

**Promissory Note**

**$ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

FOR VALUE RECEIVED, the undersigned, \_\_\_\_\_\_\_\_\_ (the “Principal”) and \_\_\_\_\_\_\_\_\_ (the “Indemnitors”) (collectively, the “Debtors”), jointly and severally promise to pay to \_\_\_\_\_\_\_\_\_ (the “Surety”) the principal sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_\_\_\_), or such lesser principal amount as may be advanced or loaned by the Surety to the Debtors (the “Principal Sum”) plus any attorneys’ fees, costs and expenses owed to and/or incurred by the Surety, including interest on the Principal Sum at the rate or rates specified below until paid in full, and any and all other sums which may be owing to the Surety by the Debtors pursuant to the Debtors’ letter request for the Surety’s financial assistance dated \_\_\_\_\_\_\_, the terms of the Interim Financing Term Sheet executed by the Debtors dated \_\_\_\_\_\_\_, the terms of the Indemnity Agreement executed by the Debtors dated \_\_\_\_\_\_\_\_\_, and/or this Promissory Note (“Note”) (all such amounts collectively referred to herein as the “Surety Loan”). The Surety and Debtors agree that this Note is only intended to cover the Surety’s Funding as defined in and under the Interim Financing Term Sheet and that this Note and any collection efforts under this Note shall not interfere with, limit or preclude the Surety from pursuing other amounts owed or collecting under other agreements, including the Indemnity Agreement, or from additional security or collateral or pursuing other causes of action.

**Demand Note.**

This Note is a demand Note. The entire outstanding and unpaid Surety Loan, together with all accrued interest thereon and any and all other sums due and owing is immediately due and payable by the Debtors on the Surety’s demand.

**Interest Rate.**

From the date of this Note until all amounts owed hereunder are paid in full, interest shall accrue on the outstanding Surety Loan at an annual interest rate of six percent (6%). Interest shall be calculated on the basis of a factor of three hundred sixty-five (365) days per year.

**Payment.**

Upon demand, the Debtors shall pay the Surety Loan in full including all sums due under the Debtors’ Request for the Surety’s Financial Assistance, the Interim Financing Term Sheet, the Indemnity Agreement and this Note, including but not limited to the outstanding Principal Sum, interest, charges, costs, attorneys’ fees and all other Surety fees/expenses. All payments made under this Note shall be applied first to accrued and unpaid interest and then to principal, or in such other order or proportion as the Surety, in the Surety’s sole discretion, may elect from time to time.

All payments shall be made to the Surety at the following address - \_\_\_\_\_\_\_\_\_\_\_\_\_\_ - or at such other address as the Surety may designate in writing.

All payments under this Note shall be made in lawful money of the United States and in immediately available funds.

The Debtors may prepay this Note in whole or in part at any time or from time to time, without penalty or premium.

**Remedies.**

The Surety shall have the following rights and remedies, including all other rights and remedies permitted under law or equity and as set forth in the Indemnity Agreement:

**Acceleration**.

The Surety, in the Surety’s sole discretion, may, upon demand at any time, declare the entire Surety Loan outstanding under this Note, plus accrued interest and all other sums owed under this Note, immediately due and payable.

**Confession of Judgment.**

The Debtors authorize, constitute and appoint \_\_\_\_ or any attorney designated by the Surety, their true and lawful attorney-in-fact to appear for the Debtors and to confess judgment against the Debtors in favor of the Surety for the full amount of the Surety Loan (including Principal Sum, accrued interest, charges and fees), plus court costs and attorneys’ fees equal to 25% of the amount due, all without prior notice or opportunity of the Debtors for prior hearing, without stay of execution or right of appeal, and expressly waiving the benefit of all exemption laws, appeals, stay of execution or supplementary proceedings, or other relief from the enforcement or immediate enforcement of a judgment or related proceedings on a judgment, and any irregularity or error in entering any such judgment. No single exercise of the power to confess judgment granted in this Section shall exhaust the power,

regardless of whether such exercise is ruled invalid, void, or voidable by any court. The power to confess judgment granted in this Section may be exercised from time to time and as often as the holder of this Note may elect.

**Miscellaneous.**

In the event any one or more of the provisions contained in this Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereto, but this Note shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Notwithstanding any other provision contained in this Note, the Surety does not intend to charge and the Debtors shall not be required to pay interest or other charges in excess of the maximum permitted by applicable law. Any payments in excess of such maximum shall be credited against principal amount due and owing under the Note or, if the principal amount due and owing under the Note has been paid in full, refunded to the Debtors.

This Note shall be interpreted in accordance with, and shall be enforced and governed by, the laws (not including principles of conflicts of laws) of the (name the jurisdiction, if necessary). Whenever used herein, the singular shall include the plural, the plural the singular, and the use of any gender, tense or conjugation shall be applicable to all genders and conjugations. The Section headings are for convenience only and are not part of this Note.

Time is of the essence of this Note.

The Debtors waive presentment, notice of dishonor and protest.

The Debtors are jointly and severally liable under this Note for all amounts due under the Note and the Surety may in its sole discretion choose to collect the amounts due under the Note from one or all of the Debtors individually or together in any combination and the Surety shall not be required to join all of the Debtors in any collection action.

This Note shall inure to the benefit of and be enforceable by the Surety and the Surety’s successors and assigns, its co-sureties, if any, and its and their reinsurers, and shall be binding upon and enforceable against the Debtors and the Debtors’ successors and assigns.

No course of dealing between the Debtors and the Surety, nor any failure to exercise or delay in exercising, any right, power or privilege of the Surety under this Note shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

All remedies provided in this Note are distinct and cumulative to any other right or remedy under this Note or afforded by law or equity, and may be exercised concurrently, independently or successively. The Surety’s exercise of its rights and remedies as provided in this Note shall not abrogate, affect, alter, change, or act as a waiver of the Surety’s rights to exercise all of its rights and remedies against the Debtors under the Indemnity Agreement.

**TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, AND IN CONSIDERATION FOR THE SURETY LOAN UNDER THE INTERIM FINANCING TERM SHEET, THE DEBTORS IRREVOCABLY WAIVE THEIR RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, RELATING TO OR IN ANY WAY CONNECTED WITH THIS NOTE. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY THE DEBTORS AND THE DEBTORS ACKNOWLEDGE THAT NEITHER THE SURETY NOR ANY PERSON ACTING ON BEHALF OF THE SURETY HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. THE DEBTORS FURTHER ACKNOWLEDGE THAT THEY HAVE BEEN REPRESENTED (OR HAVE HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS NOTE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF THEIR OWN FREE WILL, AND THAT THEY HAVE HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. THE DEBTORS FURTHER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE MEANING AND RAMIFICATIONS OF THIS WAIVER PROVISION AND, AS EVIDENCE OF THIS FACT, THE DEBTORS HAVE SIGNED THIS NOTE BELOW.**

**DEBTORS**

Principal

Corporate Indemnitors

Individual Indemnitors

**ACKNOWLEDGMENTS**

Corporate (Principal or Corporate Indemnitor)

I HEREBY CERTIFY, that on this \_\_\_\_\_\_ day of \_\_\_, \_\_\_\_\_, before me, the subscriber, a Notary Public of the State of \_\_\_\_\_\_\_\_, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on behalf of \_\_\_\_\_\_\_\_ (the “Principal” or the “Corporate Indemnitor”)., and

he/she made oath on personal knowledge that he/she is the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_ and hereby represents and warrants that he/she is authorized to execute the foregoing Promissory Note on behalf of \_\_\_\_\_\_\_, and that the execution of this Promissory Note was his/her deed and act, and done without any undue influence.

**AS WITNESS, my hand and Notarial Seal**.

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

Notary Public

Commission Expires:\_\_\_\_\_\_\_\_\_\_

**Individual Indemnitor**

I HEREBY CERTIFY, that on this \_\_\_\_\_\_ day of \_\_\_\_, \_\_\_\_\_, before me, the subscriber, a Notary Public of the State of \_\_\_\_\_\_\_\_, personally appeared \_\_\_\_\_\_, and he/she acknowledged that the execution of this Promissory Note was his/her deed and act, and done without any undue influence.

AS WITNESS, my hand and Notarial Seal.

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

Notary Public

Commission Expires:\_\_\_\_\_\_\_\_\_\_