

PREPARED BY AND RETURN TO:

Schwartz & Roman PLLC
P.O. Box 799
Durham, New Hampshire 03824



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Shelby Cnty Judge of Probate, AL
06/03/2015 09:18:43 AM FILED/CERT



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Jefferson County, Alabama
I certify this instrument filed on:
05/15/2015 12:40:01 PM AGREE
Judge of Probate- Alan L. King

THIRD PARTY LENDER AGREEMENT

THIS THIRD PARTY LENDER AGREEMENT (Agreement) is dated this 7 day of April, 2015, by and between **USAMERIBANK** ("Third Party Lender") whose address is 472 North Dean Road, Suite 104, Auburn, Alabama 36830 and **FLORIDA BUSINESS DEVELOPMENT CORPORATION, d/b/a Alabama Small Business Capital**, ("CDC") whose address is 6801 Lake Worth Road, Room 209, Lake Worth, Florida 33467

RECITALS

1. The Third Party Lender and CDC will provide separate loans to the Borrower and Operating Company, if any (collectively "Borrower"), according to the terms in the Authorization for Debenture Guarantee (SBA 504 Loan), as amended ("Authorization"). The Third Party Lender will provide term financing ("Third Party Loan"), and the CDC will provide a loan ("504 Loan") funded by a debenture issued by the CDC and guaranteed by the U.S. Small Business Administration ("SBA"), for purposes of financing the Project described in the Authorization, which involves the acquisition and/or improvement of the real and/or personal property described below, and in Exhibit A attached hereto and incorporated herein by reference ("Project Property"):

SBA Loan #:	70790350-04
SBA Loan Name:	Southeastern Temperature Controls, Inc.
Borrower:	Zander Realty, LLC
Operating Company (if any):	Southeastern Temperature Controls, Inc., Quality Controls, Inc.
Third Party Loan Amount:	\$626,920.00
Term of Third Party Loan:	<u>10 YEARS</u>
If Real Property -- Project Property Address:	320 Applegate Lane, Pelham, Alabama 35124, 1100 2nd Ave. N., Birmingham, Alabama 35203

Attach Legal description as Exhibit A

2. The parties have required the Borrower to grant liens on the Project Property to secure the separate loans advanced by the parties ("Common Collateral"), and the lien of the CDC ("CDC Lien") will be junior and subordinate to the lien of the Third Party Lender ("Third Party Lender Lien"), unless Third Party Lender, CDC and SBA agree otherwise in writing.

TERMS AND CONDITIONS

In consideration of the above, the mutual agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Amount of Third Party Loan. The Third Party Lender represents that the Third Party Loan is fully advanced; does not exceed the amount stated in the Authorization; and, will not exceed the amount allowed by the Authorization, plus reasonable costs of collection, maintenance, and protection of the Third Party Lender lien. Any amounts owed by Borrower to Lender in excess of the Third Party Lender Lien amount stated in the Authorization cannot be secured by a lien on the Common Collateral unless it is subordinate to the 504 Loan.
2. Subordination of 504 Loan. CDC agrees to make the 504 Loan to the Borrower, subject to SBA's approval, and accept a junior and subordinate lien position in the Common Collateral upon the conditions that Third Party Lender executes this Agreement and disburses the Third Party Loan according to the terms represented to CDC and SBA.
3. Accurate Information. The Third Party Lender warrants and represents that all information provided by the Third Party Lender to CDC, including, without limitation, all information regarding the Borrower's financial condition, is accurate to the best of its knowledge and that Third Party Lender has not withheld any material information. Third Party Lender acknowledges that for purpose of this transaction, CDC is acting on behalf of SBA, an agency in the United States Government, except that SBA accepts no liability or responsibility for any wrongful act or omission by CDC. Third Party Lender further acknowledges that any false statements to CDC can be considered false statements to the federal government under 18 U.S.C. §1001, and may subject the Third Party Lender to criminal penalties, and that CDC and SBA are relying upon the information submitted by the Third Party Lender.
4. Waiver of Provision Not to Encumber Common Collateral. Third Party Lender waives its rights to enforce, as against CDC and SBA, any provisions in its documents that prohibit Borrower from further encumbering the Common Collateral or which restrict the Borrower's ability to assign its lease on, or rents, income or profits from, the Common Collateral.
5. Compliance with 504 Loan Program Requirements. Third Party Lender agrees that all documents evidencing the Third Party Loan and the Third Party Lender Lien will comply with the 504 Loan Program Requirements as established by the SBA, and including those identified in the following subparagraphs, and, in the event one or more of the provisions in such documents do not comply with these 504 Loan Program requirements, Third Party Lender waives any right to enforce such provisions while the 504 Loan has any unpaid balance and agrees that it must act in a commercially reasonable manner with regard to any enforcement action.
 - a. No Open-Ended Features and No Future Advances. The Third Party Loan must not be open-ended. After completion of the project, the Third Party Lender may not make future advances under the Third Party Loan except reasonable costs of collection, maintenance, and protection of the Third Party Loan and Third Party Lender's lien.
 - b. No Early Call or Demand Provisions. Third Party Lender agrees that documents evidencing the Third Party Loan and the Third Party Lender Lien do not contain an early call feature or any provision which allows Third Party Lender to make demand under the Third Party Lender Loan other than when there is a material default under the terms of its Third Party Loan documents, which shall include, but not be limited to, failure to make timely payments on the Third Party Loan, failure to pay taxes when due or violation of any financial covenants which would cause a prudent lender to believe that the prospect of payment or performance of the Third Party Note is impaired.
 - c. No Cross-Collateralization. Third Party Lender agrees that the Common Collateral will only secure its Third Party Loan and the Common Collateral is not currently, and will not be used in the future, as security for any other financing provided by Third Party Lender to Borrower that purports to be in a superior position to that of the CDC Lien, unless authorized in writing by CDC and SBA.
 - d. No Cross-Default. During the term of the 504 Loan, Third Party Lender will not exercise any cross-default, "deem at-risk," or any other provisions in documents evidencing the Third Party Loan or



