

**CERTIFICATE OF RESOLUTIONS**  
(Corporation Borrower)

Loan # 123456789

Date to be Effective: **May 30, 2010**  
Corporation: **Construction, Inc.**  
Date of Adoption: **August 14, 2003** \*

[\*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 They have not been amended, modified, or rescinded and are now in full force and effect.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 whatever principal amounts and on whatever terms the authorized representative(s) deem necessary, 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)

Certificate of Resolutions (Corporation Borrower)

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may deem proper:

Authorized Representative(s):

Signatures:

**Dan Nachlinger**, President/Treasurer \_\_\_\_\_

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**Michael D. Beaver**, Vice President \_\_\_\_\_

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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.

**Construction, Inc., a Texas corporation**

\_\_\_\_\_

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

# MASTER LOAN AGREEMENT

## (Multiple Notes)

This Master Loan Agreement (“Agreement”) is entered into as of **May 30, 2010** by **Construction, Inc.** (“Borrower”, whether one or more), whose address is **100 Main Street , Arlington, TX 76017** and **Jane Doe** (“Guarantors”, whether one or more), and **ABC Bank** (“Lender”), whose address is **2310 W Interstate 20, 100, Arlington, TX 76017**.

### ARTICLE I

#### Definitions and Description of Loan Documents

**1.1 Loan Applications.** Borrower has requested that Lender establish a procedure whereby Borrower may submit loan applications (the “Loan Application” or “Loan Applications”) to Lender for loans for the purpose of purchasing Houses and/or Lots and constructing Houses on them. Subject to the terms and conditions of this Agreement, Lender has agreed to consider these Loan Applications and if Lender, in its sole and absolute discretion, decides to approve any Loan Applications, the loans so approved will be subject to the terms and conditions of this Agreement. Until Lender changes the format, Borrower agrees to request Lender to review Borrower’s Loan Application requests on the Loan Application form that is attached to this Agreement as Exhibit “A” and incorporated into it by reference for all purposes.

**1.2 Loans Subject to Lender’s Discretion.** Notwithstanding anything contained in this Agreement to the contrary, Lender is not obligated to make any loans to Borrower. This Agreement simply describes the terms and conditions which the parties have agreed will govern any loans which Lender may later decide, in its sole and absolute discretion, to make to Borrower pursuant to this Agreement.

**1.3 Promissory Notes.** Any loans which may be made by Lender to Borrower pursuant to the terms and provisions of this Agreement will be evidenced by promissory notes (the “Notes” or “Note”) which in the aggregate will not exceed **One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00)** (the “Maximum Amount”) executed by Borrower and payable to Lender. The Notes will mature as therein specified, (the “Maturity Date”), and will bear interest and be payable in the manner described in the Notes. The fact that the Notes have Maturity Dates that are beyond the “Termination Date” (as defined in Section 2.1 of this Agreement) shall not be deemed to (a) extend Lender’s Agreement to consider making loans beyond the Termination Date or (b) to alter Borrower’s obligation to repay the entire unpaid principal balance of each Note, together with all accrued but unpaid interest thereon, as specified in each Note. If the Maturity Date is extended by a written agreement signed by Borrower and Lender, the term “Maturity Date” as used in this Agreement means the Maturity Date as so extended. The term “Note” includes any and all renewals, modifications, rearrangements, reinstatements, enlargements, or extensions of a Note and any promissory note or notes given in renewal, substitution, or replacement therefor.

**1.4 Guaranty.** The full and prompt payment of the Notes will be unconditionally guaranteed by **Jane Doe** (“Guarantors”, whether one or more) pursuant to one or more Guaranty Agreements (the “Guaranty”, whether one or more).

**1.5 Deed of Trust.** The Notes will be secured, among other things, by (i) numerous Master Deed(s) of Trust (the “Master Deeds of Trust”) executed by Lender as master form deeds of trust pursuant to Section 12.009 of the Texas Property Code, which are recorded in various counties in the State of Texas and (ii) numerous Short Form deeds of trust (the “Short Form Deeds of Trust”) executed by Borrower for the benefit of Lender covering various properties within the State of Texas which incorporate by reference the terms of the Master Deed of Trust.

The term “Deeds of Trust” means the Master Deeds of Trust and the Short Form Deeds of Trust and all amendments, renewals, extensions, and modifications made to any of them after the date of this Agreement, collectively.

**1.6 Loan Documents.** This Agreement, the Notes, the Deeds of Trust, the Guaranty, if any, and all other documents now or hereafter executed by Borrower, Guarantors, or any other party in connection with, as evidence of, or as security for the Notes including all amendments, renewals, extensions, and modifications made to any of them after the date of this Agreement are collectively referred to in this Agreement as the “Loan Documents”. Each Loan Document must be in form and content acceptable to Lender, in Lender’s sole and absolute discretion.

**1.7 Indebtedness.** The term “Indebtedness” means all of the following:

(a) All indebtedness owed by Borrower to Lender that is evidenced by, secured by, or created in connection with the Loan Documents; including without limitation the aggregate of all principal and interest owing from time to time under the Notes and all fees, expenses, charges, premiums (if any), and other amounts from time to time owing under the Notes, this Agreement, or the other Loan Documents;

(b) All renewals, modifications, rearrangements, reinstatements, enlargements, or extensions of the Notes and any promissory note or notes given in renewal, substitution, or replacement for the Notes.

**1.8 Definitions.** In addition to the other capitalized terms that are defined throughout this Agreement, the following terms have the following meanings when used in this Agreement:

(a) **“Lot”** means a subdivided and platted lot or other tract of land approved by Lender the fee simple title to which is owned by Borrower.

(b) **“House”** means a 1-4 family residence constructed or to be constructed by Borrower upon a Lot; provided however, no more than one residence may be constructed on each Lot. The term “House” includes the Lot upon which it is located.

(c) **“Vacant Lot”** means a Lot without a House under construction on it that Borrower has designated as a Vacant Lot on the Advance Request (as defined in Section 3.3) applicable to it.

(d) **“Approved Sales Contract”** means a bona fide, legally binding, enforceable contract for the sale of a House, between Borrower, as seller, and a third party unrelated to Borrower, as buyer, with respect to which an earnest money deposit has been delivered to either an independent escrow agent or to Borrower and Borrower has undertaken a preliminary screening of the credit worthiness of the buyer (including, without limitation, obtaining a copy of a written indication of such credit worthiness from a reliable third party such as the buyer’s prospective lender) and has concluded that the buyer will qualify for a mortgage loan commitment to finance the purchase of the House.

(e) **“Pre-Sold House”** means a House which is the subject of an Approved Sales Contract. The term “Pre-Sold House” includes the Lot upon which it is located.

(f) **“Spec House”** means a House which is not the subject of an Approved Sales Contract. The term “Spec House” includes the Lot upon which it is located.

(g) **“Model House”** means a House built by Borrower for the purpose of marketing Borrower’s  

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Master Loan Agreement (Multiple Notes)

inventory to prospective purchasers and not for immediate sale. The term "Model House" includes the Lot upon which it is located.

(h) **"Mortgaged Property"** means all Vacant Lots and Houses securing the loans.

(i) **"Governmental Authority"** means any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), whether now or hereafter in existence.

(j) **"Governmental Requirements"** means (i) all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates, and ordinances of any Governmental Authority applicable to Borrower, Guarantors, or the Mortgaged Property, its ownership, use, occupancy, possession, operation, maintenance, alteration, repair, or reconstruction; (ii) all covenants, conditions, and restrictions contained in any deeds, or other forms of conveyance, or in any other instruments of any nature that are applicable to the Mortgaged Property, its ownership, use, or occupancy; and (iii) all other contracts (written or oral) of any nature that are in any way related to the Mortgaged Property and to which Borrower or Guarantors may be bound.

(k) **"Existing House"** means a House to be purchased by Borrower for the purpose of resale.

**1.9 Purpose.** The purpose of the loans is to enable Borrower to finance the properties indicated in Article II below.

## **ARTICLE II**

### **Loan Applications and Loan Terms**

**2.1 Termination Date.** The last date Borrower is entitled to have Lender consider new Loan Applications pursuant to this Agreement is **May 30, 2011** (the "Termination Date"). No Loan Applications will be considered after the Termination Date. The Termination Date may be extended by Lender, in Lender's sole and absolute discretion. If the Termination Date is extended, the term "Termination Date" means the Termination Date as so extended.

**2.2 Approval.** As used in this Agreement, the term "Approval" means Lender's agreement, to be provided or denied in Lenders sole and absolute discretion, to make a loan pursuant to this Agreement. At any time before to the Termination Date, Borrower may submit Loan Applications to Lender for the purpose of acquiring Houses or Lots and/or constructing Houses on them. Each Loan Application must be in form and content acceptable to Lender and at a minimum contain the following information with respect to the Vacant Lot and House: (a) the legal description, (b) whether Borrower intends the Lot to be categorized as a Vacant Lot, Model House, Spec House, Pre-Sold House or Existing House under this Agreement, and (c) a proposed budget for the acquisition of each House or Lot and, if Borrower intends the Lot to be categorized as a Model House, Spec House, or Pre-Sold House, a proposed budget for construction of the House. Lender will review the Loan Application and as many of the documents and as much of the information described in Sections 2.6 and 2.7 of this Agreement as Lender requests Borrower to furnish to Lender. When Lender has completed its review, Lender will give Borrower written notice of Approval or rejection of each Loan. In each notification of Approval Lender will designate the "Commitment Amount" (as defined in Section 2.3) attributable to the loan. Lender shall have no obligation to consider or approve additional loans if (i) their Approval will cause the sum of the Commitment Amounts of all approved loans to exceed the Maximum Amount, (ii) an "Event of Default" (as defined in Section 8.1) exists, or (iii) a "Potential Event of Default" (as defined in Section 8.1) exists.

**2.3 Commitment Amount.** The term "Commitment Amount" has the following meanings in the  

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following contexts:

(a) In the context of a Pre-Sold House, the term “Commitment Amount” means the lesser of (i) **100.000%** of the Approved Budget for the Pre-Sold House, (ii) **N/A%** of the projected sales price of the Contract House, (iii) **80.000%** of the appraised value of the Pre-Sold House as determined by the Appraisal, or (iv) **N/A** per Pre-Sold House.

(b) In the context of a Spec House, the term “Commitment Amount” means the lesser of (i) **100.000%** of the Approved Budget for the Spec House, (ii) **N/A%** of the projected sales price of the Spec House, (iii) **80.000%** of the appraised value of the Spec House as determined by the Appraisal, or (iv) **N/A** per Spec House.

(c) In the context of a Model House, the term “Commitment Amount” means the lesser of (i) **N/A%** of the Approved Budget for the Model House, (ii) **N/A%** of the projected sales price of the House, (iii) **N/A%** of the appraised value of the House as determined by the Appraisal, or (iv) **N/A** per Model House.

(d) In the context of a Vacant Lot the term “Commitment Amount” means the lesser of (i) **75.000%** of the purchase price of the Vacant Lot or (ii) **75.000%** of the appraised value of the Vacant Lot as determined by the Appraisal, or (iii) **N/A** per Vacant Lot.

(e) In the context of an Existing House the term “Commitment Amount” means the lesser of (i) **N/A%** of the purchase price of the Existing House (plus improvements, if applicable) or (ii) **N/A%** of the appraised value of the Existing House as determined by the Appraisal, or (iii) **N/A** per Existing House.

#### **2.4 Limitations on Commitment Amounts.**

(a) **Maximum Limit.** The aggregate Commitment Amounts of all loans made by Lender pursuant to this Agreement may not exceed **\$1,500,000.00** at any time (the “Maximum Limit”).

(b) **Limitation on Pre-Sold Houses.** The aggregate Commitment Amounts of all loans made for the purpose of constructing Pre-Sold Houses may not exceed **\$1,500,000.00** at any time. The aggregate number of all Loans made for the purpose of Pre-Sold Houses may not exceed **N/A** at any time.

(c) **Limitation on Spec Houses.** The aggregate Commitment Amounts of all loans made for the purpose of constructing Spec Houses may not exceed **N/A** at any time. The aggregate number of all Loans made for the purpose of Spec Houses may not exceed **6** at any time.

(d) **Limitation on Model Houses.** The aggregate Commitment Amounts of all loans made for the purpose of constructing Model Houses may not exceed **N/A** at any time. The aggregate number of all Loans made for the purpose of Model Houses may not exceed **N/A** at any time.

(e) **Limitation on Vacant Lots.** The aggregate Commitment Amounts of all loans made for the purpose of purchasing Vacant Lots may not exceed **\$375,000.00** at any time. The aggregate number of all Loans made for the purpose of Vacant Lots may not exceed **N/A** at any time.

(f) **Limitation on Existing Houses.** The aggregate Commitment Amounts of all loans made for the purpose of purchasing Existing Houses may not exceed **N/A** at any time. The aggregate number of all Loans made for the purpose of Existing Houses may not exceed **N/A** at any time.

(g) **Geographical Limitation.** All the Mortgaged Property must be located in: **None**

(h) **Other Limitations: Spec Homes Max 4 per subdivision, Max 6 total Vacant Lots 25% of line Max \$50,000 per lot**

## 2.5 Loan Terms.

(a) **Interest Rate.** The loans will bear interest at the following rate or rates:

- (i) (a) For each advance related to a Pre-Sold House, the term “**Applicable Rate**” means, at any time, a rate of interest per annum equal to the Index Rate in effect from time to time **plus 1.000%**.
- (b) For each advance related to a Spec House, the term “**Applicable Rate**” means, at any time, a rate of interest per annum equal to the Index Rate in effect from time to time **plus 1.000%**.
- (c) For each advance related to a Model House, the term “**Applicable Rate**” means, at any time, a rate of interest per annum equal to the Index Rate in effect from time to time **plus 0.000%**.
- (d) For each advance related to a Vacant Lot, the term “**Applicable Rate**” means, at any time, a rate of interest per annum equal to the Index Rate in effect from time to time **plus 1.000%**.
- (e) For each advance related to a Existing House, the term “**Applicable Rate**” means, at any time, a rate of interest per annum equal to the Index Rate in effect from time to time **plus 0.000%**.
- (f) In no event will these rates be less than **6.000%** per annum.

(ii) “**Index Rate**” means, on any day **The Wall Street Journal Prime Rate, the base rate on corporate loans posted by at least 70% of the nation's 10 largest banks published in the Money Rates section of The Wall Street Journal.** The Index Rate is the index agreed upon by Borrower and Lender to determine the rate of interest for the Note(s). Fluctuations in the Index Rate become effective immediately, without necessity for any notice whatsoever. Use of the Index Rate is not to be construed as a warranty or representation that the Index Rate is more favorable than another rate or index, that rates on other loans or credit facilities may not be based on indices other than the Index Rate, or that rates on loans to others may not be made below the Index Rate. If this Index Rate ceases to be published or made available, Lender shall select another index to determine the Applicable Rate. Thereafter this alternative index shall be used to calculate the rate of interest that will be charged on the Notes.

(b) **Payment Terms.** Interest on the Notes will be due and payable in accordance with the terms of each Note.

The entire unpaid principal balance of each loan made in connection with a Pre-Sold House, together with all accrued but unpaid interest thereon will be due and payable on (i) the first day of the first calendar month immediately following the expiration of **12** months after the date of the Short Form Deed of Trust executed in connection with the loan or (ii) the Maturity Date, whichever is the first to occur.

The entire unpaid principal balance of each loan made in connection with a Spec House, together with all accrued but unpaid interest thereon will be due and payable on (i) the first day of the first calendar month immediately following the expiration of **12** months after the date of the Short Form Deed of Trust executed in connection with the loan or (ii) the Maturity Date, whichever is the first to occur.

The entire unpaid principal balance of each loan made in connection with a Model House, together with all accrued but unpaid interest thereon will be due and payable on (i) the first day of the first calendar month immediately following the expiration of **N/A** months after the date of the Short Form Deed of Trust executed in connection with the loan or (ii) the Maturity Date, whichever is the first to occur.

The entire unpaid principal balance of each loan made in connection with a Vacant Lot, together with all accrued but unpaid interest thereon will be due and payable on (i) the first day of the first calendar month

immediately following the expiration of **12** months after the date of the Short Form Deed of Trust executed in connection with the loan or (ii) the Maturity Date, whichever is the first to occur.

The entire unpaid principal balance of each loan made in connection with an Existing House, together with all accrued but unpaid interest thereon will be due and payable on (i) the first day of the first calendar month immediately following the expiration of **N/A** months after the date of the Short Form Deed of Trust executed in connection with the loan or (ii) the Maturity Date, whichever is the first to occur.

The dates on which these principal payments are due and payable are referred to in this Agreement as "Principal Payment Dates".

**(c) Extension Requests.**

Lender has no obligation to extend the Principal Payment Date of any loan. Provided however, as long as no Event of Default or Potential Event of Default exists under this Agreement, Borrower may request that Lender extend the Principal Payment Date of any loan. A request for an extension of a Principal Payment Date (an "Extension Request" or "Extension Requests") must be made by Borrower at least 10 days before the Principal Payment Date requested to be extended and until Lender changes the required format any Extension Request must be made on the Extension Request form that is attached to this Agreement as Exhibit "B" and incorporated into it by reference for all purposes.

Lender will not be obligated to consider the approval of any Extension Request if the effect of the extension is to extend a Principal Payment Date beyond the Maturity Date.

Lender will not be obligated to consider the approval of an Extension Request for a loan made in connection with a Pre-Sold House for more than **12** months after the original Principal Payment Date.

Lender will not be obligated to consider the approval of an Extension Request for a loan made in connection with a Spec House for more than **12** months after the original Principal Payment Date.

Lender will not be obligated to consider the approval of an Extension Request for a loan made in connection with a Model House for more than **N/A** months after the original Principal Payment Date.

Lender will not be obligated to consider the approval of an Extension Request for a loan made in connection with a Vacant Lot for more than **12** months after the original Principal Payment Date.

Lender will not be obligated to consider the approval of an Extension Request for a loan made in connection with an Existing House for more than **N/A** months after the original Principal Payment Date.

**(i) Extension Fees.**

If Lender approves an Extension Request for any loan made in connection with a Pre-Sold House, Borrower agrees to pay Lender an extension fee of **N/A** for each approved Extension Request.

If Lender approves an Extension Request for any loan made in connection with a Spec House, Borrower agrees to pay Lender an extension fee of **N/A** for each approved Extension Request.

If Lender approves an Extension Request for any loan made in connection with a Model House, Borrower agrees to pay Lender an extension fee of **N/A** for each approved Extension Request.

If Lender approves an Extension Request for any loan made in connection with a Vacant Lot, Borrower agrees to pay Lender an extension fee of **N/A** for each approved Extension Request.

If Lender approves an Extension Request for any loan made in connection with an Existing House, Borrower agrees to pay Lender an extension fee of **N/A** for each approved Extension Request.

**(ii) Principal Reductions.**

If Lender approves an Extension Request for a loan made in connection with a Pre-Sold House, Borrower agrees to make a principal reduction on the loan of at least the following amounts for the following extension periods:

**Principal due at maturity**

If Lender approves an Extension Request for a loan made in connection with a Spec House, Borrower

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agrees to make a principal reduction on the loan of at least the following amounts for the following extension periods:

**(1) 0% for the first 6 month extension period, and (2) an additional 10% for the second 6 month extension period.**

If Lender approves an Extension Request for a loan made in connection with a Model House, Borrower agrees to make a principal reduction on the loan of at least the following amounts for the following extension periods:

n/a

If Lender approves an Extension Request for a loan made in connection with a Vacant Lot, Borrower agrees to make a principal reduction on the loan of at least the following amounts for the following extension periods:

**(1) 0% for the first 6 month extension period and (2) an additional 10% for the second 6 month extension period.**

If Lender approves an Extension Request for a loan made in connection with an Existing House, Borrower agrees to make a principal reduction on the loan of at least the following amounts for the following extension periods:

n/a

**2.6 Conditions to Approval.** Lender may require Borrower to fully satisfy any one or more of the conditions precedent contained in this Section before Lender will consider the Approval of any new loan. All of the things required to be received by Lender or done by Borrower pursuant to this Section must be furnished or done by Borrower and they must be in all respects satisfactory to Lender, in Lender's sole and absolute discretion.

(a) All of the Loan Documents (including without limitation, a new Short Form Deed of Trust covering each new Vacant Lot or House accepted into the Mortgaged Property) must be executed, delivered, and where appropriate, acknowledged and recorded,

(b) Lender has received the following: (i) certified copies of Borrower's Organizational Documents, any Guarantor's Organizational Documents, or if any Borrower or Guarantor has general partners, such general partner's Organizational Documents, or if any Borrower, Guarantor, or any general partner of Borrower or Guarantor has managers or managing members, such managers' or managing members' Organizational Documents; (ii) resolutions and/or certificates authorizing the execution, delivery, and performance of the Loan Documents by each party to them; (iii) certificates of existence and good standing from the Governmental Authority having jurisdiction over each party to the Loan Documents; and (iv) such other certificates or documents as Lender may from time to time require to evidence the continuing authority of each party to the Loan Documents to perform its obligations under the Loan Documents. With respect to any party to the Loan Documents, the term "Organizational Documents" means, if the party is: (i) a partnership or joint venture, a true and complete executed copy of its partnership or joint venture agreement and of all amendments to them; (ii) a limited partnership, a true and complete executed copy of its partnership agreement and certificate of limited partnership and all amendments to them; (iii) a corporation, a true and complete executed copy of its articles of incorporation and bylaws and of all amendments to them; (iv) a limited liability company, a true and complete executed copy of its articles of organization and regulations and of all amendments to them; and (v) an organization other than a general or limited partnership, joint venture; corporation; or limited liability Company, a true and complete executed copy of each document creating it or governing its existence, power, and authority and of all amendments to them.

(c) Lender has received evidence that the proposed Vacant Lot or House is not located within any designated flood plain or special flood hazard area (including without limitation, flood zones A or V); or evidence that Borrower has applied for and received flood insurance covering the House in the maximum coverage available to Lender.

(d) Lender has received a copy of the Plans and Specifications for each proposed House. As used in this Agreement the term “Plans and Specifications” means the plans and specifications for each House prepared by Borrower or Borrower’s architect that have been approved by Lender and all applicable Governmental Authorities and all amendments and modifications to the Plans and Specifications that are subsequently approved in writing by the same. If Borrower obtains Lender’s prior written approval, Borrower may satisfy this requirement by submitting master plans and specifications to Lender.

(e) Lender has received evidence that all insurance policies required by Section 6.17 of this Agreement will cover the proposed Vacant Lots and Houses.

(f) Lender has received the Title Evidence. “Title Evidence” means, with respect to each Vacant Lot and House, (i) a mortgagee’s title insurance policy or an interim construction binder issued by a title company acceptable to Lender in an amount equal to the Commitment Amount for that loan insuring or committing to insure that fee simple title to the applicable Vacant Lot or House is owned by Borrower and the applicable Short Form Deed of Trust is a valid first and superior lien on the fee simple title to the applicable Vacant Lot or House, subject only to those exceptions approved by Lender, (ii) all extensions required to keep such binders in full force and effect, and (iii) if Lender believes at any time there is or will be a dispute concerning the validity or priority of Lender’s lien on any Vacant Lot or House, all mortgagee’s title insurance policies required by Lender.

(g) Lender has received a Loan Application.

(h) Lender has received an “Appraisal” of each Vacant Lot and House that is acceptable to Lender. As used in this Agreement, the term “Appraisal” means one or more of the following, as requested by Lender: (i) a Master Certificate of Reasonable Value or Certificate of Reasonable Value issued by the Veterans Administration; (ii) a certificate of insurance or a commitment to insure loans by the Federal Housing Administration; (iii) an appraisal prepared by Lender or a third party appraiser, or (iv) some other method of valuation acceptable to Lender.

(i) A copy of the “Approved Budget”. As used in this Agreement, the term “Approved Budget” means a budget that has been agreed to and accepted by Lender for the acquisition of the Lot and the construction of the House. Each Approved Budget must be in form and content acceptable to Lender in Lender’s sole and absolute discretion.

**2.7 Optional Conditions to Approval.** In addition to the requirements of Section 2.6 above, Lender may also require Borrower to deliver any one or more of the items described in this Section 2.7 to Lender before Lender will consider the approval of any loan. All of the things required to be received by Lender or done by Borrower pursuant to this Section must be furnished or done by Borrower and they must be in all respects satisfactory to Lender, in Lender’s sole and absolute discretion.

(a) Evidence that all streets providing access to each Vacant Lot or House have been paved, completed, dedicated to public use, and accepted by applicable Governmental Authorities.

(b) Evidence showing the availability of all necessary utilities at the boundary lines of each Vacant Lot

and House, including sanitary and storm sewer facilities, potable water, telephone, electricity, gas, and municipal services.

(c) Evidence that each Vacant Lot and House comply with all Governmental Requirements.

(d) Building permit(s) and all other permits required with respect to the construction of each House.

(e) Evidence that all applicable zoning ordinances and restrictive covenants affecting each Vacant Lot and House permit their use as a single family residence and have been or will be timely complied with.

(f) A soil report and letter from a registered engineer stating that (i) the engineer has reviewed the soil report, (ii) such soil conditions will not cause construction of the foundations of the contemplated Houses to cost more than normally incurred for such foundations in the city in which the House is located, and (iii) the soil will not require any special engineering treatment.

(g) A fully executed copy of the Approved Sales Contract for each House, if any, together with such supplementary documentation as Lender may require (e.g., such buyer's written evidence of credit worthiness, etc.).

(h) A full size, single sheet copy of the recorded plat of the subdivision in which proposed Vacant Lot or House is located along with evidence that the plat has been approved by all Governmental Authorities.

(i) A copy of all restrictive covenants applicable to the Vacant Lots and Houses.

(j) A Phase I Environmental Site Assessment of the Vacant Lot or House evidencing no adverse environmental conditions.

(k) Evidence that no environmental notices, permits, licenses, or authorizations are required in connection with the proposed Vacant Lot or House or, if they are required, Borrower has expressly notified Lender in writing and provided Lender with a copy of such notice, permit, license, or authorization and is in compliance therewith.

(l) Such other instruments, evidence, or certificates as Lender may reasonably request.

(m) Borrower has paid Lender all fees and expenses required to be paid by Borrower by Article IV of this Agreement.

(n) A plot plan acceptable to Lender showing the proposed location of the House on the Lot and that the proposed location of the House on the Lot will not encroach on, across, or into any easement, building setback line, septic tank field, or other restricted area.

(o) A fully executed copy of the purchase contract for each Vacant Lot, if any, together with such supplementary documentation as Lender may require.

### **ARTICLE III Advances**

**3.1 No Obligation.** Lender has no obligation to advance any funds to Borrower until such time as a loan is approved by Lender, in its sole and absolute discretion, pursuant to the terms of this Agreement. Once a

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loan has been approved, Lender is still not obligated to advance any funds under such loan unless and until all of the conditions precedent contained in Article III of this Agreement have been fully satisfied with respect to the requested Advance.

**3.2 Advances.** As used in this Agreement, the term “Advance” means a disbursement by Lender, whether by journal entry, deposit to Borrower’s account, check to third party, or otherwise of any of the proceeds of the loans, any insurance proceeds, or “Borrower’s Deposit” (as defined in Section 3.8). All Advances will be made at the office of Lender or at such other place as Lender designates. Except as set forth in this Agreement, all Advances are to be made by wire transfer to a depository account that is acceptable to Lender and Borrower. Lender may, in Lender’s discretion without the necessity of an Advance Request, disburse loan proceeds by journal entry to pay interest, financing costs, and any fees and expenses described in Article IV of this Agreement. Loan proceeds disbursed by Lender by journal entry to pay interest or financing costs, and loan proceeds disbursed directly by Lender to pay costs or expenses required to be paid by Borrower pursuant to this Agreement, shall constitute Advances to Borrower.

**3.3 Procedure for Advances.** At least **Four (4)** business days prior to each date on which Borrower is requesting an Advance, Borrower shall submit a written request for the Advance (an “Advance Request”) to Lender. Lender shall have until the **Fourth** business day after receipt of the Advance Request to determine whether the amount requested should be advanced, during which time Lender’s representative (“Lender’s Inspector”) may, if requested by Lender, make an inspection of each House for which funding is requested. Each Advance Request must be certified by Borrower and such other parties as Lender may require and be in form and content acceptable to Lender, in Lender’s sole and absolute discretion. Lender will only make Advances for the acquisition of Lots and costs and expenses specified in the Approved Budget, and then only for work performed, services rendered, or materials furnished. No advance will be made for advance or unearned payments. Advances for payment of construction costs will only be made after actual commencement of construction and may not exceed the aggregate of (i) the costs of labor, materials, and services incorporated into the Mortgaged Property in a manner acceptable to Lender, plus (ii) if approved by Lender, the purchase price of uninstalled materials to be utilized in the construction of the Houses that are stored on the Mortgaged Property, or elsewhere with the written consent of and in a manner acceptable to Lender, less (iii) any retainage required by Lender, and less (iv) all prior advances for payment of costs of labor, materials, and services for the construction Houses.

**3.4 Inspections.** Borrower will permit Lender, Lender’s Inspector, or their representatives to enter the Mortgaged Property for the purposes of inspecting it and appraising its value at any time. Borrower shall cooperate with Lender’s Inspector and upon request will furnish Lender’s Inspector with any information Lender’s Inspector considers necessary or useful in connection with the performance of Lender’s Inspector’s duties. Without limiting the generality of the foregoing, Borrower shall furnish such items as working details, Plans and Specifications and details thereof, samples of materials, licenses, permits, certificates of public authorities, zoning ordinances, building codes, and copies of any contract for the construction of any of the Houses. Borrower agrees that Lender’s Inspector owes no duty to anyone other than Lender, including without limitation Borrower, Borrower’s agents, employees, contractors, subcontractors, or suppliers.

**3.5 Conditions to Advances.** Lender is under no obligation to make any Advance unless and until all of the conditions precedent contained in this Section have been fully satisfied with respect to such Advance. All of the things required to be received by Lender or done by Borrower pursuant to this Section must be in all respects satisfactory to Lender, in Lender’s sole and absolute discretion.

- (a) The Loan Documents continue to be in full force and effect and enforceable according to their terms.
- (b) All representations and warranties made by Borrower in this Agreement and the other Loan

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Documents are true and correct as of the date of each Advance and there has been no material adverse change in the financial condition of Borrower or Guarantors between the date of this Agreement and the date of the Advance.

(c) No Potential Event of Default or Event of Default exists.

(d) Borrower has furnished Lender with all of the documents or items described in Section 2.6 of this Agreement, together with all of the documents or items described in Section 2.7 of this Agreement that have been requested by Lender.

(e) The Mortgaged Property has not been destroyed or materially damaged by fire or other casualty.

(f) The Mortgaged Property is not the subject of a condemnation proceeding.

(g) The Mortgaged Property is not located in flood zone A or V unless Lender gives its advance written consent thereto, which may be withheld for any reason in Lender's sole and absolute discretion.

(h) Borrower has complied with all Governmental Requirements.

(i) Borrower has paid Lender all fees and expenses required to be paid by Borrower under Article IV of this Agreement.

(j) If requested by Lender, Borrower will also do the following: (i) deliver copies of recorded Affidavits of Commencement to Lender; (ii) deliver updated Title Evidence to Lender showing title to the Mortgaged Property to be vested in Borrower and no stated facts objectionable to Lender, including without limitation, mechanic's liens filings for unpaid bills for labor or materials; (iii) furnish Lender with a list of the names and addresses of all contractors, subcontractors, laborers, and suppliers who have furnished labor or materials for any House; (iv) furnish Lender with copies of the contracts, bills of sale, receipted vouchers, and agreements under which Borrower claims title to the materials, articles, fixtures, and other personal property used or to be used in the construction or operation of any House; and/or (v) furnish Lender with lien waivers or lien subordination agreements from all contractors, subcontractors, laborers, or suppliers, who have furnished labor or material for any House certifying that they have been fully paid for all labor and material furnished by them through the date of the Advance Request.

**3.6 Limitation on Advances.** The Commitment Amount designated by Lender as being allocated to a particular Vacant Lot or House is the maximum amount that will be advanced in connection with that Vacant Lot or House. Furthermore, Lender is not obligated to make an Advance for any stage of construction described in the Approved Budget or for any line item described in the Approved Budget if all of the work necessary to complete the construction for that stage of construction or that line item has not been fully completed in accordance with the Plans and Specifications. If the aggregate amount of Advances for any House is insufficient to pay for all labor and materials necessary to complete the construction of the House, Borrower shall pay all excess costs with funds from sources other than the Loan.

**3.7 Borrower's Deposit.** If Lender, in its sole and absolute discretion, deems that the undisbursed proceeds of any loan are insufficient to complete the construction of the House to be constructed with that loan, plus the costs of insurance, ad valorem taxes, and other normal costs incidental to the construction of those Houses, Lender may refuse to make any additional Advances to Borrower until Borrower has deposited sufficient additional funds ("Borrower's Deposit") with Lender to cover the deficiency which Lender deems to exist. Borrower will deliver Borrower's Deposit to Lender within five (5) days after Lender's written demand for it. Borrower's Deposit will be disbursed by Lender to Borrower pursuant to the terms and conditions of this Agreement as if Borrower's

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Deposit constituted a portion of the loan. Unless required by Governmental Requirements, Lender will not pay interest on Borrower's Deposit.

**3.8 Advance Not An Approval.** The making of any Advance will not be deemed an approval or acceptance by Lender of the work done before the date of the Advance. Lender has no obligation to make any Advance after the occurrence of any Event of Default, but does have the right and option to do so; provided however, if Lender elects to make an Advance after the occurrence of an Event of Default, the Advance will not be deemed to be either a waiver of the Event of Default or an obligation to make any other Advance.

**3.9 Advance Not A Waiver.** No Advance will constitute a waiver of any condition precedent to any obligation of Lender to make any further Advances or preclude Lender from thereafter declaring the failure of Borrower to satisfy the condition precedent to be an Event of Default.

**3.10 No Third Party Beneficiaries.** The benefits of this Agreement will not inure to any third party. This Agreement will not be construed to make or render Lender liable to any materialmen, subcontractors, contractors, laborers, or others for goods and materials supplied or labor performed in connection with the construction of any of the Houses. Lender is not liable for the manner in which any Advances under this Agreement may be applied by Borrower or any of Borrower's contractors or subcontractors, Notwithstanding anything contained in the Loan Documents or any conduct or course of conduct by Borrower or Lender, before or after the date of this Agreement, this Agreement will not be construed as creating any rights, claims, or causes of action against Lender, or any of its officers, directors, agents or employees, in favor of any contractor, subcontractor, supplier of labor or materials, or any of their respective creditors, or any other person or entity other than Borrower. Without limiting the generality of the foregoing, Advances made to any contractor, subcontractor, or supplier of labor or materials will not be deemed a recognition by Lender of any third-party beneficiary status claimed by any such person or entity.

**3.11 Conditions for Benefit of Lender.** All conditions precedent to the obligation of Lender to make any Advance are imposed solely for the benefit of Lender and may be waived by Lender as to one or more Advances in Lender's sole and absolute discretion without waiving them as to others, and no other party may require satisfaction of any condition precedent or be entitled to assume that Lender will refuse to make any Advance in the absence of strict compliance with these conditions precedent. All requirements of this Agreement may be waived by Lender, in whole or in part, at any time. Borrower shall have no right to rely on any investigations, inspections, or reviews performed by Lender pursuant to the terms of this Agreement or any other procedures employed by Lender under the terms of this Agreement. All such investigations, inspections, or reviews performed by Lender pursuant to the terms of this Agreement or any other procedures employed by Lender under the terms of this Agreement are solely for the Lender's own protection. Borrower acknowledges and agrees that Borrower has sole responsibility for constructing the Houses and paying for work done and materials furnished in their construction and that Borrower has solely, on Borrower's own behalf, selected or approved each contractor, each subcontractor, each materialman, and each supplier and that Lender has no responsibility for any such persons or entities or for the quality of their materials or workmanship.

#### **ARTICLE IV Fees and Expenses**

**4.1 Loan Fees.** Borrower shall pay Lender:  
Applicable required fees are "x"ed

a loan fee (the "Loan Fee") of N/A each **year** during the term of any of the loans. The first annual Loan Fee is due and payable on the date this Agreement is signed.

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- for Pre-Sold Houses a loan origination fee equal to **0.500%** of each approved loan amount. Said amount due at each approved Loan Application initial funding.
- for Spec Houses a loan origination fee equal to **0.500%** of each approved loan amount. Said amount due at each approved Loan Application initial funding.
- for Model Houses a loan origination fee equal to **N/A%** of each approved loan amount. Said amount due at each approved Loan Application initial funding.
- for Vacant Lots a loan origination fee equal to **0.500%** of each approved loan amount. Said amount due at each approved Loan Application initial funding.
- for Existing Houses a loan origination fee equal to **N/A%** of each approved loan amount. Said amount due at each approved Loan Application initial funding.

**4.2 Appraisal Fees.** Borrower shall promptly pay or reimburse Lender for all fees incurred or imposed by Lender for Appraisals made pursuant to this Agreement.

**4.3 Inspection Fees.** Borrower shall promptly pay Lender an inspection fee in the amount of **\$250.00 for each house.**

**4.4 Flood Certificate Fees.** Borrower shall promptly pay or reimburse Lender for all fees incurred by Borrower or Lender in obtaining evidence that each Vacant Lot or House is not located within any designated flood plain or special flood hazard area.

**4.5 Title Evidence Fees.** Borrower shall promptly pay or reimburse Lender for all fees incurred by Borrower or Lender in obtaining Title Evidence.

**4.6 Other Fees and Expenses.** Borrower shall promptly pay or reimburse Lender for all wire transfer fees, recording fees, insurance premiums, and other expenses incurred by Lender in connection with the loans or the Mortgaged Property that are not specifically described in other Sections of this Article IV. Borrower shall also promptly pay or reimburse Lender for all fees and expenses of counsel for Lender in connection with (a) the negotiation, preparation, filing, and recording of the Loan Documents and any renewals, extensions, and modifications to them; (b) the administration, servicing, and collection of the loans; (c) the protection of Lender's liens on the Mortgaged Property; and (d) the exercise by Lender of any of its rights and remedies under the Loan Documents.

**4.7 Lender Attorney Fees.** Borrower shall promptly pay or reimburse Lender the lender attorney fee for each individual House and Vacant Lot loan closing.

## **ARTICLE V Representations and Warranties**

To induce Lender to enter into this Agreement and make each Advance, Borrower represents and warrants to Lender, as of the date of this Agreement and as of the date of each Advance, that:

**5.1 Plans and Specifications.** The Plans and Specifications comply with all Governmental Master Loan Agreement (Multiple Notes)

Requirements. To the extent required by Governmental Requirements or applicable restrictive covenants, the Plans and Specifications have been approved by the applicable Governmental Authorities and the architectural control committee or other persons empowered to do so by any restrictive covenants.

**5.2 Governmental Requirements.** No violation of any Governmental Requirements exists with respect to the Mortgaged Property and neither the Borrower nor the Guarantors are in default with respect to any Governmental Requirements.

**5.3 Utility Services.** All utility services (including without limitation, potable water storm and sanitary sewer facilities, gas, electric, and telephone facilities) necessary for the construction of a House and its operation as a single family residence are available at the boundaries of each Lot that is part of the Mortgaged Property in adequate sizes and capacities and that Borrower has the right to connect each House to such utility services.

**5.4 Access.** All roads necessary for the full utilization of the Mortgaged Property for its intended purposes have been completed and have been accepted by the appropriate Governmental Authority.

**5.5 No Work Performed.** No labor will be performed on and no materials will be furnished or delivered to any Lot prior to recording the Short Form Deed of Trust covering that Lot, including without limitation, any labor to clear or otherwise prepare the Lot for construction of any improvements on it.

**5.6 Disclaimer of Permanent Financing.** Lender has not made any representations, warranties, guarantees, commitments, or other agreements of any kind whatsoever, either express or implied, that Lender, any subsidiary of Lender, or any other party affiliated with Lender will extend the term of any loan past its stated Maturity Date (unless otherwise expressly stated in this Agreement) or provide permanent financing for Borrower or any person purchasing any Vacant Lot or House from Borrower.

**5.7 Interstate Land Sales Act.** Borrower's development of the Mortgaged Property and the sale or lease of the Mortgaged Property by Borrower are exempt from registration under and any requirements of the Interstate Land Sales Full Disclosure Act and the regulations promulgated pursuant to it.

**5.8 Financial Statements.** Each Financial Statement delivered to Lender in connection with the loans, whether before or after the date of this Agreement, was and will be prepared and signed by Borrower's authorized agent in conformity with generally accepted accounting principles (unless other accounting principles are approved by Lender in writing) applied on a basis consistent with that of previous statements and does or will completely and accurately disclose the financial condition (including all contingent liabilities) of the party for whom it was prepared as of its date and for the period covered by it.

**5.9 Information.** All information, Financial Statements, reports (including without limitation, Inventory Reports), papers, and data given or to be given to Lender with respect to Borrower, Guarantors, and all others obligated under the terms of the Loan Documents, or with respect to the Mortgaged Property are, or at the time of delivery will be, accurate, complete, and correct in all material respects and do not, or will not, omit any fact, the inclusion of which is necessary to prevent the facts contained therein from being materially misleading.

**5.10 Master Deed of Trust.** The warranties and representations contained in Article III of the Master Deed of Trust are true and correct

## ARTICLE VI Covenants

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Master Loan Agreement (Multiple Notes)



As long as any portion of the Indebtedness remains unpaid or as long Borrower has the right to request or obtain additional Advances pursuant to this Agreement, Borrower covenants and agrees as follows:

**6.1 Commencement and Completion Unless an Existing House or Vacant Lot.** Borrower shall commence construction of each House within 45 days after the applicable Short Form Deed of Trust is recorded in the appropriate records of the county where the House is located and diligently pursue its completion without cessation except due to acts of God.

**6.2 Affidavit of Commencement.** If requested by Lender in connection with any House, Borrower will record an affidavit of commencement (“Affidavit of Commencement”) in the appropriate records of the county where the House is located. The Affidavit of Commencement must state the date construction began. The Affidavit of Commencement must not state a commencement date or be recorded before the applicable Short Form Deed of Trust is recorded and must be in form and content satisfactory to Lender, in Lender’s sole and absolute discretion.

**6.3 Affidavit of Completion.** If requested by Lender in connection with any House, Borrower will record an affidavit of completion (“Affidavit of Completion”) stating the date construction was completed in the appropriate records of the county where the Lot is located. The Affidavit of Completion must be form and content satisfactory to Lender in Lender’s sole and absolute discretion.

**6.4 Construction According to Plans and Specifications.** Borrower will construct each House in a good and workmanlike manner and in accordance with its Plans and Specifications and all Governmental Requirements. Furthermore, Borrower will not materially amend, alter, or change the Plans or Specifications unless the changes have been approved in writing by Lender in advance and, if necessary, by all Governmental Authorities and any architectural control committee or other party empowered to do so by any restrictive covenants.

**6.5 Correction of Defects.** Borrower will correct (a) any defect in the construction of the Houses and any departure from the Plans and Specifications not approved in writing by Lender and (b) all violations of any Governmental Requirements or restrictive covenants. An Advance will not constitute a waiver of Lender’s right to require compliance with this covenant with respect to any such defects or violations not previously discovered by Lender.

**6.6 Compliance with Governmental Requirements.** Borrower will promptly comply with all Governmental Requirements effecting the Mortgaged Property and do all things necessary to remain in good standing in the state where Borrower is organized.

**6.7 Notification of Budget Changes.** Promptly notify Lender of any change of 10% or more in the Approved Budget, and any material change in any fact or circumstance represented or warranted by Borrower in the Loan Documents.

**6.8 Taxes.** Pay promptly when due and before the accrual of penalties thereon all taxes, including without limitation, all payroll taxes, all federal and state income taxes, and all real and personal property taxes and assessments, levied or assessed against Borrower or the Mortgaged Property and provide Lender with paid receipts therefor if requested by Lender.

**6.9 Reports and Notices.** Furnish promptly to Lender such information as Lender may require concerning costs, progress of construction, marketing, and such other factors as Lender may require. Notify Lender promptly of (i) any litigation instituted or threatened against Borrower or any Guarantor, (ii) any deficiencies

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asserted or liens filed by the Internal Revenue Service against Borrower, any Guarantor, or the Mortgaged Property, (iii) any audits of any federal or state tax returns of Borrower or any Guarantor and the results of any such audit, (iv) any condemnation or similar proceedings with respect to any of the Mortgaged Property, (v) any proceeding seeking to enjoin the intended use of the Mortgaged Property, (vi) any changes of Governmental Requirements, utility availability, or anticipated costs of completion, and (vii) any other matters which could reasonably be expected to adversely affect Borrower's ability to perform its obligations under this Agreement.

**6.10 Indebtedness.** Promptly pay when due all Indebtedness to Lender according to the terms of this Agreement and the other Loan Documents and all other indebtedness of Borrower. To incur no other indebtedness in any manner secured in whole or in part by the Mortgaged Property, any income to be derived therefrom, or any other collateral for the Indebtedness, except as otherwise expressly approved in writing by Lender.

**6.11 Identify Property.** Display the Borrower's name and the street address of each Lot in a prominent place on the Lot that is visible from the street.

**6.12 Performance.** Promptly and fully perform all of Borrower's obligations under the Loan Documents, and never permit an Event of Default to exist.

**6.13 Advances.** Borrower will receive the Advances and will hold such funds or an equivalent amount in trust for the purpose of paying the costs and expenses for which each Advance is made and will not use any part of any Advance for any other purpose.

**6.14 Personalty and Fixtures.** Borrower will deliver to Lender, on demand, any contracts, bills of sale, statements, receipted vouchers, or agreements under which Borrower claims title to any materials, fixtures, or other personal property incorporated into any of the Houses located on any of the Mortgaged Property.

**6.15 Statement of Unpaid Balance.** Upon Lender's request, but no more often than 2 times per calendar year, Borrower will deliver a written statement or affidavit to Lender, in form satisfactory to Lender, stating the unpaid balance of the Indebtedness and that there are no offsets or defenses against full payment of the Indebtedness and the terms of the Loan Documents, or if there are any such offsets or defenses, specifying them.

**6.16 Other Loan Documents.** The covenants and agreements contained in this Agreement are made in addition to, not in lieu of, the covenants and agreements contained in the other Loan Documents.

**6.17 Insurance.**

**(a) General Requirements.** Borrower will, at Borrower's own expense, obtain and maintain in full force and effect insurance upon and relating to the Mortgaged Property with such insurers, in such amounts, and covering such risks as are requested by and satisfactory to Lender, from time to time, including but not limited to: (a) the broadest available form of builder's risk insurance (utilizing the then prevailing "ISO causes of loss-special forms" and "non-reporting forms" of builder's risk insurance form or equivalent forms acceptable to Lender) covering all Houses within the Mortgaged Property during their construction for their full replacement cost; (b) the broadest available form of "all risks" or "special form" property insurance (utilizing the then prevailing "ISO Special Form" property insurance form or an equivalent form acceptable to Lender), covering all Houses within the Mortgaged Property after their construction is complete for their full replacement cost, with no exclusions permitted for vandalism or malicious mischief; and including flood as a covered cause of loss; (c) worker's compensation insurance to the statutory limit; (d) a commercial general liability insurance policy providing coverage against (among other things) bodily injury and disease, including death resulting therefrom, personal injury and property damage, written on an "occurrence" basis in connection with the business or other activities

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conducted on or from the Mortgaged Property; (e) flood insurance covering all Houses located within Flood Zone A or V, both during construction and after construction is complete for their full replacement cost or the maximum amount available under the federal flood insurance program, whichever is the most; and (f) such other insurance with other coverages or increased coverages, if any, as Lender may require from time to time. Each insurance policy issued pursuant to this Section must be issued by good and solvent insurance companies satisfactory to Lender and all such policies must provide, by way of endorsements, riders, or as otherwise applicable, that: (a) the builder's risk and property insurance policies must contain a standard "Mortgagee clause" and must be payable to Lender as a mortgagee and not as a co-insured, and with respect to all policies and insurance carried by Borrower for the benefit of Lender, such insurance must be payable to Lender as Lender's interest may appear; (b) with respect to the commercial general liability policy and all other liability insurance, such insurance must name Lender as an "Additional Insured" (using the applicable ISO form, or an equivalent form reasonably acceptable to Lender, without modification [and under the commercial umbrella, if any], and which policy must contain standard commercial general liability "other insurance" wording, unmodified in any way that would make it excess over or contributory with the additional insured's own commercial general liability coverage); (c) Lender's coverage under the policies must not be terminated, reduced, or affected in any manner regardless of any breach or violation by Borrower of any warranties, declarations, or conditions in the policies; (d) no policies will be canceled, endorsed, altered, or reissued to effect a change in coverage for any reason and to any extent whatsoever unless the insurer has first given Lender no less than thirty (30) days' prior written notice; and (e) Lender must be permitted, but not be obligated, to make premium payments to prevent any cancellation, endorsement, alteration, or reissuance of the policies, and such payments must be accepted by the insurer to prevent same. Lender must be furnished with the original of each such initial policy when this Agreement is executed and the original of each renewal policy not less than thirty (30) days before the expiration of the initial policy or each immediately preceding renewal policy, and Lender must additionally be concurrently furnished with receipts or other evidence that the premiums on all the policies have been paid for at least one (1) year. Borrower shall furnish to Lender, on or before thirty (30) days after the close of each of Borrower's fiscal years while this Deed of Trust is in force and effect, a statement certified by Borrower or a duly authorized officer of Borrower of the amounts of insurance maintained in compliance with this Section, of the risks covered by such insurance, and of the insurance companies which carry the insurance. For purposes of this Section, the term "ISO" shall mean Insurance Services Office.

**(b) Texas Collateral Protection Insurance Notice.**

According to Section 307.052 of the Texas Finance Code the following notice is given to Borrower by Lender:

- (i) Borrower is required to:
  - (1) keep the Mortgaged Property insured against damage in the amount the Lender specifies;
  - (2) purchase the insurance from an insurer that is authorized to do business in Texas or an eligible surplus lines insurer; and
  - (3) name Lender as the person to be paid under the policy in the event of a loss;
- (ii) Borrower must, if required by Lender, deliver Lender a copy of the policy and proof of the payment of premiums; and
- (iii) Borrower fails to meet any requirement listed in paragraph (1) or (2) above, Lender may obtain collateral protection insurance on behalf of Lender at Borrower's expense.

**6.18 Surveys.** Any survey requested by Lender under this Section must be furnished to Lender within ten (10) days after Lender's request for it. All surveys or other evidence provided to Lender must be paid for by Borrower and be in form and substance acceptable to Lender in Lender's sole and absolute discretion.

**(a) Foundation Surveys.** If requested by Lender after the foundation of a House is poured, Borrower will

obtain a foundation survey or other evidence acceptable to Lender, showing (i) the location of the foundation on the Lot, (ii) that the foundation is entirely within the property lines of the Lot, (iii) that the foundation does not encroach on, across, or into any easement, building setback line, septic tank field, or other restricted area, (iv) that the foundation is located in accordance with the Plans and Specifications, (v) that the foundation does not violate any Governmental Requirements, and (vi) no state of facts objectionable to Lender. Lender has no obligation to make any Advance at any time after the completion of the foundation until such foundation survey or other acceptable evidence is delivered to Lender.

**(b) Completion Surveys.** If requested by Lender after the completion of a House, Borrower will also obtain another survey or other evidence acceptable to Lender showing the same things as the foundation survey. Lender agrees that it will not require a completion survey of any House unless Lender believes the House encroaches on, across, or into any property line, easement, building setback line, septic tank field, or other restricted area.

**6.19 Subordination and Restrictions on Payment of Affiliated Party Debt.** All Affiliated Party Debt (as defined in Section 6.21) shall be expressly subordinated to the loans. Borrower covenants and agrees not to repay any Affiliated Party Debt if (a) an Event of Default or Potential Event of Default has occurred and is continuing, (b) Borrower is not in compliance with the covenants contained in Section 6.21 of this Agreement, or (c) the repayment would cause Borrower to breach any one of the covenants contained in Section 6.21 of this Agreement.

**6.20 Financial Statements and Reports.** The following indicated Financial Statements and Reports are also requested:  
Applicable conditions are “x”ed

[ X ] **(a) Financial Statements.** All financial statements required to be delivered to Lender pursuant to this Agreement must be prepared according to generally accepted accounting principles. All financial statements required to be delivered to Lender by this Agreement must be certified as being prepared according to generally accepted accounting principles and as being true and correct by the person or legal entity whose financial condition is described in the financial statements. All audited financial statements, if any, required to be delivered to Lender by this Agreement must be prepared by an independent certified public accountant and certified by such accountant as being prepared according to generally accepted accounting principles and as being true and correct.

**(b) Borrower’s Statements and Tax Returns.**

- (i) Annual Statements.** Within **60** days after the end of each calendar year during the term of the loans, Borrower shall deliver Borrower’s annual **internally prepared** financial statements to Lender.
- (ii) Semi-Annual Statements.** Within **60** days after the end of each semi calendar year during the term of the loans, Borrower shall deliver Borrower’s semi-annual **internally prepared** financial statements to Lender.
- (iii) Quarterly Statements.** Within **60** days after the end of each calendar quarter during the term of the loans, Borrower shall deliver Borrower’s quarterly **reviewed** financial statements to Lender.
- (iv) Tax Returns.** Within **30** days after the date filed with the Internal Revenue Service, Borrower shall deliver signed copies of Borrower’s annual federal income tax returns to Lender.

**(c) Guarantors' Statements and Tax Returns.**

- (i) Annual Statement.** Within **60** days after the end of each calendar year during the term of the loans, Guarantors shall deliver Guarantors' annual **internally prepared** financial statements to Lender.
- (ii) Semi-Annual Statement.** Within **60** days after the end of each semi calendar year during the term of the loans, Guarantors shall deliver Guarantors' semi-annual **internally prepared** financial statements to Lender.
- (iii) Quarterly Statement.** Within **60** days after the end of each calendar quarter during the term of the loans, Guarantors shall deliver Guarantors' quarterly **reviewed** financial statements to Lender.
- (iv) Tax Returns.** Within **30** days after the date filed with the Internal Revenue Service, Guarantors shall deliver signed copies of Guarantors' annual federal income tax returns to Lender.

**(d) Inventory Reports.** Borrower agrees to deliver inventory reports (the "Inventory Reports") to Lender within **30** days after the end of each **quarter** during the term of the loans. All Inventory Reports must be in form and content satisfactory to Lender, in Lender's sole and absolute discretion, and must specify the following: (i) the number of Houses that Borrower has under construction that are not a part of the Mortgaged Property categorizing them as vacant lots, spec houses, pre-sold houses, or model houses; (ii) the number of houses that Borrower has under construction that are a part of the Mortgaged Property categorizing them as Vacant Lots, Spec Houses, Pre-Sold Houses, Model Houses or Existing Houses (iii) the number of houses that have been fully completed (subject to minor customer selection items) and a description of which completed houses are pre-sold houses, spec houses, or model houses; and (iv) the subdivision and city in which each such house (whether under construction or completed) is located.

**6.21 Financial Covenants.**

Applicable conditions are "x"ed

**(a) Definitions.**

"Affiliated Party" as used in this Agreement means, as to Borrower, any individual or entity (a) that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, Borrower; (b) that directly or indirectly beneficially owns or holds five percent (5%) or more of any class of voting stock of Borrower or the partnership interests in Borrower; or (c) five percent (5%) or more of the voting stock or partnership interests of which is directly or indirectly beneficially owned or held by Borrower. The term "control" means the possession, directly, or indirectly, of the power to direct or cause direction of the management and policies of another entity, whether through the ownership of voting securities, by contract, or otherwise; provided however, in no event shall Lender be deemed an Affiliated Party of the Borrower. "Affiliated Party Debt" as used in this Agreement means all debt of Borrower to an Affiliated Party or a shareholder, member, or partner of Borrower,

"Affiliated Party Receivables" as used in this Agreement means all debt owed to Borrower by an Affiliated Party or a shareholder, member, or partner of Borrower.

“Debt” means any and all notes, guaranties and other evidence of indebtedness (fixed or contingent), accounts payables, contingent liabilities, lease obligations (to the extent same are considered liabilities in accordance with generally accepted accounting principles), and any and all other obligations treated as liabilities in accordance with generally accepted accounting principles, except that in computing “Debt” any Affiliated Party Debt that has expressly been made subordinate to the loans shall be excluded.

“Tangible Net Worth” shall have the meaning used in accordance with generally accepted accounting principles, except that in computing “Tangible Net Worth” any intangible assets (e.g., goodwill, patents, trademarks, non-compete agreements, and unamortized debt costs) and Affiliated Party Receivables shall be excluded and any Affiliated Party Debt that has expressly been made subordinate to the loans shall be included.

**(b) Debt/Tangible Net Worth Ratio.** Borrower agrees that, for each **semi-annual** during the term of the loans, its Debt to Tangible Net Worth shall not exceed **4.000** to 1.0 (the “Maximum Debt to Tangible Net Worth Ratio”).

**(c) Minimum Tangible Net Worth.** Borrower agrees that, for each **quarter** during the term of the loans, its Tangible Net Worth shall not fall below **N/A** (the “Minimum Tangible Net Worth”).

**6.22 Joint and Several Liability.** Each Borrowing Entity is jointly and severally liable for the obligations of Borrower under this Agreement. If any Borrowing Entity is a partnership, each general partner of that Borrowing Entity is jointly and severally liable for the obligations of Borrower under this Agreement, and each general partner waives any requirement of law that Lender exhaust any assets of any Borrowing Entity before proceeding against the assets of such general partner.

## ARTICLE VII Assignments

**7.1 Assignment of Purchase Contracts.** As used in this Agreement the term “Purchase Contracts” means all of Borrower’s right, title, and interest in, to, and under (a) all contracts for the purchase and sale of any portion on the Mortgaged Property (including without limitation, Approved Sales Contracts), whether such Purchase Contracts are now or at any time hereafter existing, (b) all amendments, renewals, and extensions of the Purchase Contracts, (c) all payments, earnings, income, and profits arising from the sale of any part of the Mortgaged Property or from the Purchase Contracts and all other sums due or to become due pursuant to the Purchase Contracts, and (d) all earnest money, security, letters of credit, or other deposits under any of the Purchase Contracts. As additional security for the loans, Borrower transfers and assigns the Purchase Contracts to Lender. In connection with this assignment Borrower irrevocably appoints Lender as Borrower’s agent and attorney-in-fact with full power of substitution to exercise every right granted to Borrower under the Purchase Contracts and to do all things Borrower could do under or in connection with the Purchase Contracts. Borrower agrees that this power of attorney is coupled with an interest and cannot be revoked. Lender’s rights under this Section are in addition to all other rights and remedies Lender may have under this Agreement or any of the other Loan Documents. This assignment will inure to the benefit of Lender, its successors and assigns, any purchaser upon foreclosure of the Deed of Trust, and any receiver in possession of the Mortgaged Property.

**7.2 Assignment of Plans and Specifications.** As additional security for the loans, Borrower transfers and assigns to Lender all of Borrower’s right, title, and interest in and to the Plans and Specifications and represents and warrants to and covenants and agrees with Lender as follows:

(a) Each schedule of the Plans and Specifications delivered or to be delivered to Lender is and will be a complete and accurate description of the Plans and Specifications.

(b) The Plans and Specifications are and will be complete and adequate for the construction of the Houses to which they relate and there have been no material modifications of them except as described in such schedule. The Plans and Specifications will not be modified without the prior written consent of Lender.

(c) Lender may use the Plans and Specifications for any purpose relating to the Mortgaged Property, including but not limited to inspections of construction and the completion of construction.

(d) Lender's acceptance of this assignment will not constitute approval of the Plans and Specifications by Lender. Lender has no liability or obligation in connection with the Plans and Specifications and no responsibility for their adequacy or for the construction of the Houses contemplated by the Plans and Specifications. Lender has no duty to inspect the Mortgaged Property, and if Lender inspects the Mortgaged Property, Lender has no liability or obligation to Borrower or any other party arising out of such inspection. No such inspection nor any failure by Lender to make objections after any such inspection will constitute a representation by Lender that any Houses are constructed in accordance with the Plans and Specifications or constitute a waiver of Lender's right thereafter to insist that such Houses be constructed in accordance with the Plans and Specifications.

(e) This assignment will inure to the benefit of Lender, its successors and assigns, any purchaser upon foreclosure of the Deed of Trust, and any receiver in possession of the Mortgaged Property.

(f) If the Plans and Specifications are not owned by Borrower, Borrower will obtain the consent of the owner of the Plans and Specifications to this assignment.

## **ARTICLE VIII**

### **Events of Default and Remedies**

**8.1 Events of Default.** Each one of the events described in this Section 8.1 is an "Event of Default" under this Agreement. As used in this Agreement, the term "Potential Event of Default" means the occurrence of any event which, but for the giving of notice or the passage of time, would become an Event of Default.

(a) The occurrence of an "Event of Default" pursuant to and as defined in any other Loan Document.

(b) If any lien for labor or materials performed or furnished in connection with the construction of any improvements is filed against any Vacant Lot or House and it is not paid or released or bonded within 30 days after it is filed. Notwithstanding the foregoing, the filing of such a lien will not be an Event of Default if Borrower, within 30 days after Borrower becomes aware of such lien filing, satisfies the requirements of Section 8.11 of the Master Deed of Trust and Article III of the Short Form Deed of Trust describing the Lot against which the lien was filed, including without limitation, payment of the Partial Release Price (as defined in Section 3.4 of the applicable Short Form Deed of Trust) so that the House which is the subject of the lien filing is released from the liens of the Deed of Trust and is no longer a part of the Mortgaged Property.

(c) If the building permit for any House is revoked or if any House violates a Governmental Requirement in such a manner that it cannot be occupied as a single family residence. Notwithstanding the foregoing, such revocation or violation will not be an Event of Default if Borrower, within 30 days after Borrower becomes aware of such revocation or violation, satisfies the requirements of Section 8.11 of the Master Deed of Trust and Article III of the Short Form Deed of Trust describing the House which is the subject of the revocation or violation, including without limitation, payment of the Partial Release Price (as defined in Section 3.4 of the applicable Short Form Deed of Trust) so that the House which is the subject of the revocation or violation is released from the liens of the Deed of Trust and is no longer a part of the Mortgaged Property.

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Master Loan Agreement (Multiple Notes)

(d) If Borrower executes any conditional bill of sale, chattel mortgage, or other security instrument covering any materials, fixtures, or articles of personal property intended to be incorporated into the Mortgaged Property, or covering articles of personal property placed in any of the Houses, or if Borrower files a financing statement publishing notice of such security interest, or if any of such materials, fixtures, or articles of personal property are not purchased in such a manner that their ownership vests unconditionally in Borrower, free from encumbrances, on delivery at the Mortgaged Property.

(e) If any Governmental Authority files or gives any notice, levy, or assessment that does or could constitute a lien on any portion of the Mortgaged Property or any of Borrower's other assets.

(f) If any Borrower (i) changes the state of its organization or domicile, (ii) changes or converts from one type of legal entity to another, or (iii) merges or consolidates with any other legal entity, without obtaining Lender's prior written consent.

(g) If Borrower makes or permits a "Disposition" (as defined in the Master Deed of Trust) without obtaining Lender's prior written consent.

(h) If any portion of the ownership or any senior management change or both of the Borrower should without the prior written consent of Lender.

**8.2 Remedies.** Upon the occurrence of an Event of Default or a Potential Event of Default Lender may, at Lender's option, do any one or more of the following:

(a) Refuse to consider any additional Loan Applications made by Borrower to Lender pursuant to this Agreement.

(b) Refuse to make any additional loans to Borrower pursuant to this Agreement.

(c) Perform or attempt to perform any covenant contained in the Loan Documents that Borrower has failed to keep or perform and any payment made or expense incurred in the performance or attempted performance of any such covenant shall be and become a part of the Indebtedness and Borrower shall, upon demand, pay Lender all sums so paid by Lender together with interest from the date paid or incurred by Lender at the Default Rate described in the Notes.

(d) Refuse to make additional Advances.

(e) Exercise any rights or remedies Lender has under any of the Loan Documents or pursuant to applicable law.

(f) Enter into possession of the Mortgaged Property and, at Lender's option, in the name and on behalf of Borrower, do anything in connection with the construction of the Houses that Borrower could do in its own behalf, including without limitation, any one or more of the following: (i) perform all work necessary to complete construction of the Houses then under construction or discontinue any such work, whether commenced by Borrower or Lender, (ii) assume Borrower's rights, and powers under any contract Borrower has entered into in connection with the Mortgaged Property or the construction of the Houses, (iii) execute all certificates and applications that are required under any construction contract, (iv) make any additions, changes, and corrections in the Plans and Specifications which in Lender's judgment are necessary or desirable to complete construction of the Houses in substantially the same manner as contemplated by the Plans and Specifications, (v) employ architects,



contractors, subcontractors, engineers, inspectors, and security guards, and other persons to perform services or furnish materials or equipment in connection with any action Lender takes under this Section, (vi) continue any existing construction contracts or subcontracts, (vii) pay, settle, or comprise any existing bills or claims which are or may become liens against the Mortgaged Property or may be necessary or desirable for the completion of the work or the clearing of title, (viii) prosecute and defend all actions or proceedings in connection with the Mortgaged Property or the construction of the Houses; (ix) use all of Borrower's funds that are in Lender's control (including any amounts held in escrow and Borrower's Deposit), and any funds which remain unadvanced on the Loans for the purposes described in this Section; and (x) make advances in excess of the Maximum Loan Amount for the purposes described in this Section, which advances will be a part of the Indebtedness. All amounts expended by Lender pursuant to this Section will be deemed to have been disbursed to Borrower as Advances and be secured by the Deed of Trust. For the purposes described in this Section and the enforcement of the terms and conditions of this Agreement, Borrower irrevocably appoints Lender as Borrower's agent and attorney-in-fact with full power of substitution to exercise all of the rights and remedies granted to Lender by this Section. Borrower agrees that this power of attorney is coupled with an interest and cannot be revoked.

## ARTICLE IX

### Lender's Disclaimers - Borrower's Indemnities

**9.1 No Obligation by Lender to Construct.** Lender has no liability or obligation in connection with the Mortgaged Property or its development or construction. Lender is not obligated to inspect the work in progress. Lender is not liable for (i) the performance or default of any contractor or subcontractor, (ii) any failure to construct, complete, protect, or insure the Mortgaged Property, (iii) the payment of any cost or expense incurred in connection therewith, or (iv) the performance or nonperformance of any obligation of Borrower or Guarantors to Lender or to any other person or entity.

**9.2 No Obligation by Lender to Operate.** Notwithstanding anything contained in the Loan Documents to the contrary, Lender shall not have, and by its execution and acceptance of this Agreement hereby expressly disclaims, any obligation or responsibility for the management, conduct, or operation of the business and affairs of Borrower or Guarantors. Any term or condition of the Loan Documents which permits Lender to disburse funds, whether from the proceeds of the Loans, the Borrower's Deposit or otherwise, or to take or refrain from taking any action with respect to Borrower, Guarantors, the Mortgaged Property, or any other collateral for repayment of the loans, shall be deemed to be solely to permit Lender to audit and review the management, operation, and conduct of the business and affairs of Borrower and Guarantors, and to maintain and preserve the security given by Borrower to Lender for the loans, and may not be relied upon by any other person. Further, Lender shall not have, has not assumed and by its execution and acceptance of this Agreement expressly disclaims any liability or responsibility for the payment or performance of any indebtedness or obligation of Borrower or Guarantors and no term or condition of the Loan Documents, should be construed otherwise. Further, Lender shall have no obligation under any Approved Sales Contract or other agreement for the sale of any House or Vacant Lot. Borrower expressly acknowledges that no term or condition of the Loan Documents should be construed to deem the relationship between Borrower, Guarantors, and Lender to be other than that of Borrower, Guarantor, and lender. Borrower shall at all times represent that the relationship between Borrower, Guarantors, and Lender is solely that of borrower, guarantor, and lender. **BORROWER AGREES TO DEFEND, INDEMNIFY, AND HOLD LENDER HARMLESS FROM ANY COST, EXPENSE, OR LIABILITY INCURRED BY LENDER ARISING OUT OF ANY CLAIM THAT LENDER HAS ANY OBLIGATION OR IS RESPONSIBLE FOR THE MANAGEMENT, OPERATION, OR CONDUCT OF THE BUSINESS AND AFFAIRS OF BORROWER OR GUARANTORS OR AS A RESULT OF ANY CLAIM THAT LENDER HAS ANY OBLIGATION OR IS RESPONSIBLE FOR THE PAYMENT OR PERFORMANCE OF ANY INDEBTEDNESS OR OBLIGATION OF BORROWER OR GUARANTORS.**

**9.3 Lender/Borrower Relationship.** No term or condition of this Agreement or of any of the other Loan Documents should be construed to establish a joint venture, partnership, or agency relationship between Borrower and Lender. **BORROWER AGREES TO DEFEND, INDEMNIFY AND HOLD LENDER HARMLESS FROM ANY LIABILITY, LOSS, COST, OR EXPENSE INCURRED BY LENDER AS A RESULT OF ANY ASSERTION OR CLAIM AGAINST LENDER FOR THE PAYMENT OR PERFORMANCE OF ANY INDEBTEDNESS OR OBLIGATION OF BORROWER; INCLUDING WITHOUT LIMITATION, ANY CLAIM FOR PAYMENT OR PERFORMANCE MADE BY ANY CONTRACTOR, SUBCONTRACTOR, LABORER, OR SUPPLIER IN CONNECTION WITH THE CONSTRUCTION OF ANY IMPROVEMENTS ON THE MORTGAGED PROPERTY.**

## **ARTICLE X Partial Releases**

**10.1 Partial Releases.** Provided no Event of Default or Potential Event of Default exists under this Agreement or any of the other Loan Documents, Lender will grant partial releases of Vacant Lots and Houses from the lien of the Deed of Trust, upon the occurrence of all of the following conditions precedent:

- (a) Borrower delivers a written request to Lender for the partial release accompanied by a partial release form that is satisfactory to Lender, in Lender's sole and absolute discretion.
- (b) Payment to Lender of the Partial Release Price (as defined in Section 10.2 below) applicable to the Vacant Lot or House requested to be released.
- (c) Payment to Lender of any costs and expenses incurred by Lender in connection with the partial release.

**10.2 Partial Release Price.** The Partial Release Price will be equal to the amount shown on Lender's records to be the outstanding principal balance of the Loan attributable to the Vacant Lot or House requested to be released plus all accrued but unpaid interest thereon. Lender records will be conclusive evidence of the amount of the outstanding principal balance of the Loan attributable to the Vacant Lot or House requested to be released plus all accrued but unpaid interest thereon.

## **ARTICLE XI Miscellaneous**

**11.1 Successors and Assigns.** This Agreement is binding upon, and inures to the benefit of Borrower and Lender and their respective heirs, legal representatives, successors and assigns; provided, however, that Borrower may not assign any rights or obligations under this Agreement without the prior written consent of Lender.

**11.2 Headings.** All Article and Section headings are for convenience of reference only and will in no way affect the interpretation of this Agreement. All references in this Agreement to Section numbers refer to Section numbers in this Agreement, unless a different document is described, in which case the Section number refers to that Section number in the document described.

**11.3 Survival.** The provisions of this Agreement will survive the execution of all instruments described in it, will continue in full force and effect until the loans have been paid in full and will not be affected by any investigation made by any party.

**11.4 Applicable Law. THIS AGREEMENT IS GOVERNED BY AND SHOULD BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. COURTS WITHIN THE STATE OF TEXAS WILL HAVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN BORROWER AND LENDER, WHETHER IN LAW OR EQUITY, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT; AND VENUE IN ANY SUCH DISPUTE WHETHER IN FEDERAL OR STATE COURT SHALL BE IN TARRANT COUNTY, TEXAS.**

**11.5 Notices.** All notices or other communications required or permitted to be given pursuant to this Agreement must be in writing and will be considered as properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed is effective upon its deposit with the United States Postage Service or any successor thereto; notice sent by such a commercial delivery service is effective upon delivery to such commercial delivery service; notice given by personal delivery is effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the designated address of the intended addressee. For purposes of notice, the addresses of the parties are the addresses shown on page one of this Agreement; provided however, either party may change its address for notice to any other location within the continental United States by giving thirty (30) days' notice to the other party in the manner described above.

**11.6 Reliance by Lender.** Lender is relying and is entitled to rely upon each of the provisions of this Agreement. If any provision or provisions of this Agreement are held to be invalid or ineffective, all of the other provisions of this Agreement will continue in full force and effect.

**11.7 Limitation on Interest.** It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with applicable Texas law or applicable United States federal law (to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under Texas law) and that this section shall control every other covenant and agreement in this Agreement. If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Notes or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Indebtedness evidenced or secured by the Loan Documents, or if Lender's exercise of the option to accelerate the maturity of the Notes, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Borrower's and Lender's express intent that all excess amounts theretofore collected by Lender shall be credited to the principal balance of the Notes and all other Indebtedness (or, if the Notes and all other Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of the Notes and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the indebtedness until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the Maximum Lawful Rate (as defined in the Notes) from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the loans. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

**11.8 Construction.** All pronouns, whether in masculine, feminine, or neuter form, will be deemed to refer to the object of such pronoun whether same is masculine, feminine, or neuter in gender, as the context may suggest or require. All terms used in this Agreement, whether they are capitalized defined terms or not, and whether used in singular or plural form, are deemed to refer to the object of such term whether it is singular or plural in nature, as the context may suggest or require.

**11.9 Controlling Document.** In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of any other Loan Document, the terms and conditions of this Agreement shall control. This Agreement supersedes and replaces any commitment letter, term sheet or other written correspondence between Borrower, Guarantors, and Lender prior to the date of this Agreement.

**11.10 Time of Essence.** Time is of the essence with respect to all provisions of this Agreement and the other Loan Documents.

**11.11 Waiver.** No course of dealing and no delay or omission by Lender in exercising any right or remedy under this Agreement or with respect to any Loan Document shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Lender may remedy any Potential Event of Default or Event of Default by Borrower without waiving same and without waiving any prior or subsequent Potential Event of Default or Event of Default, and Lender shall be reimbursed by Borrower for any and all of its expenses in so remedying such Potential Event of Default or Event of Default. All rights and remedies of Lender under this Agreement are cumulative.

**11.12 Waiver of Jury Trial. BORROWER, LENDER, AND ANY GUARANTORS EACH WAIVE ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION, OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE LOAN DOCUMENTS, OR THE LOANS, OR (B) IN ANY WAY CONNECTED WITH, PERTAINING OR RELATED TO, OR INCIDENTAL TO ANY DEALINGS OF LENDER AND/OR BORROWER WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS AGREEMENT OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES UNDER THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR APPLICABLE LAW, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. BORROWER, LENDER, AND ANY GUARANTORS AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF BORROWER, GUARANTORS, AND LENDER IRREVOCABLY TO WAIVE THEIR RIGHTS TO A TRIAL BY JURY AS AN INDUCEMENT TO ENTER INTO THIS AGREEMENT AND MAKE THE LOANS, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN BORROWER AND LENDER OR GUARANTORS OR LENDER SHALL INSTEAD TO TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.**

**11.13.** 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.

**11.14 ENTIRE AGREEMENT. THIS LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT 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, THIS INSTRUMENT MAY BE AMENDED ONLY BY AN INSTRUMENT IN WRITING EXECUTED BY THE PARTIES TO IT.**

“x”ed if applicable:

**Prior Master Line Replaced**

**12.1 Prior Line.** A revolving line of credit (the “Prior Line”) financing has previously been provided to Borrower by Lender. The Prior Line was evidenced by among other documents the following (the “Prior Loan Documents”):

(a) Master Loan Agreement (the “Prior Loan Agreement”) dated **January 3, 2009** executed by Lender and Borrower.

(b) Numerous Promissory Notes executed by Borrower payable to Lender (the “Prior Notes”).

(c) Numerous Master Deeds of Trust executed by Lender and recorded in various counties in the State of Texas (the “Prior Master Deeds of Trust”).

(d) Numerous individual Short Form Deeds of Trust executed by the Borrower at various times pursuant to the Prior Loan Agreement and recorded in various counties in the State of Texas (the “Prior Short Form Deeds of Trust”).

(e) One or more Notices of Invalidity of Oral Agreements (the “Prior Notice”).

(f) Various Certificates and Resolutions authorizing the transactions contemplated by the Prior Loan Documents (the “Prior Certificates and Resolutions”).

(g) Guaranty Agreement dated **January 3, 2009** executed by Guarantors (the “Prior Guaranty”).

**12.2 Amendment and Restatement.** This Agreement is intended to be a complete amendment and restatement of the Prior Loan Agreement and all amendments to it. The Prior Loan Agreement, all amendments to it, and all other documents replaced and supplanted by the Prior Loan Agreement are completely replaced and supplanted by this Agreement and they have no further force or effect.

**12.3 Renewal and Extension.** The indebtedness evidenced by the Loan Documents is given in renewal and extension of the unpaid balance of the Prior Line and all of the liens, rights, assignments, and security interests securing it, including without limitation, those created, made, or granted by the Prior Loan Documents, all of which are now owned and held by Lender and which Borrower expressly acknowledges to be valid and existing against the portions of the Mortgaged Property described therein.

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Master Loan Agreement (Multiple Notes)

**12.4 Deeds of Trust.** The term “Deeds of Trust” as used in this Agreement includes the Prior Master Deeds of Trust and the Prior Short Form Deeds of Trust described herein.

**12.5 Loan Documents.** The term “Loan Documents” as used in this Agreement includes (a) the Prior Short Form Deeds of Trust listed and the Prior Master Deeds of Trust incorporated into the Prior Short Form Deeds of Trust by reference, (b) the Prior Notice, and (c) the Prior Certificates and Resolutions.

**12.6 Indebtedness.** The term “Indebtedness” as used in this Agreement includes all indebtedness owed by the Borrower to Lender that is evidenced by, secured by, or created in connection with the Prior Loan Documents.

**12.7 Mortgaged Property.** The term “Mortgaged Property” as used in this Agreement includes all Vacant Lots and Houses described in the Prior Short Form Deeds of Trust reference herein.

**Other Terms and Conditions:**

**Nothing to the contrary herein withstanding Semi-Annual Statements within 60 days after the end of each semi calendar year during the term of the loans, corporate Guarantors shall deliver Guarantors semi-annual internally prepared financial statments to Lender.**

**Nothing to the contrary herein withstanding Annual Statement within 60 days after the end of each calendar year duing the term of the loans, individual Gaurantors shall deliver Guarantors' annual internally prepared financial statements to Lender.**

**Inventory Reports.** corporate Guarantors agrees to deliver inventory reports to Lender within 30 days after the end of each calaendar quarter during the term of the Loans.

EXECUTED to be effective as of \_\_\_\_\_, 20\_\_.

**BORROWER(S):**

**Construction, Inc., a Texas corporation**

\_\_\_\_\_  
Signature Date  
**Jane Doe, President/Treasurer**

\_\_\_\_\_  
Signature Date  
**John Smith, Vice President**

*[Sign Originals Only]*

**GUARANTOR(S):**

\_\_\_\_\_  
Signature Date  
**Jane Doe**

Master Loan Agreement (Multiple Notes)

LENDER:

**ABC Bank**

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Signature

Date

**Michael Ramirez, VP Real Estate**

Exhibit A

**LOAN APPLICATION**  
**(Pursuant to Master Loan Agreement)**

**ABC Bank** ("Lender") has extended a guidance line of credit to **Construction, Inc.** ("Borrower", whether one or more). The guidance line is evidenced by, in addition to other documents, a Master Loan Agreement (the "Loan Agreement") between Borrower and Lender. Borrower requests that Lender approve the following request for loan funding pursuant to the terms of the Master Loan Agreement:

Property Address: \_\_\_\_\_

City: \_\_\_\_\_ State: **Texas** Zip: \_\_\_\_\_

Legal Description:

Lot: \_\_\_\_\_ Block: \_\_\_\_\_ Addition: \_\_\_\_\_ County: \_\_\_\_\_

Requested Loan Amount: \$ \_\_\_\_\_

Pursuant to the terms of the Master Loan Agreement Borrower intends the requested loan to be categorized as a:  
Type of Loan: \_\_\_ Pre- Sold House \_\_\_ Spec House \_\_\_ Model House \_\_\_ Inventory Lot \_\_\_ Existing House

If Lender approves this Loan Application, Borrower agrees to pay the following fees in addition to the common and customary title company and recording fees:

Origination Fee to Lender:

Per Master Loan Agreement

for Pre-Sold Houses a loan origination fee equal to **0.500** of each approved loan amount.

for Spec Houses a loan origination fee equal to **0.500** of each approved loan amount.

for Model Houses a loan origination fee equal to **N/A** of each approved loan amount.

for Vacant Lots a loan origination fee equal to **0.500** of each approved loan amount.

for Existing Houses a loan origination fee equal to **N/A** of each approved loan amount.

Lender's Attorney Fee: **\$125.00**

Date of Request: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Borrower Name: **Construction, Inc.**

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

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

Title: \_\_\_\_\_

---

**Lender's Approval or Denial of Loan Application**

The foregoing Loan Application is:

\_\_\_\_\_ approved for \$ \_\_\_\_\_

\_\_\_\_\_ denied

**ABC Bank**

\_\_\_\_\_  
Signature

**Michael Ramirez, VP Real Estate**

\_\_\_\_\_  
Date

---

Master Loan Agreement (Multiple Notes)



**Exhibit B**

**EXTENSION REQUEST  
(Pursuant to Master Loan Agreement)**

**ABC Bank** ("Lender") has extended a guidance line of credit to **Construction, Inc.** ("Borrower", whether one or more). The guidance line is evidenced by, in addition to other documents, a Master Loan Agreement (the "Loan Agreement") between Borrower and Lender. Borrower requests that Lender extend the Principal Payment Date pursuant to the terms of the Master Loan Agreement:

Property Address: \_\_\_\_\_

City: \_\_\_\_\_ State: **Texas** Zip: \_\_\_\_\_

Legal Description:

Lot: \_\_\_\_\_ Block: \_\_\_\_\_ Addition: \_\_\_\_\_

County: \_\_\_\_\_

Commitment Amount: \_\_\_\_\_

Current Principal Balance: \$ \_\_\_\_\_

At time of Loan Approval the property was categorized as a:

Type of Loan: \_\_\_ Pre-Sold House \_\_\_ Spec House \_\_\_ Model House \_\_\_ Inventory Lot \_\_\_ Existing House

If Lender approves this Extension Request, per the terms of the Master Loan Agreement, Borrower agrees to make the following required Principal Reduction and pay the following fees in addition to the common and customary title company and recording fees:

Extension Fee to Lender \$ \_\_\_\_\_

Principal Reduction \$ \_\_\_\_\_

Date of Request: \_\_\_\_/\_\_\_\_/\_\_\_\_

Borrower Name: **Construction, Inc.**

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

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

Title: \_\_\_\_\_

---

**Lender's Approval or Denial of Extension Request**

The foregoing Extension Request is:

\_\_\_ approved. The Principal Payment Date for this property is extended by \_\_\_\_\_ months.

\_\_\_ denied

**ABC Bank**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Michael Ramirez, VP Real Estate**

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Master Loan Agreement (Multiple Notes)

# 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.*

**Construction, Inc., a Texas corporation**

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Signature \_\_\_\_\_ Date \_\_\_\_\_  
**Jane Doe, President/Treasurer**

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Signature \_\_\_\_\_ Date \_\_\_\_\_  
**John Smith, Vice President**

*[Sign Originals Only]*

# ABC Bank

## UNLIMITED GUARANTY

Loan # 123456789

**THIS UNLIMITED GUARANTY** (“Guaranty”) is made as of **May 30, 2010**, by Guarantor (as hereinafter defined) for the benefit of Lender (as hereinafter defined).

1. **Definitions.** As used in this Guaranty, the following terms shall have the meanings indicated below:

(a) **“Lender”** means **ABC Bank**, whose address for notice purposes is the following:

**ABC Bank  
2310 W Interstate 20, 100  
Arlington, TX 76017**

(b) **“Borrower”** (whether one or more) means the following: **Construction, Inc.**

(c) **“Guaranteed Indebtedness”** means (i) all indebtedness, obligations and liabilities of Borrower to Lender of any kind or character, now existing or hereafter arising, whether direct, indirect, related, unrelated, fixed, contingent, liquidated, unliquidated, joint, several or joint and several, included but not limited to all principal indebtedness owing by Borrower to Lender now existing or hereafter arising under or evidenced by a Promissory Note(s) in the original principal (individual or aggregate) amount of **\$1,500,000.00** executed by Borrower and payable to the order of Lender related to a Master Loan Agreement dated **May 30, 2010**, as existing or hereafter amended, and regardless of whether such indebtedness, obligations and liabilities may, prior to their acquisitions by Lender, be or have been payable to or in favor of a third party and subsequently acquired by Lender (it being contemplated that Lender may make such acquisitions from third parties), including without limitation all indebtedness, obligations and liabilities of Borrower to Lender now existing or hereafter arising by note, draft, acceptance, guaranty, endorsement, lease, letter of credit, assignment, purchase, overdraft, discount, indemnity agreement or otherwise, (ii) all accrued but unpaid interest on any of the indebtedness described in (i) above, (iii) all obligations of Borrower to Lender under any documents evidencing, securing, governing and/or pertaining to all or any part of the indebtedness described in (i) and (ii) above (collectively, the “Loan Documents”), (iv) all costs and expenses incurred by Lender in connection with the collection and administration of all or any part of the indebtedness and obligations described in (i), (ii) and (iii) above or the protection or preservation of, or realization upon, the collateral securing all or any part of such indebtedness and obligations, including without limitation all reasonable attorneys’ fees, and (v) all renewals, extensions, modifications and rearrangements of the indebtedness and obligations described in (i), (ii), (iii) and (iv) above.

(d) **“Guarantor”** (whether one or more) means **Jane Doe**, whose address for notice purposes is the following:

**PO Box A, Keller, TX 76248**

2. **Obligations.** As an inducement to Lender to extend or continue to extend credit and other

financial accommodations to Borrower, Guarantor, for value received, jointly and severally, does hereby unconditionally and absolutely guarantee the prompt and full payment and performance of the Guaranteed Indebtedness when due or declared to be due and at all times thereafter.

3. **Character of Obligations.** This is an absolute, continuing and unconditional guaranty of payment and not of collection and if at any time or from time to time there is no outstanding Guaranteed Indebtedness, the obligations of Guarantor with respect to any and all Guaranteed Indebtedness incurred thereafter shall not be affected. All Guaranteed Indebtedness heretofore, concurrently herewith or hereafter made by Lender to Borrower shall be conclusively presumed to have been made or acquired in acceptance hereof. Guarantor shall be liable, jointly and severally, with Borrower and any other guarantor of all or any part of the Guaranteed Indebtedness.

4. **No Right of Revocation.** Guarantor understands and agrees that Guarantor may not revoke its future obligations under this Guaranty at any time as long as any Guaranteed Indebtedness is outstanding or as long as Lender is under any obligation to extend credit, in any form, to Borrower.

5. **Representations and Warranties.** Guarantor hereby represents and warrants the following to Lender:

- (a) This Guaranty may reasonably be expected to benefit, directly or indirectly, Guarantor, and (i) if Guarantor is a corporation, the Board of Directors of Guarantor has determined that this Guaranty may reasonably be expected to benefit, directly or indirectly, Guarantor, or (ii) if Guarantor is a partnership, the requisite number of its partners have determined that this Guaranty may reasonably be expected to benefit, directly or indirectly, Guarantor; and
- (b) Guarantor has adequate means to obtain from Borrower on a continuing basis information concerning the financial condition of Borrower and Guarantor is not relying on Lender to provide such information to Guarantor either now or in the future; and
- (c) Guarantor has the power and authority to execute, deliver and perform this Guaranty and any other agreements executed by Guarantor contemporaneously herewith, and the execution, delivery and performance of this Guaranty and any other agreements executed by Guarantor contemporaneously herewith do not and will not violate (i) any agreement or instrument to which Guarantor is a party, (ii) any law, rule, regulation or order of any governmental authority to which Guarantor is subject, or (iii) its articles or certificate of incorporation or bylaws, if Guarantor is a corporation, or its partnership agreement, if Guarantor is a partnership; and
- (d) Neither Lender nor any other party has made any representation or warranty to Guarantor in order to induce Guarantor to execute this Guaranty; and
- (e) The financial statements and other financial information regarding Guarantor heretofore and hereafter delivered to Lender are and shall be true and correct in all material respects and fairly present the financial position of Guarantor as of the dates thereof, and no material adverse change has occurred in the financial condition of Guarantor reflected in the financial statements and other financial information regarding Guarantor heretofore delivered to Lender since the date of the last statement thereof; and
- (f) As of the date hereof, and after giving effect to this Guaranty and the obligations evidenced hereby, (i) Guarantor is and will be solvent, (ii) the fair saleable value of Guarantor's assets exceeds and will continue to exceed its liabilities (both fixed and contingent), (iii) Guarantor is and will continue to be able to pay its debts as they mature, and (iv) if Guarantor is not an individual, Guarantor has and will continue to have sufficient capital to carry on its business and all businesses in which it is about to engage.

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Unlimited Guaranty

6. **Covenants.** Guarantor hereby covenants and agrees with Lender as follows:
- (a) Guarantor shall not, so long as its obligations under this Guaranty continue, transfer or pledge any material portion of its assets for less than full and adequate consideration; and
  - (b) Guarantor shall promptly furnish to Lender from time to time such financial statements and other financial information of Guarantor as the Lender may require, in form and substance satisfactory to Lender; and
  - (c) Guarantor shall comply with all terms and provisions of the Loan Documents that apply to Guarantor; and
  - (d) Guarantor shall promptly inform Lender of (i) any litigation or governmental investigation against Guarantor or affecting any security for all or any part of the Guaranteed Indebtedness or this Guaranty which, if determined adversely, might have a material adverse effect upon the financial condition of Guarantor or upon such security or might cause a default under any of the Loan Documents, (ii) any claim or controversy which might become the subject of such litigation or governmental investigation, and (iii) any material adverse change in the financial condition of Guarantor.

7. **Consent and Waiver.**

- (a) Guarantor waives (i) promptness, diligence and 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 for payment, notice of nonpayment, protest, demand, notice of protest, notice of intent to accelerate, notice of acceleration, notice of dishonor, diligence in enforcement and indulgences of every kind, and (ii) the taking of any other action by Lender, including without limitation, giving any notice of default or any other notice to, or making any demand on, Borrower, any other guarantor of all or any part of the Guaranteed Indebtedness or any other party.
- (b) Guarantor waives any rights Guarantor has under, or any requirements imposed by, Chapter 34 of the Texas Business and Commerce Code, as in effect on the date of this Guaranty or as it may be amended from time to time.
- (c) Lender may at any time, without the consent of or notice to Guarantor, without incurring responsibility to Guarantor and without impairing, releasing, reducing or affecting the obligations of Guarantor hereunder: (i) change the manner, place or terms of payment of all or any part of the Guaranteed Indebtedness, or renew, extend, modify, rearrange or alter all or any part of the Guaranteed Indebtedness; (ii) change the interest rate accruing on any of the Guaranteed Indebtedness (including, without limitation, any periodic change in such interest rate that occurs because such Guaranteed Indebtedness accrues interest at a variable rate which may fluctuate from time to time; (iii) sell, exchange, release, surrender, subordinate, realize upon or otherwise deal with in any manner and in any order any collateral for all or any part of the Guaranteed Indebtedness or this Guaranty or setoff against all or any part of the Guaranteed Indebtedness; (iv) neglect, delay, omit, fail or refuse to take or prosecute any action for the collection of all or any part of the Guaranteed Indebtedness or this Guaranty or to take or prosecute any action in connection with any of the Loan Documents; (v) exercise or refrain from exercising any rights against Borrower or others, or otherwise act or refrain from acting; (vi) settle or compromise all or any part of the Guaranteed Indebtedness and subordinate the payment of all or any part of the Guaranteed Indebtedness to the payment of any obligations, indebtedness or liabilities which may be due or become due to Lender or others; (vii) apply any deposit balance, fund, payment, collections through process of law or otherwise or other collateral of Borrower to the satisfaction and liquidation of the indebtedness or obligations of Borrower to

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Unlimited Guaranty

Lender, if any, not guaranteed under this Guaranty; and (viii) apply any sums paid to Lender by Guarantor, Borrower or others to the Guaranteed Indebtedness in such order and manner as Lender, in its sole discretion, may determine.

- (d) Should Lender seek to enforce the obligations of Guarantor hereunder by action in any court or otherwise, Guarantor waives any requirement, substantive or procedural, that (i) Lender first enforce any rights or remedies against Borrower or any other person or entity liable to Lender for all or any part of the Guaranteed Indebtedness, including without limitation that a judgment first be rendered against Borrower or any other person or entity, or that Borrower or any other person or entity should be joined in such cause, or (ii) Lender shall first enforce rights against any collateral which shall ever have been given to secure all or any part of the Guaranteed Indebtedness or this Guaranty. Such waiver shall be without prejudice to Lender's right, at its option, to proceed against Borrower or any other person or entity, whether by separate action or by joinder.
- (e) In addition to any other waivers, agreements and covenants of Guarantor set forth herein, Guarantor hereby further waives and releases all claims, causes of action, defenses and offsets for any act or omission of Lender, its directors, officers, employees, representatives or agents in connection with Lender's administration of the Guaranteed Indebtedness, except for Lender's willful misconduct and gross negligence.

8. **Obligations Not Impaired.**

- (a) Guarantor agrees that its obligations hereunder shall not be released, diminished, impaired, reduced or affected by the occurrence of any one or more of the following events: (i) the death, disability or lack of corporate power of Borrower, Guarantor or any other guarantor of all or any part of the Guaranteed Indebtedness, (ii) any receivership, insolvency, bankruptcy or other proceedings affecting Borrower, Guarantor or any other guarantor of all or any part of the Guaranteed Indebtedness, or any of their respective property; (iii) the partial or total release or discharge of Borrower or any other guarantor of all or any part of the Guaranteed Indebtedness, or any other person or entity from the performance of any obligation contained in any instrument or agreement evidencing, governing or securing all or any part of the Guaranteed Indebtedness, whether occurring by reason of law or otherwise; (iv) the taking or accepting of any collateral for all or any part of the Guaranteed Indebtedness or this Guaranty; (v) the taking or accepting of any other guaranty for all or any part of the Guaranteed Indebtedness; (vi) any failure by Lender to acquire, perfect or continue any lien or security interest on collateral securing all or any part of the Guaranteed Indebtedness or this Guaranty; (vii) the impairment of any collateral securing all or any part of the Guaranteed Indebtedness or this Guaranty; (viii) any failure by Lender to sell any collateral securing all or any part of the Guaranteed Indebtedness or this Guaranty in a commercially reasonable manner or as otherwise required by law; (ix) any invalidity or unenforceability of or defect or deficiency in any of the Loan Documents; or (x) any other circumstance which might otherwise constitute a defense available to, or discharge of, Borrower or any other guarantor of all or any part of the Guaranteed Indebtedness.
- (b) This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of all or any part of the Guaranteed Indebtedness is rescinded or must otherwise be returned by Lender upon the insolvency, bankruptcy or reorganization of Borrower, Guarantor, any other guarantor of all or any part of the Guaranteed Indebtedness, or otherwise, all as though such payment had not been made.
- (c) In the event Borrower is a corporation, joint stock association or partnership, or is hereafter incorporated, none of the following shall affect Guarantor's liability hereunder: (i) the unenforceability of all or any part of the Guaranteed Indebtedness against Borrower by reason of

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Unlimited Guaranty

the fact that the Guaranteed Indebtedness exceeds the amount permitted by law; (ii) the act of creating all or any part of the Guaranteed Indebtedness is ultra vires; or (iii) the officers or partners creating all or any part of the Guaranteed Indebtedness acted in excess of their authority.

Guarantor hereby acknowledges that withdrawal from, or termination of, any ownership interest in Borrower now or hereafter owned or held by Guarantor shall not alter, affect or in any way limit the obligations of Guarantor hereunder.

9. **Actions against Guarantor.** In the event of a default in the payment or performance of all or any part of the Guaranteed Indebtedness when such Guaranteed Indebtedness becomes due, whether by its terms, by acceleration or otherwise, Guarantor shall, upon demand, promptly pay the amount due thereon to Lender, in lawful money of the United States, at Lender's address set forth in Subparagraph 1(a) above. One or more successive or concurrent actions may be brought against Guarantor, either in the same action in which Borrower is sued or in separate actions, as often as Lender deems advisable. The exercise by Lender of any right or remedy under this Guaranty or under any other agreement or instrument, at law, in equity or otherwise, shall not preclude concurrent or subsequent exercise of any other right or remedy. The books and records of Lender shall be admissible in evidence in any action or proceeding involving this Guaranty and shall be prima facie evidence of the payments made on, and the outstanding balance of, the Guaranteed Indebtedness.

10. **Notice of Sale.** Except as otherwise required by law, in the event that Guarantor is entitled to receive any notice under the Uniform Commercial Code, as it exists in the state governing any such notice, of the sale or other disposition of any collateral securing all or any part of the Guaranteed Indebtedness or this Guaranty, reasonable notice shall be deemed given when such notice is deposited in the United States mail, postage prepaid, at the address for Guarantor set forth in Subparagraph 1(d) above, five (5) days prior to the date any public sale, or after which any private sale, of any such collateral is to be held; provided, however, that notice given in any other reasonable manner or at any other reasonable time shall be sufficient.

11. **Waiver by Lender.** No delay on the part of Lender in exercising any right hereunder or failure to exercise the same shall operate as a waiver of such right. In no event shall any waiver of the provisions of this Guaranty be effective unless the same be in writing and signed by an officer of Lender, and then only in the specific instance and for the purpose given.

12. **Successors and Assigns.** This Guaranty is for the benefit of Lender, its successors and assigns. This Guaranty is binding upon Guarantor and Guarantor's heirs, executors, administrators, personal representatives and successors, including without limitation any person or entity obligated by operation of law upon the reorganization, merger, consolidation or other change in the organizational structure of Guarantor.

13. **Costs and Expenses.** Guarantor shall pay on demand by Lender all costs and expenses, including without limitation, all reasonable attorneys' fees incurred by Lender in connection with the enforcement and/or collection of this Guaranty. This covenant shall survive the payment of the Guaranteed Indebtedness.

14. **Severability.** If any provision of this Guaranty is held by a court of competent jurisdiction to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, shall not impair or invalidate the remainder of this Guaranty and the effect thereof shall be confined to the provision held to be illegal, invalid or unenforceable.

15. **No Obligation.** Nothing contained herein shall be construed as an obligation on the part of Lender to extend or continue to extend credit to Borrower.

16. **Amendment.** No modification or amendment of any provision of this Guaranty, nor consent to

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Unlimited Guaranty



any departure by Guarantor therefrom, shall be effective unless the same shall be in writing and signed by an officer of Lender, and then shall be effective only in the specific instance and for the purpose for which given.

17. **Cumulative Rights.** All rights and remedies of Lender hereunder are cumulative of each other and of every other right or remedy which Lender may otherwise have at law or in equity or under any instrument or agreement, and the exercise of one or more of such rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of any other rights or remedies.

18. **GOVERNING LAW. THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND APPLICABLE FEDERAL LAWS.**

19. **VENUE. THIS GUARANTY HAS BEEN ENTERED INTO IN Tarrant COUNTY, TEXAS, AND IT SHALL BE PERFORMABLE FOR ALL PURPOSES IN SUCH COUNTY. COURTS WITHIN THE STATE OF TEXAS SHALL HAVE JURISDICTION OVER ANY AND ALL DISPUTES ARISING UNDER OR PERTAINING TO THIS GUARANTY AND VENUE FOR ANY SUCH DISPUTES SHALL BE IN Tarrant COUNTY, TEXAS.**

20. **Compliance with Applicable Usury Laws.** Notwithstanding any other provision of this Guaranty or of any instrument or agreement evidencing, governing or securing all or any part of the Guaranteed Indebtedness, Guarantor and Lender by its acceptance hereof agree that Guarantor shall never be required or obligated to pay interest in excess of the maximum nonusurious interest rate as may be authorized by applicable law for the written contracts which constitute the Guaranteed Indebtedness. It is the intention of Guarantor and Lender to conform strictly to the applicable laws which limit interest rates, and any of the aforesaid contracts for interest, if and to the extent payable by Guarantor, shall be held to be subject to reduction to the maximum nonusurious interest rate allowed under said law.

21. **Descriptive Headings.** The headings in this Guaranty are for convenience only and shall not define or limit the provisions hereof.

22. **Gender.** Within this Guaranty, words of any gender shall be held and construed to include the other gender.

23. **Entire Agreement.** This Guaranty contains the entire agreement between Guarantor and Lender regarding the subject matter hereof and supersedes all prior written and oral agreements and understandings, if any, regarding same; provided, however, this Guaranty is in addition to and does not replace, cancel, modify or affect any other guaranty of Guarantor now or hereafter held by Lender that relates to Borrower and different indebtedness.

EXECUTED as of the date first above written.

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Signature \_\_\_\_\_ Date \_\_\_\_\_  
**Jane Doe**

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Unlimited Guaranty

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

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

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

---

Unlimited Guaranty

## 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>Construction, 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"/> Other (see instructions) ▶ _____	
	<input type="checkbox"/> Exempt payee	
	Address (number, street, and apt. or suite no.) <b>100 Main Street</b>	Requester's name and address (optional)
City, state, and ZIP code <b>Arlington, TX 76017</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.

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