rate Changes**

My interest rate will never be greater than **18.000%**. My interest rate will never be less than **6.000%**.

**(5) Effective Date of Changes**

My new interest rate will become effective on each Change Date. I will pay the amount of my new **monthly** payment beginning on the first **monthly** payment date after the Change Date until the amount of my **monthly** payment changes again.

**(6) Notice of Changes**

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my **monthly** payment before the effective date of any change. The notice will include information required by law to be given to me.

**(7) Payment Changes**

The **monthly** payment I will pay may change on the **First** day of **December, 2012**, and on that day every **month** thereafter. Each date on which my **monthly** payment could change is called a "Payment Change Date"

Changes in my **monthly** payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my **monthly** payment in accordance with this Section D of this Note.

**3. PREPAYMENT**

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a Prepayment. When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the **monthly** payments due under the Note. I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due dates of my **monthly** payment unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my **monthly** payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

**4. LOAN CHARGES**

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Note



If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

## **5. BORROWER'S FAILURE TO PAY AS REQUIRED**

### **(A) Default**

If I do not pay the full amount of each **monthly** payment on the date it is due, I will be in default.

### **(B) Notice of Default**

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount.

### **(C) No Waiver By Note Holder**

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

### **(D) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

### **(E) Not Sufficient Funds Fees**

If not prohibited by applicable law, I agree to pay an amount charged by Lender not to exceed **\$30.00** (or the maximum amount allowed by applicable law if applicable law limits said fee to an amount less than **\$30.00**) for each check, draft, order or other instrument or form of remittance made in payment on this note that is returned to Lender unpaid or dishonored for any reason.

## **6. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address. Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 2(B) above or at a different address if I am given a notice of that different address.

## **7. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

## **8. WAIVERS**

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

## **9. SECURITY**

This Note is secured by the Property referenced herein above [Property Address] on the top of the first page of this Note. As further security for this Note, I grant to the Note Holder a lien and contractual right of offset in and to

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Note

all my money and property now or at any time hereafter coming within the custody or control of the Note Holder, including, without limitation, all certificates of deposit and other accounts, whether such certificates or accounts have matured or not and whether exercise of such right of offset results in loss of interest or other penalty under the terms of the certificate or account agreement. This Note is further secured by a Deed of trust of even date herewith, to **Michael H. Patterson**, Trustee, covering the real property described to wit:

**Being Lot One (1) in Block Two (2) of ESTATES AT THE LAKE, PHASE I, amending Replat of Lots 1 & 2, Block 3 and Lots 4 & 5, Block 6, Estates at the Lake Phase I, within the City of Fort Worth, Tarrant County, Texas, according to the Plat of record in Cabinet ABC, Slide 11 of the Plat Records of Tarrant County, Texas.**

#### **10. APPLICABLE LAW**

This Note is being executed and delivered and is intended to be performed in the State of Texas and shall be construed and enforced in accordance with and governed by the laws of the State of Texas and applicable federal law. All legal proceedings brought to enforce or interpret this Note shall be in the appropriate court located in **Tarrant** County, Texas. In the event of a conflict between any provision of this Note and applicable law, the applicable law shall control to the extent of such conflict and the conflicting provisions contained in this Note shall be modified to the extent necessary to comply with applicable law. All other provisions in this Note will remain fully effective and enforceable.

#### **11. SECURED NOTE**

In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note.

#### **12. DUE ON TRANSFER**

In addition to the protections given to the Lender under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Lender from possible losses which might result if Borrower does not keep the promises which Borrower makes in this Note. That Security Instrument describes how and under what conditions Borrower may be required to make immediate payment in full of all amounts Borrower owes under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

#### **13. NO ORAL AGREEMENTS**

**THIS NOTE CONSTITUTES A "WRITTEN LOAN AGREEMENT" PURSUANT TO SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE, IF SUCH SECTION APPLIES. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

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Note

**Great Custom, Inc., a Texas corporation**

\_\_\_\_\_  
Signature

Date

**Joe Builder, President**

*[Sign Originals Only]*

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**Note**

**RETURN TO:**  
**ABC Bank**  
**2310 W Interstate 20, 100**  
**Arlington, TX 76017**  
**Ambra Costner**

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**DEED OF TRUST**  
**(SECURITY AGREEMENT,**  
**FINANCING STATEMENT)**

**Loan # 132456**

THE STATE OF TEXAS }

**KNOW ALL MEN BY THESE PRESENTS:**

COUNTY OF **Tarrant** }

THE UNDERSIGNED, **Great Custom, Inc. Type: corporation Jurisdiction: Texas Charter # 12222222222**, whose mailing address is as set forth opposite the signature of each, being the debtor(s) and hereinafter called "Grantors", (whether one or more), in consideration of TEN AND NO/100 DOLLARS (\$10.00), in hand paid, and the debt and trust hereinafter mentioned, have Granted, Sold and Conveyed, and by these presents do Grant, Sell and Convey unto **Michael H. Patterson** Trustee(s), whose mailing address is **2310 Interstate 20 W, Suite 100, Arlington, TX 76017**, hereinafter called the "Trustee" (whether one or more), and to his successors in trust, the following described land and other property situated in the County of **Tarrant**, State of **Texas**, to-wit:

**Being Lot One (1) in Block Two (2) of ESTATES AT THE LAKE, PHASE I, amending Replat of Lots 1 & 2, Block 3 and Lots 4 & 5, Block 6, Estates at the Lake Phase I, within the City of Fort Worth, Tarrant County, Texas, according to the Plat of record in Cabinet ABC, Slide 11 of the Plat Records of Tarrant County, Texas.**

which has an address of:

**123 Best Street**  
**Fort Worth, TX 76116**  
(“Property Address”):

together with all heating, plumbing, refrigeration, lighting fixtures, equipment, appliances and/or other personal property used in connection therewith whether or not now or hereafter attached thereto so as to become fixtures, and all accessions and additions thereto, and all buildings and improvements thereon and hereafter placed thereon: appurtenances, servitudes, rights, ways, privileges, prescriptions and advantages thereunto belonging or in any wise appertaining, hereinafter called the "Mortgaged Premises". To the extent permitted by law, this Deed of Trust shall be construed to be a security agreement and financing statement.

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Deed of Trust (Security Agreement, Financing Statement)

TO HAVE AND TO HOLD the Mortgaged Premises unto the Trustee forever, Grantors hereby bind themselves to warrant and forever defend the title to the Mortgaged Premises, or any part thereof, unto the Trustee against all persons whomsoever claiming or to claim the same or any part thereof.

1. THIS CONVEYANCE, however, is made in trust to secure and enforce the payment of the following described indebtedness, obligations and liabilities:

- a. A promissory note (the "Note") of even date herewith in the principal sum of **Three Hundred Nine Thousand One Hundred Seventy Eight and 00/100 Dollars (\$309,178.00)** executed by the Borrowers therein and payable to the order of **ABC Bank** whose mailing address is **2310 W Interstate 20, 100, Arlington, TX 76017** (hereinafter called "Beneficiary" or "Bank"), bearing interest as therein provided;
- b. All promissory notes evidencing additional loans which Beneficiary may hereinafter make to Grantors (although it is understood that beneficiary is under no obligation to do so);
- c. All other indebtedness and liabilities of all kinds of Grantors to Beneficiary now existing or hereafter arising (including overdrafts in bank accounts), whether fixed or contingent, joint and/or several, direct or indirect, primary or secondary and regardless of how created or evidenced, or whether they may, prior to acquisition by Beneficiary, be or have been payable to, or be or have been in favor of some other person, or have been acquired by Beneficiary in a transaction with one other than Grantors;
- d. All sums advanced or costs or expenses incurred by Beneficiary which are made or incurred pursuant to or allowed by, the terms of this instrument, plus interest thereon at the maximum rate allowed by applicable law from the date paid until reimbursed; and
- e. All renewals and extensions of the above, whether or not Grantors execute any renewal or extension agreement.

All of the described indebtedness being hereinafter sometimes referred to collectively as the "debt" or "indebtedness".

2. As additional security for the payment of said debt, Grantors hereby transfer and assign unto the Beneficiary:

- a. All judgments, awards of damages and settlements hereinafter made resulting from condemnation proceedings or the taking of all or any part of the Mortgaged Premises under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Mortgaged Premises or any part thereof, or to any rights appurtenant thereto, including any award for change of grade of streets. The Beneficiary is hereby authorized, but shall not be required, on behalf and in the name of Grantors, to execute and deliver acquittances for, and to appeal from, any such judgments or awards. The Beneficiary may apply all such sums or any part thereof so received, after the payment of all expenses, including costs and attorney's fees, on the debt in such manner as the Beneficiary elects;
- b. All bonuses, rents and royalties accrued or to accrue under all oil, gas or mineral leases, now existing or which may hereafter come into existence. Grantors direct payment of the same to the Beneficiary, at the option of the Beneficiary and upon written demand of the Beneficiary therefor, to be applied to the debt until paid, whether due or not, and either before or after any default under the terms of this Deed of Trust or Note; and
- c. All of the rents, royalties, issues, profits, revenue, income and other benefits derived from the Mortgaged Premises (whether now existing or hereafter arising) or arising from the use or enjoyment of any portion thereof or from any lease or agreement pertaining thereto (hereinafter called the "Rents and Profits") are hereby absolutely and unconditionally assigned, transferred, conveyed and set over to Beneficiary to be applied by Beneficiary in payment of the principal and interest and all other sums payable on the Note and any other indebtedness secured hereby. It is intended that this assignment is absolute, unconditional and presently effective and that it shall

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Deed of Trust (Security Agreement, Financing Statement)

never be necessary for Beneficiary to institute legal proceedings of any kind whatsoever to enforce the provisions of this Section 2(C). Prior to the occurrence of any default hereunder, Grantor shall collect and receive all Rents and Profits as Trustee for the benefit of Beneficiary and Grantor, and Grantor shall apply the funds so collected first to the payment of the principal and interest and all other sums payable on the Note and in payment of all other indebtedness secured hereby, and thereafter, so long as no default hereunder has occurred, the balance shall be distributed to the account of the Grantor. Grantor will not (i) execute an assignment of any of its right, title or interest in the Rents or Profits, or (ii) except where the lessee is in default thereunder, terminate or consent to the cancellation or surrender of any lease of the Mortgaged Premises or any part thereof, now or hereafter existing, having an unexpired term of one year or more except that any lease may be canceled, provided that promptly after the cancellation or surrender thereof, a new lease is entered into with a new lessee having a credit standing, in the judgment of Beneficiary, at least equivalent to that of lessee whose lease was canceled, on substantially the same terms as the terminated or canceled lease, or (iii) modify any lease of the Mortgaged Premises or any part thereof so as to shorten the unexpired term thereof or so as to decrease the amount of rent payable thereunder, or (iv) accept prepayments of any installments of rent to become due under any of such leases in excess of one month, except prepayments in the nature of security for the performance of the lessee thereunder, or (v) in any other manner impair the value of the Mortgaged Premises or the security of this Deed of Trust. Grantor will not execute any lease of all or any substantial portion of the Mortgaged Premises except for actual occupancy by the lessee thereunder, and will at all times promptly and faithfully perform, or cause to be performed, each covenant, condition and agreement contained in each lease of the Mortgaged Premises now or hereafter existing, on the part of lessor thereunder to be kept and performed. Grantor shall furnish to Beneficiary, within ten (10) days after a request by Beneficiary to do so, a written statement containing the names of all lessees of the Mortgaged Premises, the terms of their respective leases, the spaces occupied, and the rentals payable thereunder.

Beneficiary shall have no liability or obligation with respect to any lease of the Mortgaged Premises or any part thereof.

- d All of Grantors interest in, to, and under any and all leases, tenant contracts, construction contracts and other contracts, licenses and permits, whether written or oral, now or hereafter affecting all or any part of the Property, and any agreement for the use or occupancy of all or any part of said Property which may have been made heretofore or which may be made hereafter, including any and all extensions, renewals, and modifications of the foregoing and guaranties of the performance or obligations of any tenants thereunder, and all other arrangements of any sort resulting in the payment of money to Grantor or in Grantor becoming entitled to the payment of money for the use of the Property or any part thereof, whether such user or occupier is tenant, invitee, or licensee (all of the foregoing hereafter referred to collectively as the "Leases" and individually as a "Lease", and said tenants, invitees, and licensees are hereafter referred to collectively as "Tenants" and individually as "Tenant" as the context requires), which Leases cover all or any portion of the Property. Grantor agrees to execute and deliver to Beneficiary such additional instruments, in form and substance satisfactory to Beneficiary, as may hereafter be requested by Beneficiary further to evidence and confirm said assignment; provided, however, that acceptance of any such assignment shall not be construed as a consent by Beneficiary to any Lease, or to impose upon Beneficiary any obligation with respect thereto; and provided, further, that permission is hereby given to Grantor unless and until Grantor is in default as provided herein, to collect the income, rents, issues and profits relating to the Property as they become due and payable but not in advance, except as provided herein below.

3. The proceeds of the Note to the extent that the same are utilized to take up any outstanding liens against the Mortgaged Premises, or any portion thereof, have been advanced by the Beneficiary at Grantors' request and upon Grantors' representation that such amounts are due and are secured by valid liens against the Mortgaged Premises. The Beneficiary shall be subrogated to any and all rights, superior titles, liens, and equities owned or claimed by any owner or holder of any outstanding liens and debts, however remote, regardless of whether said liens or debts are acquired by the Beneficiary by assignment or are released by the holder thereof upon payment.

4. Grantors further covenant and agree:

- a. That Grantors will pay the principal of and interest on the Note in accordance with the terms thereof. That Grantors are seized of the Mortgaged Premises and are entitled to convey the same; that Grantors will make such further assurance of title as may be necessary to fully confirm to the Trustee the title to the Mortgage Premises; Grantors shall punctually and properly perform all of Grantors' covenants, obligations, and liabilities under any other security agreement, mortgage, deed of trust, collateral pledge agreement, contract, assignment, loan agreement or any other instrument or agreement of any kind now or hereafter existing as security for, executed in connection with, or related to the indebtedness or other obligations secured hereby, or any part thereof;
- b. That all awnings, door and window screens, storm window screens, storm windows and doors, mantels, cabinets, rugs, carpeting, linoleum, wall and in-a-door beds, stoves, shades, blinds, oil and other fuel-burning systems and equipment, water heaters, radiator covers, and all plumbing, heating, lighting, cooking, ventilating, cooling, air-conditioning and refrigerating apparatus and equipment, and such goods and chattels and personal property as are ever furnished by landlords in letting or operating an unfurnished building, or which are or shall be attached to said building by nails, screws, bolts, pipe connections, masonry or in other manner, and all additions thereto and replacements thereof, and such built-in equipment as shown by plans and specifications, are and shall be deemed to be fixtures and accessions to the Mortgaged Premises, being hereby agreed to be immovables and a part of the realty as between the parties hereto, and shall be deemed to be a part and portion of the Mortgaged Premises;
- c. That Grantors will pay (prior to delinquency) all taxes and assessments levied or assessed upon the Mortgage Premises, or the interest created therein by this Deed of Trust, and exhibit the receipts therefor to the Beneficiary (unless such payments are made by the Beneficiary, as hereinafter provided), and will defend the title and possession of the Mortgaged Premises to the end that this Deed of Trust shall be and remain a first lien on the Mortgaged Premises until the debt is paid. That Grantors will pay all attorney's fees and expenses which may be incurred by the Beneficiary in enforcing the terms of the Note and this Deed of Trust or in any suit which the Beneficiary may become a party where this Deed of Trust or the Mortgaged Premises is in any manner involved, and all expenses incurred in presenting a claim against the estate of a decedent or a bankrupt. The word "assessments" as used in this Deed of Trust, whether in this paragraph or elsewhere, shall include not only assessments by political subdivisions, but also maintenance charges, regular assessments and special assessments assessed by subdivision restrictions, homeowner's declarations for planned unit developments and assessments by condominium agreements, if any;
- d. That Grantors will keep all insurable Mortgaged Premises insured for the protection of the Beneficiary against loss by fire, hazards included within the term "extended coverage" and such other hazards as Beneficiary may require in such manner, in such amounts, and in such companies as the Beneficiary may approve at Beneficiaries sole discretion, and keep the policies therefor, properly endorsed, on deposit with the Beneficiary with standard mortgagees' clauses. If renewal policies are not delivered to the Beneficiary 30 days before the expiration of the

existing policy or policies, with evidence of premiums paid, the Beneficiary may, but is not obligated to, obtain the required insurance on behalf of Grantors (or insurance in favor of the Beneficiary alone) and pay the premiums thereon. Grantors assign to Beneficiary all right and interest in all such policies of insurance and authorize the Beneficiary to collect for, adjust or compromise any losses under any insurance policy on the Mortgaged Premises, and loss proceeds (less expense of collection) shall, at the Beneficiary's option, be applied on the debt, whether due or not, or to the restoration of the Mortgaged Premises, or be released to Grantors, but such application or release shall not cure or waive any default. Grantors shall, at their expense, in addition to all other insurance obligations herein required, maintain or cause to be maintained workers' compensation insurance covering all persons employed by Grantors and Grantors shall provide Beneficiary with proof of insurance, notice of cancellation, and other information relating to such insurance coverage, in the same manner as required with respect to other insurance obligations of Grantor described in this Deed of Trust;

- e. That, when requested by the Beneficiary, Grantors will pay with and in addition to the monthly payments of principal and interest payable under the terms of the Note, on the same day as the principal and interest installments are due and payable, a sum equal to one-twelfth of the estimated annual ground rents, taxes, hazard insurance premiums and assessments, if any, next due on the Mortgaged Premises. If the amount so paid is not sufficient to pay such ground rents, taxes, hazard insurance premiums and assessments when due, then Grantors will deposit immediately with the Beneficiary an amount sufficient to pay such ground rents, taxes, hazard insurance premiums, and assessments. If there is a default under any of the provisions of this Deed of Trust resulting in a sale of the Mortgaged Premises or foreclosure, or if the Beneficiary acquires the Mortgaged Premises otherwise after default, the Beneficiary shall apply, at the time of commencement of such proceedings or at the time the property is otherwise acquired, the balance then remaining of the funds accumulated under this provision as a credit against the amount then remaining unpaid under the Note. No interest shall accrue or be allowed on any payments made under the provisions of this paragraph. If the amount so paid is in excess of the amount needed to pay such ground rents, taxes, hazard insurance premiums and assessments in any calendar year, such excess shall be applied to the next maturing installments of principal and interest. All deposits made pursuant to this paragraph shall be held by the Beneficiary as additional security for the payment of the debt described herein and shall not be assigned, attached or otherwise alienated except when transferred by Grantors to a new owner of the Mortgaged Premises concurrently with a bona fide sale of the Mortgaged Premises;
- f. That Grantors will not commit or permit any waste on the Mortgaged Premises and will keep the buildings, fences and all other improvements now or hereafter erected on the Mortgaged Premises in sound condition and in good repair and will neither do nor permit to be done anything to the Mortgaged Premises that may impair the value thereof and the Beneficiary shall have the right of entry upon the Mortgaged Premises at all reasonable times for the purpose of inspecting the same;
- g. That Grantors will pay for the cost of any appraisal of the Mortgaged Premises which Beneficiary may require from time to time, such appraisal to be prepared by an appraiser and be in form acceptable to Beneficiary.
- h. To comply with all valid governmental laws, ordinances and regulations applicable to the Mortgaged Premises and its ownership, use and operation, and to comply with all, and not violate any easements, restrictions agreements, covenants and conditions with respect to or affecting the Mortgage Premises or any part thereof;
- i. To pay promptly all bills for labor and materials incurred in connection with the Mortgaged Premises and never to permit to be fixed against the Mortgaged Premises or any part thereof, any lien or security interest, even though inferior to the liens and security interests hereof, for any



such bill which may be legally due and payable, and never to permit to be created or exist in respect of the Mortgaged Premises, or any part thereof, any other or additional lien or security interest on a parity with or superior to the liens and security interests hereof;

- j. At any time, and from time to time, upon request by Beneficiary forthwith to execute and deliver to Beneficiary any and all additional instruments and further assurances, and do all other acts and things as may be necessary or proper in Beneficiary's opinion to effect the intent of these presents, more fully evidence and perfect the rights, titles, liens and security interests herein created or intended to be created and protect the rights, remedies, powers and privileges of Beneficiary hereunder;
- k. From time to time, upon request of Beneficiary, to furnish promptly to Beneficiary such financial statements and reports relating to Grantors and Grantors' business affairs as Beneficiary may reasonably request;
- l. If Grantors are a corporation, to maintain continuously Grantors' corporate existence, good standing and its right to do business in Texas and in each other state where any part of Mortgaged Premises is situated;
- m. Upon request of Beneficiary, to deliver to Beneficiary, within sixty (60) days after the end of each calendar year, then current annual statements itemizing the income and expenses of the Mortgaged Premises, all in such detail as shall be satisfactory to Beneficiary;
- n. At any time that any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens or security interests created hereby, or upon the debt, or any part thereof, immediately to pay all such taxes; provided, that, in the alternative, Grantors may, in the event of the enactment of such a law, and must, if it is unlawful for Grantor to pay such taxes, prepay the debt in full within sixty (60) days after demand therefor by Beneficiary;
- o. To furnish promptly at any time and from time to time, upon request, a written statement or affidavit in such form as shall be satisfactory to Beneficiary, stating the unpaid balance of the debt and that there are no offsets or defenses against full payment of the debt and the terms hereof, or, if there are any such offsets and defenses, specifying them;
- p. To perform punctually and properly all of Grantors' covenants, duties and liabilities under any other security agreement, mortgage, deed of trust, collateral pledge agreement, loan agreement, contract or assignment of any kind now or hereafter existing as security for or in connection with payment of the debt, or any part thereof (each such being herein called "other security instrument");
- q. To allow Beneficiary to inspect the Mortgaged Premises and all records relating thereto or to the debt, and to make and take away copies of such records; and
- r. Without the prior written consent of Beneficiary (which may be withheld with or without cause), not to cause or permit all or any portion of the Mortgaged Premises which is fixtures or personal property to be removed from the county or state where the real property is located.

5. If any of the indebtedness hereby secured shall become due and payable, the Trustee or the Beneficiary shall have the right and power to proceed by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Mortgaged Premises under the judgment or decree of any court or courts of competent jurisdiction, or for the appointment of a receiver pending any foreclosure hereunder or the sale of the Mortgaged Premises under the order of a court or the sale of the Mortgaged Premises under the order of a court or courts of competent jurisdiction or under executory or other legal process, or for the enforcement of any other appropriate legal or equitable remedy. The Grantors agree, to the full extent that they or it lawfully may, that in case one or more of the defaults hereunder shall have occurred and shall not have been remedied, then, and in every such case, the Beneficiary shall have the right and power to enter into and upon and take

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**Deed of Trust (Security Agreement, Financing Statement)**

possession of all or any part of the Mortgaged Premises in the possession of Grantors, their or its successors or assigns, or its or their agents or servants and may exclude the Grantors, its or their successors or assigns and all persons claiming under the Grantors, and its or their agents or servants, wholly or partly therefrom; and holding the same, the Beneficiary may use, administer, manage, operate and control the Mortgaged Premises and conduct the business thereof to the same extent as the Grantors, its or their successors or assigns, might at the time do and may exercise all rights and powers of the Grantors, in the name, place and stead of the Grantors, or otherwise as the Beneficiary shall deem best; and in the exercise of any of the foregoing rights and powers Beneficiary shall not be liable to Grantors for any loss or damage thereby sustained unless due solely to the willful misconduct or gross negligence of Beneficiary.

6. In the event the ownership of the Mortgaged Premises, or any part thereof, becomes vested in a person other than Grantors, the Beneficiary may, without notice to Grantors, deal with such successor or successors in interest with reference to this Deed of Trust and to said debt in the same manner as with Grantors without in any way vitiating or discharging Grantors' liability hereunder or upon the debt. No sale of the Mortgage Premises and no forbearance on the part of the Beneficiary and no extension of the time for the payment of the debt hereby secured, given by the Beneficiary, shall operate to release, modify, change, or affect the original liability of Grantors, either in whole or in part.

7. The Beneficiary, without notice, may release any part of the Mortgaged Premises, or any person liable for the debt, without in any way affecting the lien hereof upon any part of the Mortgaged Premises not expressly released or the liability of any person not expressly released, and may agree with any party obligated on the debt, or having any interest in the Mortgaged Premises, to extend the time for payment of any part or all of the debt. Such agreement shall not in any way release or impair the lien hereof, but shall extend the lien hereof as against the title of all parties having any interest in the Mortgaged Premises which interest is subject to this Deed of Trust. The lien, security interest and other rights granted hereby shall not affect or be affected by any other security taken for the same indebtedness or any part thereof. The taking of additional security, or the extension or renewal of the indebtedness secured hereby, or any part thereof, shall not release or impair the lien, security interest and other rights granted hereby, or affect the liability of any endorser, guarantor or surety, or improve the right of any permitted junior lienholder; and this Deed of Trust, as well as any instrument given to secure any renewal or extension of the indebtedness secured hereby, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Mortgaged Premises not expressly released until the indebtedness secured hereby is completely paid.

8. Grantors waive the benefit of all laws now existing or that hereafter may be enacted provided for (i) any appraisalment before sale of any portion of the Mortgaged Premises, commonly known as Appraisalment Laws, and (ii) the benefit of all laws that may be hereafter enacted in any way extending the time for the enforcement of the collection of said debt or creating or extending a period of redemption from any sale made in collecting said debt, commonly known as Stay Laws and Redemption Laws, and Grantors hereby agree and contract that the laws of the State of Texas, save as above excepted, now in force relative to the collection of said debt and the application to the payment thereof, are expressly adopted and made a part hereof. To the extent that Grantors may lawfully do so, Grantors agree that Grantors shall not assert and hereby expressly waive, any right under any statute or rule of law pertaining to the marshalling of assets, the exemption of homestead, the administration of estates of decedents, or other matter whatever to defeat, reduce or affect the right of Beneficiary, under the terms of this Deed of Trust, to sell the Mortgaged Premises for the collection of the indebtedness secured hereby (without any prior or different resort for collection) or the right of Beneficiary, under the terms of this Deed of Trust, to the payment of such indebtedness out of the proceeds of sale of the Mortgaged Premises in preference to every other person and claimant whatever (only reasonable expenses of such sale being first deducted). Grantors expressly waive and relinquish any right or remedy which it or they may have or be able to assert by reason of the provisions of Chapter 34 of the Business and Commerce Code of the State of Texas, pertaining to the rights and

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**Deed of Trust (Security Agreement, Financing Statement)**

remedies of sureties.

9. The Beneficiary may, at the Beneficiary's option, without demand or notice and without waiver of any right, pay or discharge any lien or claim upon the Mortgaged Premises or pay any delinquent tax or assessment, and, upon such payment the Beneficiary shall be subrogated respectively to the rights of the holder of such lien or claim or to the rights of the taxing authority; the Beneficiary may advance any unpaid insurance premiums, and whenever Grantors have failed properly to maintain the improvements, the Beneficiary may make repairs necessary for the proper preservation of the security. Grantors agree to pay to the Beneficiary, upon demand, any and all disbursements made under the provisions of the Deed of Trust together with interest thereon at the rate which the principal of the Note shall bear after default from the respective dates of such disbursements, and all such disbursements shall become a part of the debt, payable at the same place specified in the Note, and shall be secured by this Deed of Trust.

10. Acceptance by the Beneficiary of any payment in an amount less than the amount then due on said debt shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be a default. At any time thereafter, and until the entire amount then due on said debt has been paid, the Beneficiary shall be entitled to exercise all rights conferred upon it in this instrument upon the occurrence of a default.

11. Grantors shall be in default hereunder if Grantors shall default in the prompt payment when due of the indebtedness secured hereby, or any part thereof; or shall fail to keep and perform any of the covenants or agreements contained herein or in any other document securing the Note or any other security instrument; or if Beneficiary discovers that any statement, representation, or warranty in the Note, this Deed of Trust or in any writing delivered to Beneficiary in connection with the indebtedness secured hereby is false, misleading or erroneous in any material respect; or if Grantors, or any person liable for the indebtedness secured hereby, or any part thereof, including any guarantor of or any surety for the performance of any obligation hereunder, files a voluntary petition in bankruptcy; makes an assignment for the benefit of any creditor, is adjudicated as bankrupt or insolvent; admits in writing its inability to pay its debts generally as they become due, applies for or consents to the appointment of a receiver, trustee, or liquidator of Grantors or of any such guarantor or surety or of all or a substantial part of its assets; takes advantage of or seeks any relief under any bankruptcy, reorganization, debtor's relief or other insolvency law now or hereafter existing; files an answer admitting the material allegations of, or consenting to, or defaulting in, a petition against Grantors or any such guarantor or surety, in any bankruptcy, reorganization, or other insolvency proceedings; institutes or voluntarily is or becomes a party to any other judicial proceedings intended to effect a discharge of the debts of Grantors or of any guarantor or surety, in whole or in part, or to effect a postponement of the maturity or the collection thereof, or to effect a suspension of any of the right or powers of Beneficiary granted in the Note, this Deed of Trust or in any other instrument evidencing or securing the indebtedness secured hereby; or if an order, judgment or decree shall be entered by any court of competent jurisdiction appointing a receiver, trustee or liquidator of Grantors or of any guarantor or surety or of all or any substantial part of the assets of Grantors or any such guarantor or surety or if Grantors or any guarantor or surety shall fail to pay any money judgment against it at least ten (10) days prior to the date on which the assets of Grantors or any such guarantor or surety may be sold to satisfy such judgment; or if Grantors or any such guarantor or surety shall fail to have discharged within a period of ten (10) days after the commencement thereof any attachments, sequestration, or similar proceedings against any assets of Grantors or of any guarantor or surety; or if the Mortgaged Premises are placed under control or in the custody of any court, or if Grantors abandon any of the Mortgaged Premises. Upon the occurrence of any such default, Beneficiary, at its option, without notice, may pursue any rights and remedies it may have hereunder or at law, or in equity and Beneficiary may, without limitation and without notice of any kind (including notice of intention to accelerate maturity), declare the entire indebtedness secured hereby immediately due and payable, whereupon it shall be so due and payable.

12. If Grantors shall perform faithfully each of the covenants and agreements herein contained, then, and only then, this conveyance shall become null and void and shall be released in due form, at Grantors' expense; otherwise, it shall remain in full force and effect. No release of this conveyance, or of the lien, security interest of assignment created and evidenced hereby, shall be valid unless executed by Beneficiary.

13. If Grantors shall default hereunder, Grantors hereby authorize and empower the Trustee, at the request of Beneficiary, at any time during the continuance of any default, to sell all or any portion of the Mortgaged Premises, at public auction, to the highest bidder, for cash, at the door of the County Courthouse of the county in Texas in which such Mortgaged Premises or any part thereof, is situated, as herein described, between the hours of 10:00 o'clock a.m. and 4:00 o'clock p.m. on the first Tuesday of any month after giving notice of the time, place and terms of said sale, and the property to be sold, as follows:

Notice of such proposed sale shall be given by posting written notice thereof at least twenty-one days preceding the date of the sale at the Courthouse door of the county in which the sale is to be made, and if the property to be sold is situated in more than one county, one notice shall be posted at the Courthouse door of each county in which the property to be sold is situated. In addition, Beneficiary shall, at least twenty-one days preceding the date of sale, serve written notice of the proposed sale by certified mail on each debtor obligated to pay the debt secured hereby according to the records of Beneficiary. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such debtor at the most recent address as shown by the records of Beneficiary, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service.

Any notice that is required or permitted to be given to Grantors may be addressed to Grantors at Grantors' address as stated herein. Any notice that is to be given by certified mail to any other debtor may, if no address for such other debtor is shown by the records of Beneficiary, be addressed to such other debtor at the address of Grantors as is shown by the records of Beneficiary. Notwithstanding the foregoing provisions of this paragraph, notice of such sale given in accordance with the requirements of the applicable law of the State of Texas in effect at the time of such sale shall constitute sufficient notice of such sale. Grantors hereby authorize and empower the Trustee to sell all or any portion of the Mortgaged Premises, together or in lots of parcels, as the Trustee may deem expedient, and to execute and deliver to the purchaser or purchasers of such property, good and sufficient deeds of conveyance of fee simple title with covenants of general warranty made on behalf of the Grantors. In no event shall the Trustee be required to exhibit, present or display at any such sale any of the personalty described herein to be sold at such sale. The Trustee making such sale shall receive the proceeds thereof and shall apply the same as follows: (i) first, he shall pay the reasonable expense of executing this trust including a reasonable Trustee's fee for commission and attorney's fees and costs of title evidence; (ii) second, he shall pay, so far as may be possible, the indebtedness secured hereby, discharging first that portion of the indebtedness arising under the covenants or agreements herein contained and not evidenced by the Note; (iii) third, he shall pay the residue, if any, to the person or persons legally entitled thereto. Payment of the purchase price to the Trustee shall satisfy the obligation of the purchaser at such sale therefor, and such purchaser shall not be bound to look after the application thereof. The sale or sales by the Trustee of less than the whole of the Mortgaged Premises shall not exhaust the power of sale herein granted, and the Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Mortgaged Premises shall be sold; and if the proceeds of such sale or sales of less than the whole of such Mortgaged Premises shall be less than the aggregate of the indebtedness secured hereby and the expense of executing this trust, this Deed of Trust and the lien, security interest and assignment hereof shall remain in full force and effect as to the unsold portion of the Mortgaged Premises just as though no sale or sales

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**Deed of Trust (Security Agreement, Financing Statement)**

had been made; provided, however, that Grantors shall never have any right to require the sale or sales of less than the whole of the Mortgaged Premises but Beneficiary shall have the right, at its sole election, to request the Trustee to sell less than the whole of the Mortgaged Premises. If default is made hereunder, the holder of the indebtedness or any part thereof on which the payment is delinquent shall have the option to proceed with foreclosure in satisfaction of such item either through judicial proceedings or be directing the Trustee to proceed as if under a full foreclosure, conducting the sale as herein provided without declaring the entire indebtedness secured hereby due and if sale is made because of default of an installment, or a part of an installment, such sale may be made subject to the unmatured part of the Note and other indebtedness secured by this Deed of Trust; and it is agreed that such sale, if so made, shall not in any manner affect the unmatured part of the indebtedness secured by this Deed of Trust, but as to such unmatured part, this Deed of Trust shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the indebtedness secured hereby.

14. In case of any sale hereunder, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder, all statements of facts, or other recitals therein made as to the nonpayment of money secured, or as to the request to the Trustee to enforce this trust, or as to the proper and due appointment of any substitute trustee, or as to the advertisement of sale, or time, place, and manner of sale, or as to any other preliminary fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true. The purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted, or rental, lease or other contract made, in violation of any provision of this Deed of Trust, and may take immediate possession of the Mortgage Premises free from, and despite the terms of, such grant of easement and rental or lease contract.

15. At the option of the Beneficiary, with or without any reason, a successor substitute trustee may be appointed by the Beneficiary without any formality other than a designation in writing of a successor or substitute trustee, who shall thereupon become vested with and succeed to all the powers and duties given to the Trustee herein named, the same as if the successor or substitute trustee had been named original Trustee herein; and such right to appoint a successor substitute trustee shall exist as often and whenever the Beneficiary desires. If Beneficiary is a corporation and such appointment is executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation.

16. Neither the exercise of, nor the failure to exercise, any option given under the terms of this Deed of Trust shall be considered as a waiver of the right to exercise the same, or any other option given herein, and the filing of a suit to foreclose this Deed of Trust, either on any matured portion of the debt or for the whole debt, shall never be considered an election so as to preclude foreclosure under the power of sale after a dismissal of the suit; nor shall the filing of the necessary notices for foreclosure, as provided in this Deed of Trust, preclude the prosecution of a later suit thereon.

17. In the event of a trustee's sale hereunder and if at the time of such sale the Grantors occupy the portion of the Mortgaged Premises so sold, or any part thereof, Grantors shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Mortgaged Premises so occupied, such rental to be due and payable daily to the purchaser. An action of forcible detainer shall lie if the tenant holds over after a demand in writing for possession of such Mortgaged Premises; and this agreement and any trustee's deed shall constitute a lease and agreement under which the tenant's possession, each and all, arose and continued.

18. Grantors will not, without the prior written consent of Beneficiary, execute or deliver any pledge,

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**Deed of Trust (Security Agreement, Financing Statement)**

security agreement, mortgage or deed of trust covering all or any portion of the Mortgaged Premises (hereinafter called "Subordinate Mortgage"). In the event of consent by Beneficiary to the foregoing or in the event the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable by the provisions of any applicable law, Grantors will not execute or deliver any Subordinate Mortgage unless there shall have been delivered to Beneficiary not less than ten (10) days prior to the date thereof a copy thereof which shall contain express covenants to the effect:

- a. That the Subordinate Mortgage is in all respects unconditionally subject and subordinate to the lien, security interest and assignment evidenced by this Deed of Trust and each term and provision hereof;
- b. That if any action or proceeding shall be instituted to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Mortgaged Premises will be named as a party defendant, nor will any action be taken with respect to the Mortgaged Premises which would terminate any occupancy or tenancy of the Mortgaged Premises without the prior written consent of Beneficiary;
- c. That the Rents and Profits, if collected through a receiver or by the holder of the Subordinate Mortgage, shall be applied first to the obligations secured by this Deed of Trust, including principal and interest due and owing on or to become due and owing on the Note and the other indebtedness secured hereby and then to the payment of maintenance, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operating and maintenance of the Mortgaged Premises; and
- d. That if any action or proceedings shall be brought to foreclose the Subordinate Mortgage, written notice of the commencement thereof will be given to Beneficiary contemporaneously with the commencement of such action or proceeding.

19. Nothing herein contained shall be so construed or operate as to require Grantors to pay interest on the Note or Notes, or any other liability or debt now existing or hereafter to exist hereunder at a rate greater than that allowed by Law, and if any provisions herein contained do, or would, presently and prospectively, operate to make this Deed of Trust or any part thereof void, voidable or ineffective, then such provisions only shall be held for naught and as though not herein contained and shall be without effect upon or prejudice to the remaining provisions, which shall nevertheless remain operative. Any of said contracts for interest shall be held subject to reduction to the highest amount allowed under applicable law as now or hereafter construed by courts having jurisdiction.

20. If, while this trust is in force, the title of the Trustee to, or the interest of Beneficiary in, the Mortgaged Premises hereby conveyed or any part thereof, shall be endangered or shall be attached directly, or indirectly, Grantors hereby authorize Beneficiary, at Grantors' expense, to take all necessary and proper steps for the defense of such title or interest, including the employment of counsel, the prosecution or defense of litigation, and the compromise or discharge of claims made against such title or interest. At any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Note, or any part thereof, or any other indebtedness secured hereby, Grantors shall immediately pay all such taxes; provided that, in the alternative Grantors may, in the event of the enactment of such a law, and must, if it is unlawful for Grantors to pay such taxes, prepay the Note, and any other indebtedness secured hereby, in full with sixty (60) days after demand therefor by Beneficiary. Grantors shall at any time and from time to time, furnish promptly, upon request, a written statement or affidavit in such form as may be required by Beneficiary, stating the unpaid balance of the Note, and any other indebtedness secured hereby, and that there are no offsets or defenses against full payment of the Note, and any other indebtedness secured hereby, and performance of the terms hereof, or if there are any such offsets and defenses, specifying them.

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**Deed of Trust (Security Agreement, Financing Statement)**

21. Unless Grantors have provided a survey of the Mortgaged Premises which shows to the contrary, Grantors represent and warrant that none of the Mortgaged Premises, or any part thereof, is situated within a flood plain, flood prone areas, special flood hazardous areas or the like, as so designated by the applicable Flood Hazard Boundary Map or any such similar map or plat issued or controlled by The Flood Insurance Administration and/or any other federal agency appointed to regulate such matters under the Federal Flood Disaster Protection Act, as amended, and Grantors hereby indemnify and hold Beneficiary harmless, from any claims and/or costs arising against or waived by Beneficiary if the Mortgaged Premises are, in fact, determined to be in such an area. In the event that the foregoing blank is checked, Grantors will keep the Mortgaged Premises insured for the protection of Beneficiary against loss by flood, and the provisions of this Deed of Trust concerning amounts of coverage, payment of premiums, endorsements, payment and application of insurance proceeds, and other matters regarding hazard insurance shall apply with equal force to Grantors' obligation herein to obtain flood insurance.

22. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Mortgaged Premises, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Deed of Trust.

23. Whenever used the singular number shall include the plural, the plural the singular, the use of any gender shall include all genders. The words "Grantors" and "Beneficiary" shall include their heirs, executors, administrators, successors and assigns and the word "Trustee" shall include his successors and substitute trustees.

24. Beneficiary shall have the right to become the purchaser at all sales to enforce this trust, being the highest bidder, and to have the amount for which such property is sold credited on the debt then owing.

25. Grantors will pay all reasonable attorney's fees and expenses which may be incurred by the Beneficiary or Trustee, in enforcing the terms of the Note and this Deed of Trust, or in any suit to which the Beneficiary or Trustee may become a party where the Deed of Trust or the Mortgaged Premises are in any manner involved and all expenses incurred in presenting a claim against the estate of a decedent or a bankrupt and will also pay any attorney's fees and expenses reasonably incurred in connection with the assignment to Beneficiary of any leases subsequently entered into by Grantors which by the terms hereof are required to be assigned to Beneficiary as additional collateral to secure payment of the indebtedness herein secured as well as any and all such fees and expenses reasonably incurred prior to full and final payment of such indebtedness relating to future advances, transfer of title to the premises and similar matters not otherwise provided for herein.

26. With respect to any personal property herein described this Deed of Trust shall constitute a Security Agreement between Grantors and Beneficiary, and, cumulative of all other rights of Beneficiary hereunder, Beneficiary shall have all of the rights conferred upon secured parties by the Uniform Commercial Code, as amended, as to this property. This Deed of Trust, as a Financing Statement, covers the following types property: Minerals, crops and goods that are, or are to become, fixtures as more fully described herein, and related to the real estate described herein, and it is intended that as to those goods and the proceeds thereof, this Deed of Trust shall be effective as a Financing Statement filed as a mineral, crop and fixture filing from the date of its filing for record in the Real Estate Records of the County in which the land is located. Information concerning the security interest created by this instrument may be obtained from the holder of this indebtedness and secured party at the Post Office address as shown in Paragraph numbered 1 of this Deed of Trust. Until the lien of this Deed of Trust is released or satisfied of record, Grantors agree, if requested by Beneficiary so to do, to execute one or more Financing Statements covering such personal property, in the manner and form required by law and to the

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**Deed of Trust (Security Agreement, Financing Statement)**

satisfaction of Beneficiary. Grantors agree to pay Beneficiary's charge, to the maximum amount permitted by law, for any statement by Beneficiary regarding the obligations secured by this Deed of Trust, requested by Grantors or on behalf of Grantors. On demand, Grantors will promptly pay all costs and expenses of filing Financing Statements, continuation statements, partial releases and termination statements deemed necessary or appropriate by Beneficiary to establish and maintain the validity and priority of the security interest of Beneficiary or any modification thereof, and all costs and expenses of any searches reasonably required by Beneficiary. Beneficiary may exercise any or all of the remedies of a secured party available to it under the Uniform Commercial Code, as amended, with respect to such personal property, and it is expressly agreed that if upon default Beneficiary should proceed to dispose of the collateral in accordance with the provisions of the Uniform Commercial Code, as amended, ten (10) days notice by Beneficiary to Grantors shall be deemed to be reasonable notice under any provision of the Uniform Commercial Code, as amended, requiring such notice; provided, however, that Beneficiary may at its option dispose of the collateral in accordance with Beneficiary's rights and remedies in respect of the real property pursuant to the provisions of this Deed of Trust, in lieu of proceeding under the Uniform Commercial Code, as amended.

27. It shall be a default hereunder if Grantors should sell (be executory Contract for Deed or otherwise), assign or convey any part or all of the Mortgaged Premises (regardless of whether the buyer or assignee "assumes" the indebtedness hereby secured or takes "subject to" such indebtedness) without first obtaining the written Consent of Beneficiary; provided, however, this paragraph shall not apply to sales of standard inventory items of personal property in the ordinary course of Grantors' business.

28. This Deed of Trust constitutes a "construction mortgage" as defined in the Uniform Commercial Code as enacted in Texas, and secures an obligation incurred for the construction of improvements on the real property described herein. Grantors shall use the proceeds of such construction loan to construct improvements on the Mortgaged Premises according to Plans and Specifications submitted to Beneficiary, and any such improvements, and all building materials and supplies placed on the Mortgaged Premises, shall constitute additional security for the repayment of such construction loan and other obligations hereby secured. Further, all plans and specifications, permits and all contracts and subcontracts, all accounts and monies due Grantors and any and all other rights, interests and privileges of Grantors in connection with said construction project shall constitute additional security for the indebtedness and obligations hereby secured. Grantors further covenant and agree that they will comply with all state, federal and other governmental architectural barriers laws and regulations governing such construction.

29. Expenses; Indemnification. To the extent not prohibited by applicable law, Grantors will pay all costs and expenses and reimburse Bank for any and all expenditures of every character, including, but not limited to, the fees and expenses of counsel for Bank, incurred or expended from time to time, regardless of whether a default or event of default shall have occurred in connection with: (a) Bank's evaluating, monitoring, administering and protecting the Mortgaged Premises; and (b) Bank's creating, perfecting or realizing upon Bank's security interest in and liens on the Mortgaged Premises, and all costs and expenses relating to Bank's exercising any of its rights and remedies under this or any of the other security instruments or at law, including, without limitation, all appraisal fees, consulting fees, filing fees, taxes, brokerage fees and commissions, title review and abstract fees, Uniform Commercial Code search fees, other fees and expenses incident to title searches, reports and security interests, escrow fees, attorneys' fees, legal expenses, court costs, fees and expenses incurred in connection with it; provided, that no right or option granted by Grantors to Bank or otherwise arising pursuant to any provision of this or any other instrument shall be deemed to impose or admit a duty on the Bank to supervise, monitor or control any aspect of the character or condition of the Mortgaged Premises or any operations conducted in connection with it for the benefit of Grantors or any other person or entity other than the Bank. The Grantors agree to indemnify, defend and hold the Bank, its directors, officers and employees (collectively, "Indemnified Parties") harmless from and against any and all loss, liability, obligation, damage, penalty, judgment, claim,

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**Deed of Trust (Security Agreement, Financing Statement)**



deficiency and expense (including interest, penalties, attorneys' fees and amount paid in settlement), regardless of whether the same was caused in whole or in part by the negligence of any of the Indemnified Parties, to which the Indemnified Parties may become subject arising out of or in connection with this Agreement, the Note, any other security instruments hereto or any transaction contemplated herein to therein (other than those which arise by reason of the gross negligence of the Bank). Any amount to be paid hereunder by the Grantors to the Bank shall be a demand obligation owing by the Grantors to the Bank and shall bear interest from the date of expenditure at the highest lawful rate.

30. Environmental Matters. Without the Bank's prior written consent, Grantors shall not use, store, treat, generate, release, discharge, dispose or transport any Hazardous Materials on, under, in, above, to or from the Mortgaged Premises. For the purposes of this section, "Hazardous Materials" shall refer to any underground storage tank, petroleum, polychlorinated biphenyls or other substances, materials and wastes that are or become regulated as hazardous or toxic substances under any applicable local, state or federal law, regulation or order, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act, each as amended from time to time (herein collectively called "Environmental Laws"). Grantors shall indemnify, defend and hold Bank harmless from and against; (a) any loss, costs, expense, claim or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, remedial or restoration work ("Remedial Work") required by Bank, or any non-governmental entity or person, or any governmental agency or political subdivision which requires Remedial Work upon a reasonable belief that the Remedial Work is required by the Environmental Laws; and (b) any claims of third parties for loss, injury, expense or damage arising out of the use, presence, treatment, generation, release, discharge, disposal or transportation of any Hazardous Materials on, under, in, above, to or from the Mortgaged Premises. In the event any Remedial Work is so required under applicable Environmental Laws, Grantors shall perform or cause to be performed the Remedial Work in compliance with all Environmental Laws. All Remedial Work shall be performed by one or more contractors under the supervision of a consulting engineer, each contractor and the consulting engineer being selected by Grantors and approved in advance in writing by Bank. Grantors shall promptly provide the Bank with copies of the remedial plan and allow the Bank to attend meetings among Grantors, the consulting engineer, the contractors and any regulatory authority. In the even Grantors shall fail to commence the Remedial Work in a timely fashion or fail to prosecute diligently the Remedial Work to completion, Bank may, but shall not be required to, cause the Remedial Work to be performed, subject fully to the indemnification provisions of this section. It shall not be necessary for the Bank to incur any expense to enforce this indemnification, and the indemnification contained herein shall survive repayment of the Note and release of the lien of this Deed of Trust and shall be fully applicable notwithstanding any negligence on the part of any Indemnified Party. The liabilities and covenants of Grantors hereunder may not be assigned and any such assignment shall be null and void without the Bank's prior written consent.

31. Grantor also grants to the trustee a security interest in all oil, gas, and other minerals that might be produced from the land covered by this deed of trust. This deed of trust (i) is to be filed in the real property records of the county in which the land is located, (ii) covers all "as-extracted collateral," as defined in Texas Business and Commerce Code §9.102, attributable to the land, (iii) serves as a security agreement covering the as-extracted collateral, (iv) serves as an assignment of all payments made for damages or anticipated damages to the land, and (v) serves as a financing statement covering as-extracted collateral and fixtures as provided in Texas Business and Commerce Code §9.502. The provisions of this paragraph are cumulative of all other provisions of this deed of trust.

**ADDITIONAL PROVISIONS:**

The note secured hereby is secured by the Vendor's Lien retained in the Deed of even date herewith conveying the property to Grantors, which Vendor's Lien has been assigned to Lender, this Deed of Trust

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**Deed of Trust (Security Agreement, Financing Statement)**

being additional security therefore.

**THIS WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.**

**THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

EXECUTED this **First** day of **November**, 2012.

**Great Custom, Inc., a Texas corporation**

\_\_\_\_\_  
Signature Date

**Joe Builder, President**

Mailing address:  
555 Honey Street  
Fort Worth, TX 76116

*[Sign Originals Only]*

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by **Joe Builder, President of Great Custom, Inc., on behalf of said corporation.**

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
**Deed of Trust (Security Agreement, Financing Statement)**

AFTER RECORDING RETURN TO:  
**Great Custom, Inc.**  
555 Honey Street  
Fort Worth, TX 76116

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**Warranty Deed with Vendor's Lien**

Date: Executed on the date set forth in the acknowledgement herein, but to be effective the First day of November, 2012.

Grantor: **Billy Seller**

Grantor's Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Grantee: **Great Custom, Inc.**

Grantee's Mailing Address: **555 Honey Street Fort Worth, TX 76116**

Consideration:

**Ten Dollars (\$10.00) and other good and valuable consideration paid to Grantor by Grantee and a note of even date in the principal amount of Three Hundred Nine Thousand One Hundred Seventy Eight and 00/100 Dollars -- (\$309,178.00) made by Grantee payable to the order of ABC Bank , "Lender" herein, as consideration for the amount paid to Grantor. The note is secured by a vendor's lien retained in favor of Lender in this deed and by a deed of trust of even date from Grantee to Michael H. Patterson , Trustee.**

Property (including any improvements):

**Being Lot One (1) in Block Two (2) of ESTATES AT THE LAKE, PHASE I, amending Replat of Lots 1 & 2, Block 3 and Lots 4 & 5, Block 6, Estates at the Lake Phase I, within the City of Fort Worth, Tarrant County, Texas, according to the Plat of record in Cabinet ABC, Slide 11 of the Plat Records of Tarrant County, Texas.**

**The above described property also includes any and all of Grantor's right, title, and/or interest in any and all system memberships and/or ownership certificates in any non-municipal water and/or sewer systems now or in the future serving said property.**

Reservations from and Exceptions to Conveyance and Warranty:

**This conveyance is given and accepted subject to any and all restrictions, reservations, covenants, conditions, rights of way, easements, municipal or other governmental zoning laws, regulations and ordinances, if any, affecting the herein described property.**

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Warranty Deed with Vendor's Lien

**Grantee herein assumes the taxes for the current year.**

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells, and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty. The vendor's lien (to the extent of **\$60,000.00** consideration paid by Grantee to Grantor) against and superior title to the property are retained until each note described is fully paid according to its terms, at which time this deed shall become absolute. The vendor's lien and superior title retained in this deed are transferred to Lender, without recourse on Grantor. When the context requires, singular nouns and pronouns include the plural. When executed by a corporation the words "heirs and assigns" shall be construed to mean "Successors and assigns".

**Billy Seller**

\_\_\_\_\_

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

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_ **of Billy Seller, on behalf of said entity.**

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

## **Residential Construction Loan Agreement (Builder's Name)**

This RESIDENTIAL CONSTRUCTION LOAN AGREEMENT (the "Agreement") is entered into among **Great Custom, Inc.** (the "Borrower" whether one or more), and **ABC Bank** ("Lender")

### **RECITALS:**

WHEREAS, Borrower owns or intends to purchase the land (the "Property") which is described as:

**Being Lot One (1) in Block Two (2) of ESTATES AT THE LAKE, PHASE I, amending Replat of Lots 1 & 2, Block 3 and Lots 4 & 5, Block 6, Estates at the Lake Phase I, within the City of Fort Worth, Tarrant County, Texas, according to the Plat of record in Cabinet ABC, Slide 11 of the Plat Records of Tarrant County, Texas.**

WHEREAS, Borrower desires to construct certain improvements (the "Improvements") thereon; and

WHEREAS, the Improvements are to be built in accordance with the budget approved by Lender and attached hereto as Exhibit "B" (the "Work Schedule") and the plans and specifications previously provided to and approved by Lender (the "Plans and Specifications").

### **AGREEMENT:**

NOW, THEREFORE, in consideration of the promises herein contained, and for Ten Dollars (\$10.00) and other good and valuable consideration paid by each to the other, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Agreement to Advance.** Lender shall make a loan (the "Loan") to Borrower, not to exceed the principal amount of the Promissory Note executed on this day evidencing the Loan (the "Note"), to pay for the costs for labor performed and materials furnished (collectively called the "Work") in accordance with the Plans and Specifications. All advances made by the Lender for financing construction of the Improvements shall be charged against the Note. Borrower will pay all interest which accrues on the Note within ten (10) days after billing by Lender.

Borrower shall place with Lender, or its designee, on this date the sum of **\$0.00**, for credit to a "Construction Loan Account" (hereinafter referred to as the Construction Loan Account) to be opened on the books of Lender on behalf of the Borrower, and disbursed by Lender pursuant to this Agreement. Use of the Construction Loan Account is restricted to the above-referenced transaction and to the terms of this Agreement and shall not be used for any other purpose. The funds distributed from said Construction Loan Account shall be referred to as Construction Loan Funds.

Withdrawals shall be made from the Construction Loan Account before any of the funds of the Lender will be advanced. If the funds to be advanced under the Loan, together with the funds in the Construction Loan Account, appear to the Lender at any time to be insufficient to complete the Improvements in accordance with the Plans and Specifications, the Borrower agrees to promptly deposit in the Construction Loan Account funds to cover the insufficiency. Any excess funds will be refunded to the Borrower or credited against any completion costs at Borrower's option.

Borrower shall deposit with Lender, or its designee, on this date the sum of **\$0.00**, for credit to a "Retainage Account" (hereinafter referred to as the Retainage Account). This Retainage Account shall be available only to

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Residential Construction Loan Agreement - Builder's Name

Lender to cover any expense incurred by Lender as a result of any default by Builder or Borrower under this Agreement or any document incorporated herein, including, but not limited to payment of any mechanic's liens filed against the Property or to otherwise satisfy any retainage requirement. Any remaining balance shall be returned to Borrower thirty (30) days after the Improvements have been completed.

2. **Assignment of Vendor's Lien.** If Borrower does not currently own the Property, the first disbursement of the proceeds of the Loan shall be used to purchase such Property, and the Vendor's Lien shall be assigned or otherwise transferred to Lender. The remaining Loan proceeds shall be advanced by Lender to Borrower as portions of the Work are completed pursuant to the provisions of this Agreement.

3. **Borrower's Representations and Warranties.** Borrower represents and warrants that, (i) Borrower has full right, power and authority to execute this Agreement; (ii) no Work has commenced nor have any materials been delivered on or to the Property or specially manufactured or prefabricated items been ordered; (iii) no written or oral agreement regarding the construction of all or any portion of the Improvements thereof has been entered into by Borrower or to the best of Borrower's knowledge by any subcontractor; and (iv) the funds to be advanced hereunder, together with other funds in the Account are sufficient to fully construct the Improvements, pay all expenses necessary for such construction; and (v) Borrower agrees that all disbursements during construction and upon completion of construction will be subject to the retainage requirements of the Texas Property Code.

4. **Procedure for Construction Advances.** The proceeds of the Loan and any funds held in the Account shall be advanced at such times as Borrower has earned a portion of amounts due under the approved Work Schedule (the "Completed Work"). A written draw request for each advance shall be delivered to Lender at least three (3) business days prior to the date on which such advance is to be made. The draw request shall be in a form acceptable to Lender. If requested by Lender, each such request must be accompanied by pertinent invoices, receipts, certificates, lien waivers and other documents. Lender shall have no obligation to make any advance if, at the time the request for such advance is made, Borrower is in default with respect to any provision of this Agreement or of any instrument referred to herein. Each draw request shall be deemed a representation and warranty by Borrower that no such default exists. The amount of each construction advance shall be for the items listed in the draw request, as approved by Lender, less the total of all amounts previously advanced and any necessary Retainage (as defined herein) not covered by the funds in the Account. The checks/wire transfers shall be delivered by Lender to Borrower based upon progress made in the Work, in such amounts and at such times as Lender, in its discretion, determines as being reasonable based upon inspections made by Lender or its agent from time to time. Unless such individuals have been already paid, Borrower will use the Loan proceeds to pay all subcontractors, artisans, laborers and materialmen contributing to the Work which has been accomplished to date. Lender has the right as a condition precedent to the issuance of a check to require an inspection of the Work by the inspector or appraiser of its choice, at the expense of the Borrower, and to require a title search of the Property or title policy endorsement. A minimum of three (3) and a maximum of ten (10) inspections may be required by Lender. The expense to the Borrower of each inspection shall not exceed **\$50.00 per inspection**. Borrower agrees to utilize the checks and wire transfers delivered to it by Lender strictly in accordance with the provisions of this Agreement. Borrower represents to Lender that it will not request payment from Lender or accept payment from Lender from the proceeds of the Loan unless the portion of the Work to be paid from such payment has been completed, and Borrower either has paid or with the proceeds of each check will pay all subcontractors, artisans, laborers and materialmen for the work they have performed or furnished up to the date of payment. Borrower acknowledges and agrees with Lender that a failure to comply with the covenants made in this Paragraph, or to follow the procedures for disbursement of the Loan proceeds designated in this Paragraph or any use of the Loan proceeds for a purpose different from that specified in this Agreement shall constitute a default on the Loan by Borrower, thereby enabling Lender, at its option, to accelerate maturity of the Loan and to exercise all remedies provided to it under the provisions of the Note, Security Instrument and the Contract. If at the time any such draw request is made Lender determines that there are insufficient funds remaining to be advanced to complete the

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Residential Construction Loan Agreement - Builder's Name

Improvements in accordance with the Plans and Specifications, Lender shall have no obligation to advance funds hereunder until such time as Borrower has deposited sufficient funds into the Account which, when added to the remaining funds to be advanced, are sufficient in the opinion of Lender to complete said Improvements in accordance with the Plans and Specifications.

5. **Conditions Precedent for the Initial Construction Advance.** As a condition precedent to the initial advance of funds for the construction of the Improvements, and in addition to the requirements for all additional advances, all of the following conditions shall have been satisfied, which satisfaction shall be determined solely by Lender.

- a. **Documentation.** Borrower shall have delivered the following documents:
  - (i) This Agreement, fully executed and acknowledged.
  - (ii) A copy of the recordable Warranty Deed (if applicable) conveying the Property to Borrower with the vendor's lien assigned to the Lender.
  - (iii) The original executed Note, and any applicable allonge.
  - (iv) A fully executed and acknowledged Deed of Trust and applicable Riders (the "Security Instrument") covering the Property and all Improvements thereon, whether now existing or hereafter constructed.
  - (v) Any other documentation required by Lender.
- b. **Mortgagee Title Policy.** Borrower shall furnish to Lender an acceptable Mortgagee Policy of Title Insurance, insuring that the lien created by the Security Instrument constitutes a valid lien on the Property. Such policy shall in form and substance be acceptable to Lender, and contain only the Lender approved exceptions. It must evidence that all due and payable real estate taxes, including subsequent assessments for prior years due to change in land usage or ownership, have been paid in full. At the completion of construction, the Borrower shall be responsible for the cost of any endorsements or additional title coverage necessary to satisfy Lender.
- c. **Work Schedule.** Borrower shall have furnished to Lender, in form and content acceptable to Lender, the Work Schedule and budget prepared for the project; and the names, addresses and telephone numbers of all subcontractors and suppliers with whom Borrower has contracted or intends to contract for the construction of the Improvements.
- d. **Plans and Specifications.** Borrower shall have furnished to Lender two final sets of the executed and dated Plans and Specifications for the Improvements and any modifications thereof with, if required, the appropriate governmental approval(s), which shall be reviewed and approved by Lender. Furthermore, Borrower shall provide such additional sets of the executed and dated Plans and Specifications as may be required by any governmental authorities. The executed and dated Plans and Specifications shall be attached to this Agreement. If any change order is agreed to by the parties, the executed and dated Plans and Specifications shall be amended, and a modified set shall be provided to Lender.
- e. **Soil Test.** If requested to do so by Lender, Borrower shall furnish to Lender a copy of all fault line maps, soil and subsoil test reports for the Property prepared by a registered engineer qualified to do soil testing and acceptable to Lender.
- f. **Building Permit.** Borrower shall have furnished to Lender building permits and all other necessary approvals, including approval from any appropriate environmental agency, issued by the appropriate governmental authority with respect to the Improvements. Borrower shall provide Lender with satisfactory evidence that all Plans and Specifications for construction of the

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Improvements have been approved by all governmental units having jurisdiction and, if applicable, by the appropriate home owners association or architectural review committee, and that construction shall comply with applicable zoning, building use, occupancy codes, and restrictions. Borrower represents and warrants to the Lender that all utility services and facilities necessary for the construction and utilization of the Improvements are unconditionally available to the Property and any costs associated therewith are included in the approved budget.

- g. **Survey.** Borrower further agrees to furnish Lender, prior to the pouring of a concrete foundation for the Improvements, a preliminary form board survey, prepared by a registered surveyor or engineer acceptable to Lender, which survey shall show that the foundation will comply with the minimum slab level regulations promulgated by the Federal Housing Administration and the regulations of the municipality in which the Property is located. If the Property contains existing Improvements, a current survey made and certified by a registered public surveyor or professional engineer in a form acceptable to Lender, which survey will include a flood stamp, shall be furnished to Lender.
- h. **Homeowner's Warranty.** Unless waived in writing by Lender, evidence must be furnished to Lender that Borrower is approved by an association acceptable to Lender for the issuance of a homeowner's warranty.
- i. **Insurance.** Borrower shall have obtained or cause to have been obtained from an insurance company acceptable to Lender, builder's all risk extended coverage insurance against loss or damage, which coverage in no event shall be less than the total amount of the Loan. Such insurance policy shall name the Lender as a "loss-payee" as its interest may appear, and shall contain a mortgagee clause acceptable to Lender. Borrower shall furnish Lender with a certificate that such insurance is in full force and effect. Borrower shall also furnish a public liability insurance policy. Each such policy shall be in an amount and form and issued by an insurer acceptable to Lender. Each such policy shall also provide that Lender receive written notice thirty (30) days prior to cancellation of said policy and shall be otherwise satisfactory in content to the Lender. The originals of such policies shall be deposited with the Lender, or in lieu thereof, certified copies of the original policies along with original certificates of insurance coverage. In case of loss, Lender, at its option, shall be entitled to receive and retain the proceeds of the insurance policies, applying the proceeds to the balance of the Note, and the balance of such proceeds, if any, shall be paid to the Borrower.
- j. **Flood Insurance.** Lender shall have been provided with evidence, satisfactory to the Lender, that the Property is not situated in an area designated by the Federal Emergency Management Agency as being located in a special flood hazard area, or Borrower shall provide flood insurance from an insurer acceptable to Lender and in form and amount satisfactory to Lender.
- k. **Affidavit of Commencement.** As a condition precedent to the first advance for labor, materials or construction services (whether or not it is the first advance) Lender may require Borrower to execute and date in order for Lender to record with the County Clerk of the County in which the Property is located an Affidavit of Commencement as authorized by Section 53.124 of the Texas Property Code (or such other subsequent provision replacing said section). Such Affidavit shall designate the date of commencement of construction of the Improvements, which date shall be subsequent to the recording date of the Security Instrument.

6. **Additional Advances.** Each advance is subject to the satisfaction, as determined solely by Lender, of the  

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following conditions at the time of such advance. Lender reserves the right to make advances which are allocated to any of the designated items in the approved Work Schedule for such other purposes or in such different proportions as Lender may, in its sole discretion, deem necessary or advisable. Borrower may not reallocate items of cost or change the approved Work Schedule without the prior written consent of Lender. The Borrower agrees to fulfill each of these conditions, and to furnish to the Lender such evidence of compliance therewith as the Lender may require:

- a. The Borrower has fully complied with all obligations under this Agreement and are entitled to such advance, it being understood that the making of any advance when the Undersigned are not entitled thereto will not constitute a waiver by the Lender of such compliance in that or any other case.
- b. A foundation survey, if required by Lender, shall have been furnished to Lender within ten (10) days after laying of the foundation of the Improvements, showing no encroachments of the Improvements on any boundary line, or easement, setback line or other restricted area.
- c. No fire or other casualty has occurred which could reasonably be expected to make it impossible for the Improvements to be completed by the completion date stated herein. There have been no notifications from any municipal authority of any potential fire or environmental hazard.
- d. If requested by Lender, the Borrower will furnish to the Lender a title insurance policy endorsement insuring the lien on the Security Instrument to be a valid lien, containing only such exclusions and exceptions as the Lender may approve, issued by a title insurance company satisfactory to the Lender, current to the date of the advance and covering that advance and all prior advances.
- e. The Lender has been furnished with sworn statements by the Borrower as specially requested to do so by the Lender as follows:
  - (i) The names, and the amounts due as well as the amounts already paid or to be paid contemporaneously with the requested advance to each contractor, subcontractor or other person or entity furnishing materials or performing work entering the construction of any improvements are accurate.
  - (ii) The stage of completion of the construction and the overall cost of construction theretofore incurred, and that no material changes from the Plans and Specifications have been made.
  - (iii) The estimated overall cost of completing the Improvements, to be in such form and with such supporting details as the Lender shall require, including (without limitation) certification by the Borrower of the estimated cost of completing construction pursuant to the Plans and Specifications, demonstrating to the satisfaction of the Lender that the amount to be subsequently advanced will be sufficient to pay the remaining overall cost of completing construction.
  - (iv) That all Work performed to the date of the advance in question has been performed in a good and workmanlike manner pursuant to the provisions of the work agreement and in conformance with the Plans and Specifications. That all construction has been performed in strict compliance with all applicable ordinances, statutes, regulations, and

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subdivision requirements or restrictions.

- (v) That no default exists under the Note, the Security Instrument, or this Agreement, and that no event has occurred which, with the giving of notice, or otherwise, would constitute an event of default under said Note, Security Instrument, or this Agreement. Any advance made by Lender prior to the fulfillment by Borrower of any requirements made by Lender, or of any condition precedent set forth in this Agreement shall not be deemed a waiver of Lender's right to have such requirement or condition precedent fulfilled prior to advancing future Loan proceeds. Lender may, but shall not be obligated to, advance an amount that exceeds the face amount of the Note.
- (vi) That there are no liens or encumbrances against said Property other than the Note to Lender or those otherwise approved by Lender.

7. **Retainage Fund.** It is understood by Borrower that Section 53.101 of the Texas Property Code requires Borrower to retain ten percent (10%) of the Contract Price or the value of the Work (the "Retainage") during the progress of construction and thirty (30) days after completion of the construction. Borrower acknowledges that failure to retain such funds may result in all qualified lien claimants having a lien against the Property in lieu of such Retainage Fund, and personal liability on the part of the Borrower may be the result. Lender has the option, but is not required, to retain ten percent (10%) of each advance until thirty-one (31) days after all Work has been completed, all governmental authorities or other entities having jurisdiction over the Property have approved the Work, and Lender has received evidence satisfactory to it that all obligations incurred in connection with the Work have been fulfilled or paid, at which time the Retainage shall be payable. For purposes of this Paragraph, the Work shall be deemed to be completed on the day the Improvements are ready for occupancy, subject only to completion of the usual punch list items. Borrower may elect to waive the retainage period if acceptable title insurance can be obtained, and Borrower accepts full responsibility for such waiver. In no event shall Lender be considered a fiduciary for the administration of the fund, nor shall Lender incur any liability for Borrower's failure to hold the Retainage.

8. **Right of Inspection.** The Borrower shall furnish the Lender with a complete duplicate set of Plans and Specifications. The Lender has the right, but not the obligation, during construction of the Improvements to inspect the same and require to be repaired or replaced, at Borrower's expense, any material or workmanship that does not comply with the Plans and Specifications. Such inspection shall not cost more than **\$50.00 per inspection**. A minimum of three (3) to a maximum of ten (10) shall be required by Lender. Such inspections shall be deemed to be for the benefit of the Lender only and shall create no liability or responsibility to the Borrower; the parties expressly acknowledge that Lender has no obligation to monitor or control the work for Borrower. Lender's agreement to advance funds under this Agreement is expressly conditioned upon its continuing right to inspect the Property. Lender may inspect the Property at any reasonable time to determine the progress and quality of the Work and the condition of the Improvements, but Lender shall not be liable for the performance or default of any contractor or subcontractor, or for any failure to construct, complete, protect or insure the Improvements or materials, or for the payment of any cost or expense incurred in connection therewith, or for the performance or non-performance of any obligation of Borrower; and nothing, including without limitation any disbursement hereunder or the deposit or acceptance of any document or instrument, shall be construed as a representation, warranty, or waiver express or implied, on Lender's part. Lender may perform any inspection by or through any employee, agent, or independent contractor.

9. **Right of Lender to Complete or Secure.** Borrower agrees that, if construction of the Improvements is delayed or suspended for a period in excess of fifteen (15) days, or if Borrower fails to supply workmen and materials which are satisfactory to Lender at any time during the progress of the construction, or if Borrower or

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any other persons engaged in such construction or any part thereof refuses, omits or neglects to supply a quantity of material or workmen necessary to complete the Work within the required time period, or if Borrower shall be in default with respect to any provision hereof or any provisions of the instruments attached hereto, Lender may (but is not obligated) and is hereby authorized, in its sole discretion, upon five (5) days written notice to Borrower, to proceed with the construction of the Improvements. For these purposes, Lender, and any persons authorized or employed by it, are expressly authorized to enter into and upon said Property and Improvements and take charge thereof, together with all materials, equipment and other personal property thereon and to proceed with the construction of said Improvements, or to require Borrower to complete construction, with any such changes, alterations, additions or modifications as may be deemed necessary or expedient by Lender, and to do whatever Lender may, in its sole discretion, deem necessary to insure completion of the construction, all to the end that the Property shall constitute the best practicable security for the Loan. If construction is delayed or suspended, Lender, in Lender's discretion, and without notice to Borrower, may take such steps as Lender deems reasonable to secure the Property and Improvements from the elements or intruders. Any costs so incurred shall be at Borrower's expense.

10. **Power-of-Attorney.** Borrower does hereby irrevocably constitute and appoint Lender to be its true and lawful attorney-in-fact for it and in its name to sign any and all draw requests for the advances to be made hereunder, as the Lender may in its sole discretion deem necessary and proper to secure the continuance and completion of said Improvements according to the terms hereof, and to pay all sums necessary for incidental expenses in connection therewith, all of which disbursements and sums shall be considered advances made by Lender to Borrower under the provisions of this Agreement and the Note. Lender shall not be required to make such payments unless in its sole discretion it consents to waive the signing of such draw requests by Borrower. Borrower hereby also irrevocably authorizes and empowers Lender to do and perform for them and in its name, place and stead all actions which Lender may in its judgment deem necessary and proper to be done to effect the construction of said Improvements, including but not limited to the execution and recording of any notice or other instrument which Lender may in its sole discretion deem necessary to protect its interest or security. Further, Lender has the option but not the obligation to commence, appear in or defend any action or proceeding which may affect the Property. The Power-of-Attorney contained herein shall be a power coupled with an interest.

11. **Right to Withhold Advances.** Lender shall have no obligation to make any advance hereunder if, at the time of the request for such advance, Borrower is in default with respect to any provisions of this Agreement or any of the instruments referred to herein. Each request for an advance hereunder shall be deemed a representation and warranty by Borrower that no default exists under the Plans and Specifications or under this Agreement. If at the time any such draw request is made Lender determines that there are insufficient funds remaining to be advanced to complete the Improvements in accordance with the Plans and Specifications, Lender shall have no obligation to advance funds hereunder until such time as Borrower has deposited sufficient funds with Lender which, when added to the remaining funds to be advanced, are sufficient in the opinion of Lender to complete said Improvements in accordance with the Plans and Specifications.

12. **Costs to be Paid by Borrower.** Borrower will reimburse Lender for all expenses contemplated in this Agreement of any kind which may be incurred by Lender in connection with this transaction, and Lender may deduct from any advance to be made hereunder any amount necessary for the payment of any unpaid interest owing to Lender hereunder or any fees and expenses of or relating to the examination of the title to the Property, surveys, appraisals, re-appraisals, inspection fees, recording fees, wire transfer fees, architect's fees, attorney fees and legal expenses incurred in the enforcement by Lender of any of the provisions contained in this Agreement, and any other amounts necessary for the payment of the costs of said Improvements, whether incurred by an escrow agent or by Lender, and all sums so deducted or applied shall be deemed advances under this Agreement. In addition, Lender has the option, but not the obligation, to pay or discharge any lien or claim upon the Property and to pay any delinquent tax or assessment thereon, and upon such payment, Lender shall be subrogated to the rights of the

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holder of such lien or claim or the rights of the taxing authority. Lender may also advance any unpaid insurance premiums and obtain and maintain insurance not provided by Borrower. Borrower hereby expressly agrees to pay Lender, upon demand, any and all disbursements made under this Agreement together with interest thereon at the rate stated in the Note from the date each disbursement is made, and Borrower agrees that all such disbursements shall become a part of the indebtedness represented by the Note.

13. **Construction Delays Permanent Loan.** If the Work is not completed on or before **November 1, 2013** (Completion Date), Lender shall be entitled to charge the following Delay Payments. Borrower recognizes that time is of the essence as to the Completion Date. By executing this Contract, Borrower confirms that the Completion Date establishes a reasonable period for performing the work. Borrower recognizes that Lender will suffer financial loss if the work is not completed within the time specified, and that Borrower agrees that because such loss cannot now be ascertained, Lender will be compensated in the amount of  $\frac{1}{2}$  of 1% of the loan amount if the Improvements are not completed before the Completion Date; and for any portion of a 90 day period thereafter, 1% will be collected until the Improvements are complete, herein referred to as "Delay Payments". The parties agree this is reasonable compensation and not a penalty. Borrower agrees that Lender may offset any compensation for Delay Payments against any funds held in any account due to Borrower for the construction of the Improvements. Lender, at Lender's option, may deduct said Delay Payments from the Construction Loan Account and/or Retainage Account referenced herein.

14. **Completion.** For purposes of this Agreement, the Work shall be deemed completed on the day the Property is ready for occupancy, subject only to the completion of the usual punch list items. Borrower agrees, where requested by Lender:

- a. To deliver an acceptable final survey which would allow the title insurer to remove the survey exceptions from the Mortgagee Title Policy.
- b. To deliver an appraiser's final inspection, which is commonly referred to as a recertification.
- c. To deliver a hazard insurance policy, acceptable to Lender and, if applicable, flood insurance application reflecting the correct property address.
- d. To file a Completion Affidavit, in a form acceptable to Lender, of record in the county where the Property is located.
- e. To execute, acknowledge and deliver to Lender an indemnification acceptable to Lender holding Lender harmless if Borrower elects not to hold retainage.
- f. To execute, acknowledge and deliver to Lender any documentation deemed necessary by Lender.
- g. To obtain any further documentation required by Lender.

The Improvements shall not be considered complete unless and until all the Work requiring inspection by any homeowners association or similar entity, or municipal or other governmental authorities having jurisdiction, has been duly inspected and approved by such entities or authorities and all requisite certificates of occupancy and other approvals have been duly issued; and provided, further, that Lender may withhold final payment to Borrower until satisfactory evidence shall have been presented to Lender showing payment in full of all obligations incurred in connection with construction of the Improvements, and waiver of all liens in conjunction with such obligations.

15. **Default.** If the Borrower does not proceed diligently and continuously with an adequate supply of labor and materials to construct and complete the Improvements, except for a period of not more than fifteen (15) days (or of such greater length of time as the Lender may agree to in writing in any given case); or if any statement, representation, or warranty contained herein or in any certificate or other instrument at any time delivered to the Lender pursuant to this Agreement shall be untrue in any material respect at the time such statement, representation, or warranty was made; or if default occurs in the observance and performance of any of the covenants, agreements, or obligations of the Borrower hereunder or under the Security Instrument or the Note secured thereby; or if default occurs in the observance or performance of any of the covenants, agreements or

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obligations of the Borrower hereunder; then, in any such event, all obligation on the part of the Lender to make any further advance hereunder or under the Security Instrument shall, at Lender's election, cease and all amounts previously advanced shall, at the option of the Lender, become immediately due and payable.

16. **Remedies of the Lender.**

- a. In the event of the occurrence of any of the contingencies described in this Agreement which would give the Lender the right to refrain from making any further advances hereunder, the Lender, at its option (and whether or not it exercises any other rights hereunder), may thereupon or at any time thereafter (i) take possession of the Property, together with all materials, equipment, and Improvements thereon, whether or not affixed to the Property; (ii) perform any and all Work and labor and purchase any and all materials necessary to complete the Improvements substantially according to the Plans and Specifications and to equip the same; and (iii) incur and pay such other costs and expenses as are reasonably connected with any of the foregoing. The authorization granted hereby shall be deemed irrevocably vested in Lender for the purpose of protecting Lender's security interest in the Property and shall constitute a power coupled with an interest, and may not be revoked by Borrower. Lender has any rights and/or remedies given to Lender in the Note, Security Instrument, or any other document executed in connection with the Loan, and any remedy at law or in equity under the laws of the State of Texas.
- b. All costs and expenses paid or incurred by the Lender pursuant to the foregoing subparagraph of this Paragraph shall be deemed to be advanced to the Borrower and shall be a part of the indebtedness evidenced by the Note and secured by the Security Instrument. At the option of the Lender, such sums may be deducted from any advance thereafter becoming due.
- c. Nothing herein contained shall be deemed to waive any right given to Lender pursuant to the applicable law relating to mechanic's, artisan's and materialman's liens.

17. **Use of Proceeds by the Lender.** The Lender or its escrow agent may at any time without the consent of the Borrower, pay bills and continue the construction pursuant to this Agreement in accordance with the Plans and Specifications on file with the Lender, using for such purposes the unadvanced net proceeds of the Loan and such sums as may be available in the Account provided, however, that nothing herein shall in any way be construed to obligate the Lender to pay bills or to complete construction.

18. **Approval of Changes to the Construction.** Borrower agrees and understands that, with respect to the construction of the Improvements, no modification, deletion, addition, and/or amendment to the Plans and Specifications subsequent to the execution of this Agreement, may be made without the prior written approval of Lender.

19. **Third Parties.** This Agreement is made for the sole protection and benefit of the Borrower and the Lender, and no other person shall be deemed to have any privity of contract hereunder nor any right of action of any kind hereon.

20. **Environmental.**

- a. Borrower has made such inspections of the Property as it deems reasonable and necessary, regarding the presence of hazardous waste or other toxic substances in or on the Property. Borrower warrants and represents to the Lender that it is not aware of any presence of any hazardous waste or toxic substance in or on the Property, whether in containers or otherwise, any storage medium or facilities for hazardous waste or other toxic substances in or on the Property,

or the use of any part of the Property, for processing or storage of any hazardous waste or other toxic substance. There is excepted from this provision such matters as may pertain to normal utility service to the Property.

- b. Borrower warrants Lender that all chemicals, compounds, paints, sealants, adhesives and construction materials used in the Work will be transported, stored, installed, applied, removed and disposed of in strict accordance with their instructions and any governmental regulations pertaining to them, and shall only be handled by persons properly qualified to handle them.
- c. Borrower herein indemnifies and agrees to hold Lender harmless from any and all liability or claims or causes of action arising from any applicable statute, which Lender may at any time be subject to arising from any interest of Lender in the Property related to the Loan.

21. **Governing Law: Conflicts Between Documents.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. If there is a conflict between the terms of the various loan documents, the following order of priority shall control: (a) Note; (b) this Agreement; and (c) Security Instrument.

22. **Assignment.** Borrower agrees that, without the written consent of the Lender, Borrower will not assign this Agreement or any interest therein, or assign or issue an order on the Lender for any advances or any part thereof, and that any such purported assignment or order shall be null and void, and the Lender shall not be obligated to recognize, accept, or fulfill any such assignment or order. This Agreement shall be binding upon Borrower and Lender, and their respective heirs, devisees, successors, representatives and assigns.

23. **Notices.** Any notice, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed given and received on the date mailed to the addressee at the address indicated below for each respective party, or on the date delivered if delivered in person.

Borrower's Address: **555 Honey Street  
Fort Worth, TX 76116**

Telephone No.:

Lender's Address: **2310 W Interstate 20, 100  
Arlington, TX 76017**

Telephone No.: **(817) 461-5500**

24. **General Provisions.**

- a. Failure by Lender to exercise or enforce any right, power or remedy under this Agreement shall not constitute a waiver of such right, power or remedy.
- b. Any applicable representation made by Borrower herein shall survive the repayment of the indebtedness and the termination of this Agreement.
- c. The liability of each person executing this Agreement as Borrower shall be joint and several.
- d. This Agreement may be amended only by contemporaneous or subsequent written agreement executed by the parties to be bound thereby.
- e. All rights, powers and remedies of Lender contained in this Agreement are cumulative and in addition to all other rights, powers and remedies created in any other document or existing at law

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or in equity.

- f. In the event any part or provision of this Agreement is held unenforceable or void, the enforceability or validity of the remaining parts and provisions shall remain unaffected.
- g. Whenever this Agreement so requires, the masculine shall include the feminine and the neuter, and the singular shall include the plural and vice versa, unless the context clearly requires a different interpretation.
- h. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meanings or interpretations hereof.
- i. Lender may record this Agreement.
- j. Borrower hereby acknowledges receipt of a copy of this Agreement.
- k. The parties further acknowledge and agree that, in the event Borrower brings any legal or quasi-legal proceeding against Lender regarding any of the terms, conditions, duties and obligations of this Agreement, including, without limitation, to rescind, reform, enforce, construe or seek any other legal or equitable relief arising out of, this Agreement, and, in the event Lender prevails in that proceeding or adjudication, including any without prejudice adjudication, Lender shall be entitled to recover the reasonable attorneys' fees, expenses and costs of court incurred by Lender in defending those claims upon which Borrower was unsuccessful through trial and upon appeal.

**BORROWER UNDERSTANDS THAT DURING THE DISBURSEMENT PERIOD OF THE LOAN, BORROWER WILL PAY INTEREST ONLY ON THE OUTSTANDING PRINCIPAL WHICH LENDER HAS ADVANCED PURSUANT TO THE TERMS OF THIS AGREEMENT.**

EXECUTED on the **First** day of **November, 2012**, by all parties, as evidenced by the signatures hereafter.

**Great Custom, Inc., a Texas corporation**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Joe Builder, President**

*[Sign Originals Only]*

**ABC Bank**

\_\_\_\_\_

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

\_\_\_\_\_  
Residential Construction Loan Agreement - Builder's Name

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by **Joe Builder, President of Great Custom, Inc., on behalf of said corporation.**

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_ **of ABC Bank, on behalf of said limited liability partnership.**

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_



**EXHIBIT "B" - WORK SCHEDULE AND CONSTRUCTION COST BREAKDOWN**

<u>START-UP COSTS</u>	<u>BUDGETED COST</u>	<u>ALLOCATED COST</u>	<u>INITIAL ADVANCE</u>
Land Cost	_____	_____	_____
Appraisal Fee	_____	_____	_____
Architect Fees	_____	_____	_____
Building Permits	_____	_____	_____
Tap Fees	_____	_____	_____
Insurance	_____	_____	_____
Title Policy	_____	_____	_____
Builder's Risk	_____	_____	_____
Interest Fees	_____	_____	_____
Loan Origination Fees	_____	_____	_____
Other	_____	_____	_____
<b>Totals:</b>	_____	_____	_____
<u>ADDITIONAL COSTS</u>			
Title Searches *	_____	_____	_____
Inspection & Administration Work *	_____	_____	_____
Surveys *	_____	_____	_____
Realtor Fees	_____	_____	_____
* Cost will be deducted from draw	_____	_____	_____
<u>CONSTRUCTION COSTS</u>			<u>AVAILABLE AFTER RETAINAGE</u>
1. Layout, Excavation & Permits	_____	_____	_____
2. Rough Plumbing/Sewer Taps	_____	_____	_____
3. Slab	_____	_____	_____
4. Forms Pulled/Cables Stressed	_____	_____	_____
5. Wall Framing	_____	_____	_____
6. Roof Framing/Decked	_____	_____	_____
7. Finished Roof	_____	_____	_____
8. Cornice & Facia	_____	_____	_____
9. Exterior Doors & Windows	_____	_____	_____
10. Exterior Veneer	_____	_____	_____
11. Plumbing:	_____	_____	_____
Topout	_____	_____	_____
Finished	_____	_____	_____
12. Electrical:	_____	_____	_____
Rough-In	_____	_____	_____
Finished	_____	_____	_____
Fixtures	_____	_____	_____

Residential Construction Loan Agreement - Builder's Name

13. Heat & A/C:	_____	_____	_____
Rough-In	_____	_____	_____
Furnace Set	_____	_____	_____
Compressor & Final	_____	_____	_____
14. Exterior Painting	_____	_____	_____
15. Insulation:	_____	_____	_____
Walls	_____	_____	_____
Ceilings	_____	_____	_____
16. Sheetrock/Tape, Bed, Texture	_____	_____	_____
17. Fireplace	_____	_____	_____
18. Interior Trim, Doors & Paneling	_____	_____	_____
19. Ceramic Tile	_____	_____	_____
20. Cabinets & Vanities	_____	_____	_____
21. Interior Paint	_____	_____	_____
22. Concrete Walks & Drives	_____	_____	_____
23. Counter Tops	_____	_____	_____
24. Landscape	_____	_____	_____
25. Appliances	_____	_____	_____
26. Finished Floor	_____	_____	_____
27. Hardware	_____	_____	_____
28.	_____	_____	_____
29.	_____	_____	_____
30. Final Punch Out Ind. Wallpaper	_____	_____	_____
<b>Totals:</b>	_____	_____	_____
<b><u>POOL COSTS</u></b>	_____	_____	_____
Dig & Steel Ties	_____	_____	_____
Gunite Blown	_____	_____	_____
Plaster & Finish Out	_____	_____	_____
<b>Totals:</b>	_____	_____	_____
<b>PROJECT COST/GRAND TOTAL</b>	_____	_____	_____
	_____	_____	_____

**Great Custom, Inc., a Texas corporation**

\_\_\_\_\_  
Signature Date  
**Joe Builder, President**

*[Sign Originals Only]*

\_\_\_\_\_  
Residential Construction Loan Agreement - Builder's Name

**ABC Bank**

\_\_\_\_\_

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

STATE OF TEXAS

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by **Joe Builder, President of Great Custom, Inc., on behalf of said corporation.**

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

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

My commission expires: \_\_\_\_\_

STATE OF TEXAS

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_ **of ABC Bank, on behalf of said limited liability partnership.**

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

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

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
**Residential Construction Loan Agreement - Builder's Name**

Lender: **ABC Bank**  
Borrower: **Great Custom, Inc.**  
Property: **123 Best Street, Fort Worth, Texas 76116**

## **Flood Insurance Coverage Subject to Possible Change**

**Loan # 132456**

If your property is or becomes zoned for required flood insurance and we assign, sell or transfer the servicing of your mortgage loan, your new lender/servicer may require more flood insurance coverage than the minimum amount that has been identified in your Notice of Special Flood Hazards (NSFH). The new lender/servicer may require coverage in an amount greater than the minimum, and has the right to require flood coverage at least equal to 100% of the insurable value (also known as replacement cost value) of the building(s) used as collateral to secure the loan or the maximum available under the National Flood Insurance Program (NFIP) for the particular type of building. You should review your exposure to flood damage with your insurance provider, as you may wish to increase your coverage above the minimum amount required at the time of closing your loan versus what subsequently the new lender/servicer may require.

Acknowledged by Borrower(s) this **First** day of **November, 2012**.

**Great Custom, Inc., a Texas corporation**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Joe Builder, President**

*[Sign Originals Only]*



AFFIANT

\_\_\_\_\_  
**Joe Builder**

SWORN TO AND SUBSCRIBED BEFORE ME this \_\_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

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**Affidavit of Non-Commencement**

Lender: **ABC Bank**  
Borrower: **Great Custom, Inc.**  
Property: **123 Best Street, Fort Worth, TX 76116**

## **Attorney Representation Notice**

**Loan # 132456**

This Attorney Representation Notice (“Notice”) is entered into between PeirsonPatterson, LLP (“We”, “our” or “us”) and **Great Custom, Inc.** (“you” or “your” whether one or more), herein referred to as “Borrower”.

**LOAN DOCUMENTATION.** PeirsonPatterson, LLP (We”, “us” or “our”) has prepared the legal instruments involved in this loan using information supplied by the Lender and other third parties. We have acted only on behalf of the Lender. We and the Lender have not assisted or rendered legal advice to Borrower with respect to the loan or the Property securing it or the documents executed in connection with it. If Borrower has any questions about the meaning of any document or Borrower’s legal rights, Borrower should retain personal legal counsel for advice in this transaction.

**DESCRIPTION OF LEGAL SERVICES PERFORMED.** We may have prepared all or part of the following legal instruments affecting title to the Property: Deed (if a purchase transaction), Note, Security Instrument and Assignment of Lien (if requested).

**DISCLAIMER OF REPRESENTATION OR WARRANTY.** We have not conducted a title search on the Property, and make no representation or warranty about condition of the title, access to the Property or any other matters that might be revealed from Borrower’s examination of a survey, title information, or the Property itself. **Borrower is cautioned to make sure the Deed delivered to Borrower conveys what Borrower has contracted to purchase.**

**DATA SUPPLIED BY LENDER.** The disclosure calculations and fee data have been supplied by the Lender. We make no representations regarding the value of the Property, conformance with any limitations on fees, waiting periods or any other matters outside our control.

**RESPONSIBILITY FOR PAYMENT OF FEES.** As part of Borrower’s obligation to pay the expenses of the Lender in connection with the preparation of the legal documentation, Borrower agrees to pay directly to us at loan closing, the amount indicated on the Attorney Invoice, unless Lender has noted otherwise in their closing instructions.

**BASIS FOR FEE.** The document preparation fee charged by us is based on a per transaction charge rather than an hourly fee. This fee is intended to provide fair compensation for our services, taking into consideration the time and labor required, the complexities of the questions involved, and the skill required to perform the services. Other considerations include our expertise in the complexities of the real estate practice, the necessary overhead associated with the rendering of the services and our assumption of risk in the rendering of the services. There has been no charge made for any disclosures or information required by the Real Estate Settlement and Procedures Act, the Truth-in-Lending Act or the Homeowners’ Protection Act.

**NOTICE TO BORROWER AND SELLER REGARDING DEED PREPARATION.** We represent Lender and only Lender in this transaction. If we have prepared a draft deed, it has been at the request of Lender. Seller and Borrower are advised to consult their respective legal counsel with any questions before signing the draft deed.

We have provided the draft deed as a convenience. **IF THE DRAFT DEED WE PREPARED IS USED, SELLER AND BORROWER (OR THEIR ATTORNEYS) SHOULD REVIEW AND AMEND IT, IF NECESSARY, TO MAKE CERTAIN THAT IT IS CONSISTENT WITH THE SALES CONTRACT AND CORRECTLY REFLECTS THE CONDITION OF TITLE FOR THE PROPERTY AND THE OBLIGATIONS OF THE PARTIES TRANSFERRING RIGHTS TO REAL PROPERTY, AND IF APPLICABLE RESERVING CERTAIN RIGHTS, FOR EXAMPLE MINERAL INTEREST, IS AN INHERENTLY COMPLEX MATTER AND CONTEMPLATES THE INVOLVEMENTS OF ATTORNEYS. IF APPLICABLE, THE DEED SHOULD BE AMENDED TO REFLECT ANY MINERAL OR OTHER RESERVATION. BE CERTAIN THAT THE DEED EXPRESSES THE INTENT OF SELLER AND BORROWER. ANOTHER DEED, OR AMENDMENTS TO THE DRAFT DEED, MUST BE REVIEWED AND APPROVED BY US PRIOR TO ITS EXECUTION.** To the extent Lender and Seller are the same, we further represent Lender in its capacity as Seller for purposes of Deed preparation only. Seller is signing this agreement only to receive the notices and to assent to the terms contained in this paragraph.

Borrower and Seller hereby acknowledge receiving and reading a copy of this Notice and affirm the accuracy of their respective statements contained herein.

**Great Custom, Inc., a Texas corporation**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Joe Builder, President**

*[Sign Originals Only]*

**Billy Seller**

\_\_\_\_\_

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

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**Attorney Representation Notice**



**CERTIFICATE OF RESOLUTIONS**  
(Corporation Borrower)

**Loan # 132456**

Date to be Effective: **November 1, 2012**  
Corporation: **Great Custom, Inc.**  
Date of Adoption: **November 1, 2012** \*

[\*Date of meeting of board of directors or of written consent of directors. The undersigned to change if date inserted is not accurate.]

The undersigned secretary and president of the Corporation certify the following facts:

1. The Corporation is organized and operating under the laws of **Texas**, is qualified to do business in **Texas**, and is in good standing.
2. No proceeding for forfeiture of the certificate of incorporation of the Corporation or for voluntary or involuntary dissolution of the Corporation is pending.
3. Neither the articles of incorporation nor the bylaws of the Corporation limit the power of the board of directors to pass the resolutions below.
4. The undersigned is authorized to make and sign this certificate.
5. The undersigned keeps the records and minutes of the proceedings of the board of directors of the Corporation, and the resolutions below are an accurate reproduction of the ones made in those proceedings. They have not been amended, modified, or rescinded and are now in full force and effect.
6. The resolutions below were duly adopted on the Date of Adoption. The meeting of the board of directors was called and held in accordance with law and the bylaws of the Corporation, and a quorum was present.
7. Resolutions:

**Resolution of Corporation to Borrow**

RESOLVED, that the Corporation is authorized to borrow from **ABC Bank** (“Lender”) and to enter into a promissory note(s) (the “Note”) in the principal (individual or aggregate) amount of \$309,178.00, payable to the order of Lender.

RESOLVED FURTHER, that to secure the payment of the Note, the Corporation is authorized to enter into a Mortgage, Deed of Trust, or Security Deed (the “Security Instrument”) covering certain land (the “Property”) and any necessary modifications, extensions, increases, and renewals of the Security Instrument.

RESOLVED FURTHER, that the Corporation is authorized to enter into any assignments, pledges, mortgages, deeds of trust, security agreements, and other documents and instruments concerning the Property, or any real or personal property, or any interest therein, owned by the Corporation that may be necessary or appropriate, or required by Lender, to evidence and secure the payment of the Note.

RESOLVED FURTHER, that the following individuals (the “Authorized Representative(s)”) are authorized (individually or jointly) to execute and deliver, on behalf of and in the name of the Corporation, the Note, the Security Instrument, and any other agreements, documents, or instruments, and to take or cause to be taken any action necessary or appropriate in connection with the Note and the Security Instrument or to accomplish the purposes of these resolutions, in the form and with the provisions the Authorized Representative(s)

may deem proper:

Authorized Representative(s):

Signatures:

**Joe Builder**, President

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RESOLVED FURTHER, that the president or any vice president of the Corporation is authorized to execute and deliver, on behalf of and in the name of the Corporation, the Note, the Security Instrument, and any other agreements, documents, or instruments, and to take or cause to be taken any action necessary or appropriate in connection with the Note and the Security Instrument or to accomplish the purposes of these resolutions, in the form and with the provisions that the officers may deem proper.

RESOLVED FURTHER, that the Corporation confirms and ratifies all actions previously taken by any officer or other representative of the Corporation with respect to the loan evidenced by the Note and all documents executed in connection with the loan.

The undersigned hereby certifies that the undersigned is the duly elected and qualified secretary of the Corporation; that the signatures above are genuine signatures; and that the foregoing certificate of resolutions is true and correct.

**Great Custom, Inc., a Texas corporation**

\_\_\_\_\_  
Signature Date  
**Jeff Builder, Secretary**

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by **Jeff Builder, Secretary of Great Custom, Inc., a Texas corporation, on behalf of said corporation.**

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Lender: ABC Bank  
Borrower: Great Custom, Inc.  
Property: 123 Best Street, Fort Worth, Texas 76116

## Document Correction Agreement

Loan # 132456

**AGREEMENT TO CORRECT OR PROVIDE ADDITIONAL DOCUMENTATION OR FEES:** In consideration of Lender disbursing funds for the closing of the Loan secured by the Property being encumbered, and regardless of the reason for any loss, misplacement, or inaccuracy in any loan documentation, Borrower(s) agrees as follows: That, should a document be lost or misplaced, misstated or inaccurately reflect the true and correct terms and conditions of the Loan, upon the request of the Lender (including persons acting on behalf of the Lender) or Settlement Agent, Borrower(s) will comply with Lender's request to execute, acknowledge, initial and deliver to Lender any documentation Lender deems necessary to replace or correct the lost, misplaced, misstated or inaccurate documents(s). Borrower's completed and accepted final application and any disclosure statements provided by Lender shall be evidence of Borrower's and Lender's intent regarding the agreed terms and conditions of the loan. If a replacement note is executed, the Lender hereby indemnifies the Borrower(s) against any loss associated with a demand on the original executed note. The documents Lender requests Borrower(s) to execute, acknowledge, initial and deliver pursuant to this Paragraph shall hereinafter be referred to as "Replacement Documents." Borrower(s) agrees to deliver the Replacement Documents within ten (10) days after receipt by Borrower(s) of a written request from Lender for such replacement. Borrower(s) also agrees that upon the request of the Lender (including persons acting on behalf of the Lender) or Settlement Agent, Borrower(s) will comply with Lender's reasonable request to supply additional documentation and/or to pay Lender any additional sums previously disclosed to Borrower(s) as a cost or fee associated with the Loan which for whatever reason was not collected at closing. The documents or fees Lender requests Borrower(s) to provide pursuant to this Paragraph shall hereinafter be referred to as "Additional Documents or Fees."

**REQUEST BY LENDER:** Any request by the Lender, (including persons acting on behalf of the Lender) or Settlement Agent for any Additional Documents or Fees shall be prima facie evidence of the necessity for same. A written statement from Lender, (including persons acting on behalf of the Lender) or Settlement Agent, addressed to Borrower(s) at the address indicated in the documentation shall be considered conclusive evidence of the necessity for said Additional Documents or Fees or corrections thereof.

**FAILURE TO DELIVER REPLACEMENT OF ADDITIONAL DOCUMENTS OR FEES MAY CONSTITUTE DEFAULT:** Borrower(s)'s failure or refusal to comply with the terms of the Lender's request may, at Lender's election, constitute a default under the note and/or mortgage/deed of trust and give Lender the option of declaring all sums secured by the loan documents immediately due and payable.

**BORROWER LIABILITY:** If Borrower(s) fails or refuses to execute, acknowledge, initial and deliver the Replacement Documents or provide the Additional Documents or Fees to Lender more than ten (10) days after being requested to do so by Lender, and understanding that Lender is relying on these representations, Borrower(s) agree(s) to be liable for any and all loss or damage which Lender sustains thereby including but not limited to all attorney's fees and costs incurred by Lender.

This Agreement shall inure to the benefit of Lender's successors and assigns and be binding upon the heirs, devisees, personal representatives, successors and assigns of Borrower(s).

**Great Custom, Inc., a Texas corporation**

\_\_\_\_\_  
Signature

Date

**Joe Builder, President**

*[Sign Originals Only]*

Lender: **ABC Bank**  
Borrower: **Great Custom, Inc.**  
Property: **123 Best Street, Fort Worth, TX 76116**

## Loans to One Borrower Certificate

Loan # 132456

Regarding the above referenced transaction and other relationships with Lender, Borrower, under the penalties of perjury hereby certifies and represents to Lender pursuant to the Financial Institution Reform Recovery and Enforcement Act of 1989. Section 301(5)(u)(2) and Office of Thrift Supervision Rules and Regulations, Title 12 Code of Federal Regulations, Section 563.93 that the following outstanding loans, with the balances presently due shown below are all of the loans presently existing which have been made by Lender to Borrower or any person, entity, or interest in which Borrower is or may be associated or related pursuant to the definition of loans to "one borrower" is hereinafter set forth:

**NAME OF PERSON, ENTITY, AND INTEREST  
DESCRIBED IN THE DEFINITION OF  
"ONE BORROWER" AS HEREIN AFTER STATED,  
HAVING OUTSTANDING LOANS OR LOAN WITH:**

UNDERSIGNED BORROWERS ON THIS LOAN	LOAN NUMBER: Loan # 132456	BALANCE PRESENTLY DUE: \$309,178.00
<u>OTHER LOANS</u>		
_____	_____	_____
_____	_____	_____
_____	_____	_____

**"One Borrower" for purposes of Section 563.93 and for purposes of this Certificate is defined as follows:**

1. Use the same meaning as the term "person" set forth at 12 CFR Part 32:
2. The term in 12 CFR Part 32 is defined as an individual; sole proprietorship; partnership; joint venture; association; trust; estate; business trust; corporation; not-for-profit corporation; sovereign government or agency; instrumentality, or political subdivision thereof; or any similar entity or organization.

**Great Custom, Inc., a Texas corporation**

\_\_\_\_\_  
Signature Date  
**Joe Builder, President**

*[Sign Originals Only]*

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by **Joe Builder, President of Great Custom, Inc., on behalf of said corporation.**

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Lender: **ABC Bank**  
Borrower: **Great Custom, Inc.**  
Property: **123 Best Street, Fort Worth, Texas 76116**

## Loans to One Borrower Certificate

Loan # 132456

The below listed Borrower **Great Custom, Inc.** ("Borrower"), hereby says:

1. The Borrower is the applicant for and will become obligor on a loan to be made to Borrower by **ABC Bank** ("Lender"), in the amount of **Three Hundred Nine Thousand One Hundred Seventy Eight and 00/100 (\$309,178.00)** secured by the following described real property and the improvements located thereon:

**Being Lot One (1) in Block Two (2) of ESTATES AT THE LAKE, PHASE I, amending Replat of Lots 1 & 2, Block 3 and Lots 4 & 5, Block 6, Estates at the Lake Phase I, within the City of Fort Worth, Tarrant County, Texas, according to the Plat of record in Cabinet ABC, Slide 11 of the Plat Records of Tarrant County, Texas.**

2. All other loans presently owned by Lender and made by Lender to (i) persons, trusts, partnerships, syndicates or corporations of which the Borrower or, to the best knowledge of Borrower, any other obligor on the loan, is a nominee, beneficiary, general partner, limited partner owning ten percent or more (based on the value of his contribution) member, or record or beneficial stockholder owning ten percent (10%) or more of the capital stock, (ii) all trusts, syndicates, partnerships and corporations of which any beneficiary, member, general partner, limited partner, owning an interest of ten percent (10%) or more of the capital stock, is also a beneficiary, member, general partner, limited partner owning an interest of ten percent (10%) or more or record or beneficial stockholder owning ten percent (10%) or more of the capital stock of Borrower or, to the best knowledge of Borrower, any other obligor on the loan, are as follows:

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EXECUTED effective as of, although not necessarily on, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Great Custom, Inc., a Texas corporation**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Joe Builder, President**

*[Sign Originals Only]*

Loan To One Borrower Certificate

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by **Joe Builder, President of Great Custom, Inc., on behalf of said corporation.**

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_



Lender: **ABC Bank**  
Borrower: **Great Custom, Inc.**  
Property: **123 Best Street, Fort Worth, TX 76116**

## Mineral Rights Acknowledgment

**Loan # 132456**

Words used in this Acknowledgment are defined below. Words in the singular mean and include the plural and vice versa.

“**Borrower**” is **Great Custom, Inc.**

“**Lender**” is **ABC Bank**, and its successors or assigns.

“**Loan**” means the debt evidenced by the Note and all sums due under the Security Instrument.

“**Note**” means the promissory note(s) dated **November 1, 2012**, signed by Borrower in favor of Lender.

“**Property**” means the property commonly known as **123 Best Street, Fort Worth, Texas 76116**.

“**Security Instrument**” means the deed of trust/mortgage/security deed/security instrument signed by Borrower in favor of Lender, securing payment of the Note.

Borrower understands that the Property may be subject to mineral development rights held by others and the exercise of those rights could result in a taking of or damage to some or all of the Property. Borrower further understands that the party desiring to exercise its mineral development rights may be liable to Borrower and Lender for reimbursement for exercising such mineral development rights.

The Reimbursement may be considered “Miscellaneous Proceeds” under the Security Instrument.

Borrower hereby acknowledges that Borrower has read this Acknowledgment and fully understands its terms and implications and Borrower is executing it the same day as the Note and Security Instrument, as a material inducement to Lender to make this Loan.

**Great Custom, Inc., a Texas corporation**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Joe Builder, President**

*[Sign Originals Only]*

# MORTGAGE FRAUD IS INVESTIGATED BY THE FBI



**Mortgage Fraud is investigated by the Federal Bureau of Investigation and is punishable by up to 30 years in federal prison or \$1,000,000 fine, or both. It is illegal for a person to make any false statement regarding income, assets, debt, or matters of identification, or to willfully overvalue any land or property, in a loan and credit application for the purpose of influencing in any way the action of a financial institution.**

*Some of the applicable Federal criminal statutes which may be charged in connection with Mortgage Fraud include:*

- 18 U.S.C. § 1001 - Statements or entries generally
- 18 U.S.C. § 1010 - HUD and Federal Housing Administration Transactions
- 18 U.S.C. § 1014 - Loan and credit applications generally
- 18 U.S.C. § 1028 - Fraud and related activity in connection with identification documents
- 18 U.S.C. § 1341 - Frauds and swindles by Mail
- 18 U.S.C. § 1342 - Fictitious name or address
- 18 U.S.C. § 1343 - Fraud by wire
- 18 U.S.C. § 1344 - Bank Fraud
- 42 U.S.C. § 408(a) - False Social Security Number

*Unauthorized use of the FBI seal, name, and initials is subject to prosecution under Sections 701, 709, and 712 of Title 18 of the United States Code. This advisement may not be changed or altered without the specific written consent of the Federal Bureau of Investigation, and is not an endorsement of any product or service.*

**Great Custom, Inc., a Texas corporation**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Joe Builder, President**

*[Sign Originals Only]*

**Mortgage Fraud Warning**



Lender: **ABC Bank**  
Borrower: **Great Custom, Inc.**  
Property: **123 Best Street, Fort Worth, Texas 76116**

## Notice of No Oral Agreements

Loan # 132456

**THIS WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.**

**THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

**Receipt of Notice:** The undersigned hereby represents and warrants that I/we have each received and read a copy of this Notice on or before the execution of the "Loan Agreement." "Loan Agreement" means one or more promises, promissory notes, agreements, undertakings, security agreements, deeds of trust or other documents, or commitments, or any combination of those actions or documents, pursuant to which a financial institution loans or delays repayment of or agrees to loan or delay repayment of money, goods, or any other thing of value or to otherwise extend credit or make a financial accommodation.

**Great Custom, Inc., a Texas corporation**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Joe Builder, President**

*[Sign Originals Only]*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Ricky Bobby**

Lender: **ABC Bank**  
Borrower: **Great Custom, Inc.**  
Property: **123 Best Street, Fort Worth, Texas 76116**

## Notice to Cosigner or Guarantor

### (IMPORTANT! PLEASE READ BEFORE COSIGNING OR GUARANTEEING)

You are being asked to guarantee the above referenced debt. Think carefully before you do. If the Borrower does not pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the Borrower does not pay. You may also have to pay late fees or collection costs, which increases this amount.

The Lender can collect this debt from you without first trying to collect from the Borrower. The Lender can use the same collection methods against you that can be used against the Borrower, such as suing you, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt. This notice is provided to you by the Lender indicated above.

By signing below, you acknowledge that you have received this notice prior to becoming obligated.

\_\_\_\_\_  
Signature Date  
**Ricky Bobby**

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by **Ricky Bobby**.

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notice of Cosigner or Guarantor and Guaranty

## Guaranty

<b>Guarantor</b> (give name and address) Ricky Bobby 1111 Place Drive, Bridgeport, TX 76426	
<b>Borrower</b> (give name and address) Great Custom, Inc. 555 Honey Street, Fort Worth, TX 76116	<b>Lender</b> (give name and address) ABC Bank 2310 W Interstate 20, 100, Arlington, TX 76017

FOR VALUE RECEIVED, in consideration of any and all loans or other financial accommodations heretofore or hereafter at any time made or granted to "Borrower" by the "Lender" and as an inducement to the Lender to advance monies or continue current obligations with Borrower or extend credit to the Borrower, which loans, other financial accommodations, monies advanced and/or extensions of credit will or may benefit the undersigned, and which would not have been and/or will not be made without this Guaranty, the undersigned, being **Ricky Bobby** (hereinafter called "Guarantors" whether one or more, or a "Guarantor", when referring to one specifically), do hereby guarantee to the Lender the immediate payment in full of any and all of the Guaranteed Indebtedness (as hereinafter defined) when due, whether by acceleration or otherwise, and at all times thereafter.

- Continuing Guaranty.** If the box adjacent to this paragraph is checked, this is a continuing guaranty applicable to and guaranteeing any and all Guaranteed Indebtedness as defined in this paragraph. In connection with a continuing guaranty hereunder, the term "Guaranteed Indebtedness" shall include (1) any and all indebtedness of every kind and character, without limit as to amount, whether now existing or hereafter arising, of Borrower to Lender, regardless of whether evidenced by notes, drafts, acceptances, discounts, overdrafts, deeds of trust, security agreements, loan agreements, or otherwise, and regardless whether such indebtedness be fixed, contingent, primary, secondary, joint, several or joint and several, (2) interest, whether accruing before or after maturity, on any and all of the indebtedness described in (1) preceding, (3) any and all attorneys' fees, costs and expenses incurred or suffered by Lender in the making of, the administration of or collection of the foregoing indebtedness described in (1) preceding or interest described in (2) preceding, or any part thereof.
- Specific Guaranty.** If the box adjacent to this paragraph is checked, this is a specific guaranty applicable to and guaranteeing all Guaranteed Indebtedness as defined in this paragraph. The term "Guaranteed Indebtedness" for purposes of a specific guaranty means any and all amounts of (1) principal, (2) interest, whether accruing before or after maturity, on any and all of the indebtedness described, and (3) any and all attorneys' fees, costs and expenses incurred or suffered by Lender in the making of, the administration of or collection of the foregoing indebtedness described in (1) preceding or interest described in (2) preceding, or any part thereof, and other amounts owing or which hereafter become owing on or in connection with the certain indebtedness, obligations or liabilities of Borrower to Lender described below, together with all renewals, modifications and extensions thereof, even though represented by new instruments, such indebtedness being described as follows:

(Note Description)

**Note Date: November 1, 2012**

**Note Amount: \$309,178.00**

**Lender: ABC Bank**

**Borrower(s): Great Custom, Inc.**

**Monetary Limitation.** If the box adjacent to this paragraph is checked, Guarantor's liability respecting the Guaranteed Indebtedness whether pursuant to a continuing guaranty or specific guaranty, as applicable, shall not exceed an aggregate principal amount at any time of **\$309,178.00 of the outstanding principal balance(s) owing on the Guaranteed Indebtedness at the time Lender makes written demand upon Borrower on above referenced Note(s) for payment under this Guaranty, it being understood and agreed that Guarantor's liability hereunder shall not in any way be reduced by any payment received by the Lender from other Guarantors on the Guaranteed Indebtedness or any proceeds received or credit applied at any foreclosure sale**, together with and plus any and all interest, attorneys' fees and costs of collection owing and which may hereafter become owing on or in connection with the Guaranteed Indebtedness.

**Percentage Limitation.** If this box adjacent to this paragraph is checked, this is a specific guaranty applicable to and guaranteeing any and all Guaranteed Indebtedness as defined in this paragraph. In connection with this Guaranty, the term "Guaranteed Indebtedness" shall include (a) the principal indebtedness owing by Borrower to Lender now or hereafter arising under or evidenced by that one certain promissory note dated **November 1, 2012**, in the original principal amount of **\$309,178.00** executed by Borrower and payable to the order of Lender (the "Note"), provided however, Guarantor's obligation hereunder for that portion of the Note that represents principal shall be limited to **Zero percent (0.000%)** of the outstanding principal balance of the Note as of the date of maturity, whether by acceleration or otherwise (and the foregoing provision applies regardless of any subsequent foreclosure); (b) accrued but unpaid interest, whether accruing before or after maturity, on any and all of the entire outstanding indebtedness described in (a) herein; (c) all obligation of Borrower to Lender under any documents evidencing, securing, governing and/or pertaining to all or any part of the indebtedness described in (a), and (b) herein; (d) any and all attorneys' fees, costs and expenses incurred or suffered by Lender in the making of, the administration of or collection of the foregoing indebtedness described in (a), (b) and (c) herein or the protection of preservation of, or realization upon, the collateral securing all or any part of such indebtedness and obligations described in (a), (b), (c) and (d) herein.

1. This Guaranty shall be binding upon the Guarantors, and upon the respective heirs, administrators, executors, personal representatives, successors and assigns of each of the Guarantors, and to the extent that the Borrower or any of the Guarantors is either a partnership or a corporation, all references herein to the Borrower and to the Guarantors, respectively, shall be deemed to include any successor or successors, whether immediate or remote, to such partnership or corporation. In the event of the death of any of the Guarantors, the obligation of the estate of a deceased Guarantor hereunder shall continue in full force and effect as to: (1) the Guaranteed Indebtedness, as it exists at the date of death, and any renewals, modifications or extensions thereof, and (2) loans or advances made to or for the account of Borrower after the date of death of a deceased Guarantor pursuant to an obligation of the Lender, under a commitment made to Borrower prior to the date of such death, subject only to the limitation, if any be herein specified, on the amount of the Guaranteed Indebtedness hereby guaranteed. If more than one party shall execute this Guaranty, the term "Guarantors" as used herein shall mean and refer to all parties executing this Guaranty and each of them, and all such parties shall be jointly and severally obligated hereunder.

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**Guaranty**

2. Subject to any express limitation of liability provided hereinabove, this instrument shall be an absolute and unconditional guaranty, and the fact that at any time or from time to time the Guaranteed Indebtedness may be paid in full shall not affect the obligation of the Guarantors with respect to any indebtedness of Borrower to the Lender thereafter incurred; provided, however, that any of the Guarantors may discontinue his obligations hereunder only upon actual receipt by the Lender of written notice from such discontinuing Guarantors, or any person duly authorized and acting on behalf of such discontinuing Guarantors of the discontinuance hereof as to such Guarantors; provided further, however, that no such notice of discontinuance shall affect or impair any of the agreements and obligations of such discontinuing Guarantors hereunder with respect to: (1) any and all of the Guaranteed Indebtedness owing and existing prior to the time of actual receipt of such notice by the Lender, (2) any and all of the Guaranteed Indebtedness created or acquired thereafter pursuant to any commitment or agreement made to or with Borrower prior to the giving of such notice, (3) any and all extensions, rearrangements, restructurings, modifications or renewals of any of the foregoing, (4) any and all interest on any of the foregoing, and (5) any and all expenses paid or incurred by the Lender in endeavoring to collect any of the foregoing, and in enforcing this Guaranty against such discontinuing Guarantors; and all of the agreements and obligations of such discontinuing Guarantors under this Guaranty shall, notwithstanding any such notice of discontinuance, remain fully in effect until all of the Guaranteed Indebtedness (including any extensions, rearrangements, restructurings, modifications or renewals of any of the foregoing enumerated items), and all such interest and expenses shall have been paid in full. Any such notice of discontinuance by or on behalf of any of the Guarantors shall not affect or impair the obligations hereunder of any other Guarantors who have not given such notice.

3. If this is a continuing guaranty, then this guaranty shall not be wholly or partially satisfied or extinguished by any Guarantor's payment of any amount hereunder, including payment of all amounts due as of any specified date, but shall continue in full force and effect as against each Guarantor for the full amount, except as otherwise specified herein, of all Guaranteed Indebtedness created, incurred or arising prior to the time when notice of termination is given by the respective Guarantor to the Lender as specified herein, and until payment in full thereof. Any and all extensions of credit and financial accommodations concurrently herewith or hereafter made by Lender to Borrower shall be conclusively presumed to have been made in acceptance hereof.

4. If this is a specific guaranty, then this guaranty shall not be wholly or partially satisfied or extinguished by Guarantor's partial payment of any amount due on the Guaranteed Indebtedness but shall continue in full force and effect as against each Guarantor for the full amount of the Guaranteed Indebtedness until payment in full thereof.

5. If any of the Guarantors become liable for any indebtedness owing by the Borrower to the Lender, by endorsement or otherwise, other than pursuant to this Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of Lender hereunder shall be cumulative of any and all other rights the Lender may ever have against Guarantors.

6. Guarantors, without limiting their liability hereunder in any respect, hereby consent to and waive notice of, and hereby agree that the obligations under the terms of this Guaranty shall not be in any way released, diminished, impaired, reduced or affected by the occurrence of any one or more of the following events: (a) the taking or accepting of any other security or guaranty for any or all of the Guaranteed Indebtedness; (b) any release, surrender, exchange, subordination or loss of any security at any time existing in connection with any of the Guaranteed Indebtedness; (c) any partial or total release of the liability of any of the Guarantors, or the partial or total release of any other guarantor or guarantors; (d) the death, insolvency, bankruptcy, disability or lack of corporate power of Borrower, any of the Guarantors or any party at any time liable for the payment of any or all of the Guaranteed Indebtedness, whether now existing or hereafter occurring; (e) any renewal, extension, restructuring, modification or rearrangement of the payment of any or all of the Guaranteed Indebtedness, or any

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**Guaranty**



adjustment, indulgence, forbearance or compromise that may be granted or given by the Lender to Borrower or any of the Guarantors; (f) any neglect, delay, omission, failure or refusal of the Lender to take or prosecute any action for the collection of any of the Guaranteed Indebtedness or to foreclose or take or prosecute any action in connection with any instrument or agreement evidencing or securing all or any part of the Guaranteed Indebtedness; (g) any failure of Lender to notify the Guarantors of any renewal, extension, modification or assignment of the Guaranteed Indebtedness or any part thereof, or the release of any security or of any other action taken or not taken by the Lender against Borrower or any new agreement between Lender and Borrower, it being understood that Lender shall not be required to give any of the Guarantors any notice of any kind under the circumstances whatsoever with respect to or in connection with the Guaranteed Indebtedness; (h) in the event Borrower is a corporation, joint stock association or partnership, or is hereafter incorporated, the lack of enforceability of all or any part of the Guaranteed Indebtedness against Borrower by reason of the fact that the Guaranteed Indebtedness exceeds the amount permitted by law, the act of creating the Guaranteed Indebtedness or any part thereof is ultra vires, or the officers creating same acted in excess of their authority; (i) any payments by Borrower to Lender which is held to constitute a preference under the bankruptcy laws or any payment which Lender for any other reason is required to refund or pay to someone else; or (j) the subsequent incorporation, reorganization, merger, or consolidation of the Borrower.

7. Guarantors hereby waive marshalling of assets and liabilities, sale in inverse order of alienation, notice of acceptance of this Guaranty and of any indebtedness obligation or liability to which it applies or may apply. Guarantors expressly waive each and every right to which they may be entitled by virtue of any applicable suretyship law. Guarantors waive promptness, diligence, notice of acceptance of this Guaranty, and notice of the incurring of any obligation, indebtedness, or liability to which this Guaranty applies or may apply, and waives presentment, demand of payment, notice of intent to accelerate, notice of acceleration, notice of dishonor or nonpayment and the taking of any other action by the Lender, and giving any notice of default or any other notice to, or making any demand on the Borrower, any other guarantor or any other party.

8. If, at any time, there be Other Indebtedness, as defined in this paragraph, (a) Lender, without in any manner impairing its rights hereunder, may, at its option, exercise rights of offset by applying, first, to the Other Indebtedness, any deposit balances to the credit of Borrower and (b) Lender may apply, first, to the Other Indebtedness all payments received from Borrower and all amounts realized by Lender from collateral or security held by Lender for the payment of Borrower's indebtedness; provided, however, if a particular security instrument expressly requires an application different from that permitted under this paragraph, proceeds realized by Lender under such security instrument shall be applied as provided in such instrument. As used in this paragraph, the term "Other Indebtedness" means all indebtedness, if any, of Borrower to Lender that is not Guaranteed Indebtedness as herein defined.

9. Any amounts received by Lender from whatsoever source on account of the Guaranteed Indebtedness may be applied by it toward the payment of such of the Guaranteed Indebtedness, and in such order of application as the Lender may from time to time elect, and notwithstanding any payments made by or for the accounts of the Guarantors pursuant to their Guaranty, the Guarantors shall not be subrogated to any rights of the Lender until such time as this Guaranty shall have been discontinued as to all of the Guarantors in the manner set forth above, and the Lender shall have received payment of the full amount of the Guaranteed Indebtedness and all of the obligations of the Guarantors hereunder.

10. Guarantors expressly waive and bar themselves from any right to setoff, recoup or counterclaim any claim or demand against the Borrower or against any other person liable on any part of the Guaranteed Indebtedness.

11. Lender need not notify any of the Guarantors that Lender has sued Borrower, but if Lender gives

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Guaranty

written notice to the Guarantors that it has sued Borrower, the Guarantors shall be bound by any judgement or decree therein.

12. Nothing herein contained shall be construed as an obligation on the part of Lender to extend credit to the Borrower, or as an obligation to continue to extend credit.

13. Guarantors, on demand, shall secure or make such payments on their obligations hereunder as Lender shall require, but Guarantors shall remain liable in accordance with the terms hereof notwithstanding compliance with Lender's requirements in such respect. Each of the Guarantors shall furnish Lender from time to time such financial statements and other financial information as Lender may reasonably request. None of the Guarantors shall, so long as his or their obligations under this Guaranty continue, transfer or pledge any material portion of his or their assets for less than full and adequate consideration.

14. It shall not be necessary for Lender, in order to enforce payment hereunder by the Guarantors, first to institute suit or exhaust its remedies against Borrower or others liable on the Guaranteed Indebtedness or to enforce its rights against any security which shall have ever been given to secure the Guaranteed Indebtedness or any guaranty. It is the intention of the parties hereto that the Guarantors shall be primarily liable, jointly and severally, with the Borrower. Specifically, and without limiting the foregoing, the Guarantors do hereby waive and relinquish any and all rights they may have to require Lender to first proceed against Borrower and its property.

15. Suit may be brought against the Guarantors, joint and severally, or against any one or more of them, or less than all of them, without impairing the rights of Lender against the others of the Guarantors, and Lender may compromise any indebtedness with any one or more of the Guarantors for such sum or sums as it may see fit and release any Guarantor from all further liability to Lender for its obligations hereunder without impairing the right of Lender to demand or collect amounts due hereunder from other Guarantors not so released, provided that no such compromise with, or release of, any Guarantor shall in anywise impair the rights of the Guarantors among themselves.

16. To secure all obligations of the Guarantors hereunder, Lender shall have a lien upon and security interest in any and all balances, credits, deposits, accounts or monies in the name of any of the Guarantors now or hereafter with the Lender and any and all property of every kind or description in the name of any of the Guarantors now or hereafter for any reason or purpose whatsoever, in the possession or control of, or in transit to the Lender or in possession or control of any agent or bailee for the Lender, and Lender may, at its election, without demand or notice of any kind to Guarantors, at any time and from time to time when any amount of the Guaranteed Indebtedness shall be due and payable, appropriate, setoff and/or apply any and all balances, credits, deposits, accounts, monies or other such property above described toward the payment of such amount or amounts in such order of application as Lender may elect.

17. The Guaranty shall be governed by and construed and interpreted in accordance with the laws of the United States of America and the State of **Texas**. The proper place of venue to enforce payment of performance under the Guaranty is **Tarrant County, Texas**, Guarantors irrevocably agree that any legal proceeding arising out of or in connection with the Guaranty shall be brought in a state or federal court of proper jurisdiction in **Tarrant County, Texas**. Guarantors agree that the Lender's records showing the account between the Lender and the Borrower shall be admissible as evidence in any action or proceeding involving this Guaranty, and such records shall be prima facie proof of the items therein set forth. Guarantors agree to pay reasonable attorneys' fees and all other collection costs if this Guaranty is placed in the hands of any attorney for collection.

18. Lender may, from time to time, whether before or after any discontinuance of his or its obligations hereunder by any of the Guarantors, without notice to the Guarantors, or any of them, assign or transfer

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**Guaranty**

any or all of the Guaranteed Indebtedness or any interest therein and, notwithstanding any such assignment or transfer or any subsequent assignment or transfer thereof, such Guaranteed Indebtedness shall be and remain Guaranteed Indebtedness for the purposes of this Guaranty, and each and every immediate and successive assignee or transferee of any of the Guaranteed Indebtedness or of any interest herein shall, to the extent of the interest of such assignee or transferee in the Guaranteed Indebtedness, be entitled to the benefits of this Guaranty to the same extent as if such assignee or transferee were the Lender; provided, however, that unless Lender shall otherwise consent in writing, Lender shall have an unimpaired right, prior and superior to that of any such assignee or transferee to enforce this Guaranty, for the benefit of Lender, as to that portion of the Guaranteed Indebtedness which the Lender has not assigned or transferred.

19. This guaranty agreement, whether continuing, specific and/or limited, shall be in addition to and cumulative of, and not in substitution, novation or discharge of any and all prior or contemporaneous guaranty agreements by Guarantors, or any of them, in favor of Lender or assigned to Lender by others. No modification, consent, amendment or waiver of any provision of this Guaranty, nor consent to any departure by any of the Guarantors therefrom shall be effective unless the same shall be in writing and signed by an officer of the Lender, and then shall be effective only in the specific instance and for the purpose for which given. This guaranty agreement cannot be changed orally. No notice to or demand of any of the Guarantors in any case shall of itself entitle any such Guarantor to any other or further notice or demand in similar or other circumstances. No delay or omission by Lender in exercising the powers or rights hereunder shall impair any such right or power or be construed as a waiver hereof or any acquiescence therein, nor shall any single or partial exercise of any such power preclude other or further exercise thereof, or the exercise of any other right or power hereunder. Whenever possible, each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of the Guaranty shall be prohibited or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

20. Unless otherwise specifically provided herein, any notice required or permitted pursuant to the terms of this Guaranty shall be in writing and shall be deemed given when hand delivered to such party, or mailed to such party, at such party's address set forth herein by certified or registered mail, return receipt requested. The addresses as set forth in this Guaranty shall be the addresses to which notices shall be sent unless the Lender or Guarantors, as applicable, shall notify the other of any change of address pursuant to the foregoing notice procedure.

21. The masculine and neuter genders used herein shall each include the masculine, feminine and neuter genders, and the singular number used herein shall include the plural number. The words "person" and "entity" shall include individuals, corporations, partnerships, joint ventures, associations, joint stock companies, trusts, unincorporated organizations and governments and any agency or political subdivision thereof.

22. This Guaranty may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument without the necessity of all Guarantors (if more than one Guarantor) signing each counterpart. Production of any counterpart other than the one to be enforced shall not be required.

**IL AND MD Only - CONFESSION OF JUDGMENT.** If Guarantor defaults, it authorizes any attorney to appear in a court of record and confess judgment against it in favor of Lender. The confession of judgment may be without process and for any amount due on this Guaranty including collection costs and reasonable attorneys' fees.

**PA only - WARRANTY OF AUTHORITY TO CONFESS JUDGMENT. Upon default, in addition to all**

Guaranty

other remedies and rights available to Lender, by signing below Guarantor irrevocably authorizes the prothonotary, clerk, or any attorney to appear in any court of record having jurisdiction over this matter and to confess judgment against Guarantor at any time without stay of execution. Guarantor waives notice, service of process and process. Guarantor agrees and understands that judgment may be confessed against Guarantor for any unpaid principal, accrued interest and accrued charges due on this Note, plus collection costs and reasonable attorneys' fees up to 15 percent of the judgment. The exercise of the power to confess judgment will not exhaust this warranty of authority to confess judgment and may be done as often as Lender elects. Guarantor further understands that Guarantor's property may be seized without prior notice to satisfy the debt owed. Guarantor knowingly, intentionally, and voluntarily waives any and all constitutional rights Guarantor has to pre-deprivation notice and hearing under federal and state laws and fully understands the consequences of this waives.

By signing immediately below, Guarantor agrees to the terms of the WARRANTY OF AUTHORITY TO CONFESS JUDGMENT section.

By signing below, Guarantor acknowledges and agrees (1) that Guarantor has first received, read and understood (a) the Guaranty and (b) the NOTICE TO GUARANTOR set forth below, (2) that all information provided to the Lender is true, correct and sufficiently complete so as not to be misleading and that the Lender has relied on such information in extending financial accommodations to the Borrower, and (3) Guarantor agrees to all terms of the Guaranty as above stated.

**THIS WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.**

**THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

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Guaranty

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature Date

**Ricky Bobby**

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by **Ricky Bobby.**

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
**Guaranty**

Lender: **ABC Bank**  
Borrower: **Great Custom, Inc.**  
Property: **123 Best Street, Fort Worth, Texas 76116**

## **Collateral Protection Insurance Notice (Texas)**

**Loan # 132456**

Pursuant to Texas law (Tex. Finance Code § 307.052), Lender is required to give the following notice at the time the credit agreement is executed.

You have entered into a credit agreement that requires you to maintain Collateral Protection Insurance for the above property. As part of this agreement, you are required to:

1. **Keep the collateral insured against damage in the amount the Lender specifies;**
2. **Purchase the insurance from an insurer that is authorized to do business in this state or an eligible surplus lines insurer;**
3. **Name Lender as the party to be paid under the policy in the event of a loss; and**
4. **If required by Lender, deliver to Lender a copy of the policy and proof of the payment of premiums.**

If you fail to meet any requirement listed above, Lender may obtain Collateral Protection Insurance on your behalf and at your expense.

### **ACKNOWLEDGMENT**

I/We hereby acknowledge receipt of this Collateral Protection Insurance Notice and further acknowledge that I/we understand its provisions.

**Great Custom, Inc., a Texas corporation**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Joe Builder, President**

*[Sign Originals Only]*

## Request for Taxpayer Identification Number and Certification

**Give Form to the  
 requester. Do not  
 send to the IRS.**

<b>Print or type See Specific Instructions on page 2.</b>	Name (as shown on your income tax return) <b>Great Custom, Inc.</b>	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input checked="" type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
	Address (number, street, and apt. or suite no.) <b>555 Honey Street</b>	Requester's name and address (optional)
	City, state, and ZIP code <b>Fort Worth, TX 76116</b>	
List account number(s) here (optional)		

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number									

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Employer identification number									

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

#### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,
- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a “saving clause.” Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS a percentage of such payments. This is called “backup withholding.” Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

#### **Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

### **Updating Your Information**

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

### **Penalties**

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

### **Specific Instructions**

#### **Name**

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your income tax return on the “Name” line. You may enter your business, trade, or “doing business as (DBA)” name on the “Business name/disregarded entity name” line.

**Partnership, C Corporation, or S Corporation.** Enter the entity's name on the “Name” line and any business, trade, or “doing business as (DBA) name” on the “Business name/disregarded entity name” line.

**Disregarded entity.** Enter the owner's name on the “Name” line. The name of the entity entered on the “Name” line should never be a disregarded entity. The name on the “Name” line must be the name shown on the income tax return on which the income will be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a domestic owner, the domestic owner's name is required to be provided on the “Name” line. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on the “Business name/disregarded entity name” line. If the owner of the disregarded entity is a foreign person, you must complete an appropriate Form W-8.

**Note.** Check the appropriate box for the federal tax classification of the person whose name is entered on the “Name” line (Individual/sole proprietor, Partnership, C Corporation, S Corporation, Trust/estate).

**Limited Liability Company (LLC).** If the person identified on the “Name” line is an LLC, check the “Limited liability company” box only and enter the appropriate code for the tax classification in the space provided. If you are an LLC that is treated as a partnership for federal tax purposes, enter “P” for partnership. If you are an LLC that has filed a Form 8832 or a Form 2553 to be taxed as a corporation, enter “C” for C corporation or “S” for S corporation. If you are an LLC that is disregarded as an entity separate from its owner under Regulation section 301.7701-3 (except for employment and excise tax), do not check the LLC box unless the owner of the LLC (required to be identified on the “Name” line) is another LLC that is not disregarded for federal tax purposes. If the LLC is disregarded as an entity separate from its owner, enter the appropriate tax classification of the owner identified on the “Name” line.



**Other entities.** Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name/disregarded entity name" line.

## Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the "Business name/disregarded entity name," sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
  2. The United States or any of its agencies or instrumentalities,
  3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
  4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
  5. An international organization or any of its agencies or instrumentalities.
- Other payees that may be exempt from backup withholding include:
6. A corporation,
  7. A foreign central bank of issue,
  8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
  9. A futures commission merchant registered with the Commodity Futures Trading Commission,
  10. A real estate investment trust,
  11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
  12. A common trust fund operated by a bank under section 584(a),
  13. A financial institution,
  14. A middleman known in the investment community as a nominee or custodian, or
  15. A trust exempt from tax under section 664 or described in section 4947.

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 5 and 7 through 13. Also, C corporations.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 7 <sup>2</sup>

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney, and payments for services paid by a federal executive agency.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [IRS.gov](http://IRS.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, below, and items 4 and 5 on page 4 indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on the "Name" line must sign. Exempt payees, see *Exempt Payee* on page 3.

**Signature requirements.** Complete the certification as indicated in items 1 through 3, below, and items 4 and 5 on page 4.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

### What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee <sup>1</sup> The actual owner <sup>1</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulation section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulation section 1.671-4(b)(2)(i)(B))	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or "DBA" name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

\*Note. Grantor also must provide a Form W-9 to trustee of trust.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

### Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

#### Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 1-877-IDTHEFT (1-877-438-4338).

Visit [IRS.gov](http://IRS.gov) to learn more about identity theft and how to reduce your risk.

### Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

## Request for Taxpayer Identification Number and Certification

**Give Form to the  
 requester. Do not  
 send to the IRS.**

<b>Print or type See Specific Instructions on page 2.</b>	Name (as shown on your income tax return) <b>Ricky Bobby</b>	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input checked="" type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate  <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶  <input type="checkbox"/> Other (see instructions) ▶	
	<input type="checkbox"/> Exempt payee	
	Address (number, street, and apt. or suite no.) <b>1111 Place Drive</b>	Requester's name and address (optional)
City, state, and ZIP code <b>Bridgeport, TX 76426</b>		
List account number(s) here (optional)		

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number									

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Employer identification number									

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

#### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,
- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a “saving clause.” Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS a percentage of such payments. This is called “backup withholding.” Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

#### **Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

### **Updating Your Information**

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

### **Penalties**

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

### **Specific Instructions**

#### **Name**

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your income tax return on the “Name” line. You may enter your business, trade, or “doing business as (DBA)” name on the “Business name/disregarded entity name” line.

**Partnership, C Corporation, or S Corporation.** Enter the entity's name on the “Name” line and any business, trade, or “doing business as (DBA) name” on the “Business name/disregarded entity name” line.

**Disregarded entity.** Enter the owner's name on the “Name” line. The name of the entity entered on the “Name” line should never be a disregarded entity. The name on the “Name” line must be the name shown on the income tax return on which the income will be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a domestic owner, the domestic owner's name is required to be provided on the “Name” line. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on the “Business name/disregarded entity name” line. If the owner of the disregarded entity is a foreign person, you must complete an appropriate Form W-8.

**Note.** Check the appropriate box for the federal tax classification of the person whose name is entered on the “Name” line (Individual/sole proprietor, Partnership, C Corporation, S Corporation, Trust/estate).

**Limited Liability Company (LLC).** If the person identified on the “Name” line is an LLC, check the “Limited liability company” box only and enter the appropriate code for the tax classification in the space provided. If you are an LLC that is treated as a partnership for federal tax purposes, enter “P” for partnership. If you are an LLC that has filed a Form 8832 or a Form 2553 to be taxed as a corporation, enter “C” for C corporation or “S” for S corporation. If you are an LLC that is disregarded as an entity separate from its owner under Regulation section 301.7701-3 (except for employment and excise tax), do not check the LLC box unless the owner of the LLC (required to be identified on the “Name” line) is another LLC that is not disregarded for federal tax purposes. If the LLC is disregarded as an entity separate from its owner, enter the appropriate tax classification of the owner identified on the “Name” line.

**Other entities.** Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name/disregarded entity name" line.

## Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the "Business name/disregarded entity name," sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
  2. The United States or any of its agencies or instrumentalities,
  3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
  4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
  5. An international organization or any of its agencies or instrumentalities.
- Other payees that may be exempt from backup withholding include:
6. A corporation,
  7. A foreign central bank of issue,
  8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
  9. A futures commission merchant registered with the Commodity Futures Trading Commission,
  10. A real estate investment trust,
  11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
  12. A common trust fund operated by a bank under section 584(a),
  13. A financial institution,
  14. A middleman known in the investment community as a nominee or custodian, or
  15. A trust exempt from tax under section 664 or described in section 4947.

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 5 and 7 through 13. Also, C corporations.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 7 <sup>2</sup>

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney, and payments for services paid by a federal executive agency.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [IRS.gov](http://IRS.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, below, and items 4 and 5 on page 4 indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on the "Name" line must sign. Exempt payees, see *Exempt Payee* on page 3.

**Signature requirements.** Complete the certification as indicated in items 1 through 3, below, and items 4 and 5 on page 4.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

### What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee <sup>1</sup> The actual owner <sup>1</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulation section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulation section 1.671-4(b)(2)(i)(B))	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or "DBA" name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

\*Note. Grantor also must provide a Form W-9 to trustee of trust.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

### Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

#### Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 1-877-IDTHEFT (1-877-438-4338).

Visit [IRS.gov](http://IRS.gov) to learn more about identity theft and how to reduce your risk.

### Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

**LAST PAGE  
OF THE PACKAGE**