Third Party Lender Lien which allow Third Party Lender to make demand on the Third Party Loan prior to maturity unless the Third Party Loan is in material default.

e. Maturity and Balloon Payments. The Third Party Loan must have a term of at least 7 years (when the 504 loan is for a term of 10 years), or a term of at least 10 years (when the 504 loan is for 20 years). If the Third Party Lender has made more than one loan, then an overall loan maturity must be calculated, taking into account the amounts and maturities of each loan. Any balloon payment for the Third Party Loan must be clearly identified and disclosed to SBA and approved at application or subsequently approved by SBA.

f. Reasonable Interest Rate. The Third Party Loan has a reasonable interest rate which does not and will not exceed the maximum interest rate for Third Party Loans from commercial financial institutions as published periodically by SBA in the Federal Register and in effect as of the date of this Agreement.

6. Marshaling of Assets. If the Third Party Lender takes additional collateral as security for the Third Party Loan, in the case of liquidation, any proceeds received from such additional collateral, must be applied to the Third Party Lender's Loan prior to the proceeds from the liquidation of the Common Collateral held by the CDC/SBA and the Third Party Lender. If the additional collateral no longer exists at the time of liquidation, or has insufficient value to justify the cost of collection, then the Third Party Lender is not required to liquidate such collateral, provided the Third Party Lender notifies CDC/SBA.

7. Notice of Default under the Third Party Loan. Within thirty (30) days after the expiration of any cure period for any continuing material default of the Third Party Loan or Third Party Lender Lien, Third Party Lender must provide written notice (referencing SBA's loan number for the 504 Loan) of the default to CDC and SBA. At least sixty 60 days prior to any legal proceedings against or liquidation of the Common Collateral (not including sending a demand letter), Third Party Lender must provide SBA with written notice of its intent to do so.

8. Limitation on Default Interest Rate. Third Party Lender may not escalate the rate of interest upon default to a rate greater than the maximum rate published by SBA in the Federal Register. SBA will only pay the interest rate on the note in effect before the date of Borrower's default.

9. Subordination to 504 Loan and/or CDC Lien, of Amounts Attributable to Default Provisions.

a. The term "Default Charges" used in this paragraph includes, but is not limited to, prepayment penalties, late fees, other default charges, and escalated interest after default due under the Third Party Loan.

b. To the extent the Third Party Lender Lien secures any amounts attributable to Default Charges, which may exist in the Third Party Loan and Third Party Lender Lien, Third Party Lender Lien is and will be subordinate to the 504 Loan and the CDC Lien. This subordination applies only to CDC and SBA and their successors and assigns, and shall not inure to the benefit of Borrower or any guarantor of the Third Party Loan.

c. In the event of default under the Third Party Loan, CDC or SBA may bring the Third Party Loan current or may acquire the Third Party Loan secured by the Third Party Lender Lien. Third Party Lender agrees that in either of these circumstances, the amount to bring the Third Party Loan current or the purchase price of that loan will be net of all amounts attributable to the Default Charges so subordinated to the 504 Loan and the CDC Lien. Third Party Lender further agrees that if it receives from CDC or SBA any amounts attributable to such Default Charges, Third Party Lender holds such funds in trust for SBA and will remit such funds to SBA as soon as possible. In addition, Third Party Lender shall charge as against SBA only the interest rate on the Third Party Loan that was in effect before the date of Borrower's default. Should CDC or SBA not purchase the Third Party Loan but rather bring the Third Party loan current, Default Charges on the Third Party Loan may remain due and owing from the Borrower.

