



Oil and Hazardous Materials Indemnification Agreement

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OIL AND HAZARDOUS MATERIALS INDEMNIFICATION AGREEMENT

This OIL AND HAZARDOUS MATERIALS INDEMNIFICATION AGREEMENT (this "**Agreement**") is made as of the ____ day of ____, 20__ by [NAME OF BORROWER], a ____ corporation with its principal address being ____ (the "**Borrower**") and [NAME OF LENDER], a ____ [corporation] with its principal address being ____ (the "**Lender**").

WHEREAS, the Borrower is obligated for the prompt, punctual and faithful payment and performance of various liabilities, obligations, and indebtedness to the Lender (hereinafter collectively, the "**Liabilities**"); and

WHEREAS, the Liabilities are secured by, among other things, a certain Security Agreement (as may be amended the "**Security Agreement**"), encumbering, among other collateral, all business assets of the Borrower, including all business assets whether now existing or hereafter acquired and including all business assets now or hereafter located at the property owned or operated by the Borrower located at [PRINCIPAL ADDRESS] (the "**Collateral**"); and

WHEREAS, in order to induce the Lender to extend the Liabilities to the Borrower, the Borrower has agreed to execute and deliver this Agreement to the Lender;

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Borrower hereby represents, warrants, and covenants as follows (All terms used in this Agreement are being used with the meaning given those terms in [CITE LAWS], as amended):

1. Borrower Representations. The Borrower represents that neither the Borrower nor any person for whose conduct the Borrower is responsible including, but not limited to tenants or users of the Collateral ever:

(a) owned, occupied, or operated a site or vessel on which any hazardous material or oil was or is stored (except if such storage was or is in compliance with all laws, ordinances, and regulations pertaining thereto), transported, or disposed of;

(b) directly or indirectly transported, stored, treated or disposed, or arranged for the transport, storage, treatment or disposal of any hazardous material or oil;

(c) caused or was legally responsible for any release, or threat of release, of any hazardous material or oil;

(d) received notification from any federal, state, or other governmental authority of:
(i) any potential, known, or threat of release of any hazardous material or oil on (whether on the Collateral or from another property offsite of the Collateral) or from the Collateral, or any other site or vessel owned, occupied, or operated either by the Borrower or any person for whose conduct the Borrower is responsible or whose liability may result in a lien on the Collateral; or
(ii) the incurrence of any expense or loss by such governmental authority, or by any other person,

in connection with the assessment, containment, or removal of any release, or threat of release, of any hazardous material or oil from the Collateral or any such site or vessel.

2. No Hazardous Materials. The Borrower represents and warrants that no hazardous material or oil was ever, or is now, stored on (except in compliance with all laws, ordinances, and regulations pertaining thereto), transported, or disposed of on the Collateral.

3. Borrower Obligations. The Borrower shall:

(a) not store (except in compliance with all laws, ordinances, and regulations pertaining thereto), or dispose of any hazardous material or oil on the Collateral, or on any other site or vessel owned, occupied, or operated either by the Borrower, or by any person for whose conduct the Borrower is responsible;

(b) neither directly nor indirectly transport or arrange for the transport of any hazardous material or oil;

(c) take all such action, including, without limitation, the conducting of engineering tests (at the sole expense of the Borrower) (i) to confirm that no hazardous material or oil is or ever was stored or released on the Collateral; (ii) to assess, contain, and remove any such hazardous material or oil on the Collateral; and (iii) to qualify for any insurance program or safe harbor which may be available under said [CITE LAW], as amended;

(d) provide the Lender with immediate written notice upon: (i) the Borrower's obtaining knowledge of any potential or known release, or threat of release, of any hazardous material or oil on (whether from the Collateral or from another property offsite of the Collateral) or from the Collateral, or any other site or vessel owned, occupied, or operated by the Borrower or by any person for whose conduct the Borrower is responsible or whose liability may result in a lien on the Collateral; (ii) the Borrower's receipt of any notice to such effect from any federal, state, or other governmental authority; and (iii) the Borrower's obtaining knowledge of any incurrence of any expense or loss by such governmental authority in connection with the assessment, containment, or removal of any hazardous material or oil for which expense or loss the Borrower may be liable or for which expense a lien may be imposed on the Collateral; and

(e) comply with all laws, judgments, decrees, orders, rules, and regulations pertaining to environmental matters relating to the use, storage, containment, and removal of hazardous materials or oil, including, without limitation, those arising under [CITE LAWS], as amended, and any other federal, state or local statute, rule, regulation, ordinance, or decree.