d. The Third Party Lender agrees:

(1) If the Third Party Lender sells its Note (other than when liquidating the Third Party Loan), then the Third Party Lender must provide CDC/SBA, within fifteen (15) days of the sale, with written notice of the purchaser's name, address and telephone number and confirmation that the purchaser has received a copy of the executed Third Party Lender Agreement.

(2) If the Third Party Loan is in default and the Third Party Lender, as part of its liquidation strategy,

(i) proposes to sell its note, or

(ii) receives an offer from a third party, then the Third Party Lender must provide CDC/SBA with the option to purchase the note at the same price offered by the potential purchaser, net any Default Charges per paragraph 9(c). SBA will have forty five (45) days from receipt of the notice from the Third Party Lender to exercise its option to purchase the note. If SBA does not exercise its option and the Third Party Lender sells its note, then the Third Party Lender must provide CDC/SBA, within fifteen (15) days of the sale, with written notice of the purchaser's name, address and telephone number and must provide the purchaser with a copy of the executed Third Party Lender Agreement.

e. If the Third Party Lender sells or otherwise transfers its note to a third party, then any default charges, including, but not limited to, prepayment penalties, late fees, other default charges, and escalated interest after default due under the Third Party Loan must be subordinate to the amounts outstanding on the 504 Loan and/or CDC Lien.

f. If the Third Party Lender loan documents contain a swap component or hedging contract (hereinafter defined as "swap agreement"), all costs associated with this swap agreement, which may be termed swap fees, termination fees, default fees or other related fees, shall be subordinate to the amounts outstanding on the 504 Loan and/or CDC Lien.

10. Liquidation. In the event that either the Third Party Loan or the 504 Loan is declared in default, Third Party Lender and CDC and SBA agree to cooperate in liquidating and/or selling the Common Collateral. Third Party Lender agrees to (a) accept a U.S. Treasury check(s) in connection with any purchase of Third Party Lender's note or any foreclosure or liquidation bid by CDC or SBA; (b) to provide CDC and SBA with the loan payment status, loan payment history, and an itemized payoff statement of the Third Party Loan; (c) to provide CDC and SBA, at no charge (except for reasonable charges for photocopies) with copies of any appraisals, environmental investigations, or title examinations or searches of the Collateral conducted by or for Third Party Lender; and (d) to provide any other information about Borrower or the Third Party Loan requested by CDC and SBA in writing.

11. Waiver of Right to Indemnification by SBA or CDC. If Third Party Lender's documents contain provisions granting Third Party Lender the right to indemnification by subsequent owners of the Project Property, then Third Party Lender waives its right to enforce such provisions against SBA or CDC in the event SBA or CDC acquires title to the Project Property through foreclosure of the CDC Lien, acceptance of a deed in lieu of foreclosure, or otherwise.

12. Bank Regulatory Issues. If Third Party Lender is regulated by one of the Federal functional regulators (Comptroller of the Currency, Federal Deposit Insurance Corporation, or National Credit Union Administration), Third Party Lender represents that it is subject to the Joint Final Rule on Customer Identification Programs (CIP) in 31 C.F.R. 103.121 and that it or its agent will perform with respect to the Borrower the specified requirements of its CIP.

13. No Implied Third Party Beneficiaries. To the extent there is a conflict between this Agreement and any provision in any agreement either Party may have with a third party, including but not limited to, Borrower, the terms and conditions in this Agreement shall supercede any such provision. The parties agree that SBA may enforce this agreement as a third party beneficiary, and further agree that this Agreement shall not grant any right, benefit, priority, or interest to any other third party, including but not limited to, Borrower and Guarantor(s).

14. Successors and Assigns. This Agreement will inure to the benefit of and bind the respective parties to this Agreement, and their successors and assigns, including any party acquiring the Third Party Loan and Third Party Lender Lien by sale, assignment, or other transfer from Third Party Lender. Third Party Lender agrees that CDC may assign this Agreement to the SBA, and waives all rights to contest such assignment.

15. Federal Law. When SBA is the holder of the loan instruments evidencing the 504 Loan and any security for that loan (including but not limited to the CDC Lien on the Common Collateral), this Agreement and all such instruments will be construed in accordance with Federal law. CDC or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes, but by using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax, or liability. The Third Party Lender may not claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to the 504 Loan.

16. Termination: This document will be released and terminated upon the payment in full of either the Third Party Loan or the 504 loan and all costs related thereto.

17. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument.

18. Validity of Provisions. In the event that any provision of this Agreement is deemed invalid by a court of competent jurisdiction, all other provisions of this Agreement shall remain valid and enforceable.

19. Revision of this Agreement. Both Third Party Lender and CDC agree that this Agreement is a standard SBA Form, and, as such, neither party has authority to modify or delete any provision in this Agreement, or add any additional provisions, without prior written authorization from the SBA.

20. Authority to Execute Agreement. The persons signing below certify that they have been duly authorized to execute this Agreement on behalf of their respective party.

USAMERIBANK

By
Its:

[Signature]
S. V. - President

STATE OF ALABAMA
COUNTY OF Shelby

I, the undersigned, a notary public in and for said county in said state, hereby certify that Doug Williamson, whose name as SVP, of USAMeriBank, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand this the 7 day of April, 2015.



[Signature]
NOTARY PUBLIC

My Commission Expires: 11-30-2018



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FLORIDA BUSINESS DEVELOPMENT
CORPORATION

By: William G. Bates
Its: WILLIAM G. BATES
Vice President

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

BEFORE ME, the undersigned authority duly authorized to take oaths and acknowledgments personally appeared WILLIAM G. BATES, Vice President of Florida Business Development Corporation. They are personally known to me and acknowledged to and before me that they executed said instrument for the purposes therein contained on behalf of Florida Business Development Corporation.

WITNESS my hand and official seal in the County and State last aforesaid this 13th day of April, 2015.

Nicole L. Tibbetts

Justice of the Peace/Notary Public/State of New Hampshire

ASSIGNMENT TO SBA

CDC assigns this Third Party Lender Agreement to SBA.

NICOLE L. TIBBETTS
Notary Public, State of New Hampshire
My Commission Expires August 22, 2017

FLORIDA BUSINESS DEVELOPMENT
CORPORATION

By: William G. Bates
Its: WILLIAM G. BATES
Vice President

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

BEFORE ME, the undersigned authority duly authorized to take oaths and acknowledgments personally appeared WILLIAM G. BATES, Vice President of Florida Business Development Corporation. They are personally known to me and acknowledged to and before me that they executed said instrument for the purposes therein contained on behalf of Florida Business Development Corporation.

WITNESS my hand and official seal in the County and State last aforesaid this 13th day of April, 2015.

Nicole L. Tibbetts

Justice of the Peace/Notary Public/State of New Hampshire

NICOLE L. TIBBETTS
Notary Public, State of New Hampshire
My Commission Expires August 22, 2017



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EXHIBIT "A"

Parcel I: (1100 2nd Avenue North, Birmingham, Alabama 35203)

Lot 12 and the West 50 feet of Lot 11, Block 264, according to the Present Plan and Survey of the City of Birmingham, as made by the Elyton Land Company, situated in Jefferson County, Alabama.

NOTE: This survey is unrecorded and unavailable for recordation.

Parcel II: (320 Applegate Lane, Pelham, Alabama 35124)

Lots 17 and 18, according to the Final Plat of Clayton's Addition to Oak Mountain Business Park, as recorded in Map Book 37, page 103, in the Probate Office of Shelby County, Alabama.

SUBJECT TO: i) taxes and assessments for the year 2014, a lien but not yet payable; ii) Easement recorded in Instrument 200305/5964 in the Probate Office of Jefferson County, Alabama (Parcel I); iii) Transmission line permit to Alabama Power Company, recorded in Deed 126, page 299, in the Probate Office of Shelby County, Alabama (Parcel II); iv) Right of way to Shelby County, recorded in Deed 180, page 584, in the Probate Office of Shelby County, Alabama (Parcel II); v) Right of way to Southern Bell Telephone and Telegraph Company, as recorded in Deed 334, page 205, in the Probate Office of Shelby County, Alabama (Parcel II); vi) Easement to Randall H. Goggans, as recorded in Instrument 1999-16171, in the Probate Office of Shelby County, Alabama (Parcel II); vii) Mineral and mining rights and rights incident thereto to Amoco Production recorded in Deed 336, page 430 and amended in Misc. Book 15, page 373, in the Probate Office of Shelby County, Alabama (Parcel II); and viii) coal, oil, gas and mineral and mining rights which are not owned by Mortgagor.



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Total of Fees and Taxes-\$34.00
DGENERALLY