4. Borrower Indemnification. The Borrower shall indemnify, defend, and hold the Lender harmless of and from any claim brought or threatened against the Lender by the Borrower, any guarantor or endorser of the Liabilities, or any governmental agency or authority or any other person (as well as from attorneys' reasonable fees and expenses in connection therewith) on account of the presence of hazardous material or oil on the Collateral, the release of hazardous materials or oil on or from the Collateral, or the failure by the Borrower to comply with the terms and provisions hereof (each of which may be defended, compromised, settled, or pursued by the Lender with counsel of the Lender's selection, but at the expense of the Borrower). This indemnification covers any costs and expenses that the Lender may incur: (i) in defending or

protecting its security interest or the priority thereof, or, (ii) for assessment, containment and/or removal of any hazardous material or oil from all or any portion of the Collateral or any surrounding areas. The within indemnification shall survive payment of the Liabilities and/or any termination, release, or discharge executed by the Lender in favor of the Borrower.

5. General.

5.1 No Assignment. Neither this Agreement nor any rights or obligations hereunder may be transferred or assigned without the other party's prior written consent and any attempt to the contrary shall be void.

5.2 Governing Law. This Agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of [STATE]. The Borrower submits itself to the jurisdiction of the courts of said [STATE] for all purposes with respect to this Agreement and the Borrower's relationship with the Lender.

5.3 Successors and Assigns. This Agreement shall be binding upon the Borrower and the Borrower's heirs, executors, administrators, representatives, successors, and assigns and shall inure to the benefit of the Lender and the Lender's successors and assigns.

5.4 Notices. All notices and other communications required or permitted hereunder will be in writing and will be delivered by hand or sent by overnight courier, fax or e-mail to:

if to Borrower:

fax: _____

e-mail: _____

Attention: _____

with a copy to:

fax: _____

e-mail: _____

Attention: _____

if to Lender:

fax: _____

e-mail: _____

Attention: _____

with a copy to:

fax: _____
e-mail: _____
Attention: _____

Each party may furnish an address substituting for the address given above by giving notice to the other parties in the manner prescribed by this Section 5.4. All notices and other communications will be deemed to have been given upon actual receipt by (or tender to and rejection by) the intended recipient or any other person at the specified address of the intended recipient.

5.5 Severability. Any determination that any provision of this Agreement or any application thereof is invalid, illegal, or unenforceable in any respect in any instance shall not affect the validity, legality, and enforceability of such provision in any other instance, nor the validity, legality, or enforceability of any other provision of this Agreement.

5.6 Fees and Costs. The Borrower shall pay on demand all costs of collection and all expenses of the Lender in connection with the preparation, execution, and delivery of this Agreement and of any other documents and agreements between the Borrower and the Lender, including, without limitation, attorneys' reasonable fees and disbursements, and all expenses which the Lender may hereafter incur in connection with the collection of the Liabilities or the protection or enforcement of any of the Lender's rights against the Borrower, the Collateral, and any guarantor or endorser of the Liabilities. The Borrower authorizes the Lender to pay all such expenses and to charge the same to any account of the Borrower with the Lender.

5.7 Construction. The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (a) references to the plural include the singular, the singular the plural, and the part the whole, (b) references to one gender include all genders, (c) "or" has the inclusive meaning frequently identified with the phrase "and/or," (d) "including" has the inclusive meaning frequently identified with the phrase "including but not limited to" or "including without limitation," and (e) references to "hereunder," "herein" or "hereof" relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time.

5.8 Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements and understandings other than this Agreement relating to the subject matter hereof.

5.9 Waiver. The Borrower hereby makes the following waiver, knowingly, voluntarily, and intentionally, and understands that the Lender, in entering into any loan

arrangements or making any financial accommodations to the Borrower, whether now or in the future, is relying on such waiver. THE BORROWER HEREBY IRREVOCABLY WAIVES ANY PRESENT OR FUTURE RIGHT OF THE BORROWER TO A JURY IN ANY TRIAL OF ANY CASE OR CONTROVERSY IN WHICH THE BANK IS OR BECOMES A PARTY (WHETHER SUCH CASE OR CONTROVERSY IS INITIATED BY OR AGAINST THE BANK OR IN WHICH THE BANK IS JOINED AS A PARTY LITIGANT), WHICH CASE OR CONTROVERSY ARISES OUT OF OR IS IN RESPECT OF, ANY RELATIONSHIP BETWEEN THE BORROWER OR ANY OTHER PERSON AND THE BANK.

5.10 Counterparts. This Agreement may be in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, the Borrower has executed this Agreement, to take effect as an instrument under seal, as of the date first set forth above.

BORROWER:

[CORPORATE NAME]

By: _____

Its:

LENDER:

[CORPORATE NAME]

By: _____

Its: