



## COMMERCIAL FINANCE ARBITRATION CLAUSE

### **BINDING ARBITRATION.**

- 1. Arbitrable Claims.** Except as otherwise specified below, all actions, disputes, claims and controversies under common law, statutory law or in equity of any type or nature whatsoever, whether arising before or after the date of this Agreement, and whether directly or indirectly relating to: (a) this Agreement and/or any amendments and addenda hereto, or the breach, invalidity or termination hereof; (b) any previous or subsequent agreement between LENDER and Borrower; (c) any act committed by LENDER or by any parent company, subsidiary or affiliated company of LENDER (the "LENDER Companies"), or by any employee, agent, officer or director of a LENDER Company whether or not arising within the scope and course of employment or other contractual representation of the LENDER Companies provided that such act arises under a relationship, transaction or dealing between LENDER and Borrower; and/or (d) any other relationship, transaction or dealing between LENDER and Borrower (collectively the "Disputes"), will be subject to and resolved by binding arbitration. Notwithstanding the foregoing, the parties agree that either party may pursue claims against the other that do not exceed Fifteen Thousand Dollars (\$15,000) in the aggregate in a court of competent jurisdiction. Service of arbitration claims shall be acceptable if made by U.S. mail or overnight delivery to the address for the party described herein.
- 2. Administrative Body.** All arbitration hereunder will be conducted in accordance with the Consolidated Arbitration Rules of United States Arbitration & Mediation ("USA&M"). The arbitration rules are found at [www.usam.com](http://www.usam.com). Claims shall be filed with USA&M in their office located at 500 N. Broadway, Suite 1800, St. Louis, Missouri 63102. All arbitrator(s) selected will be attorneys with at least five (5) years secured transactions experience. A panel of three arbitrators shall hear all claims exceeding One Million Dollars (\$1,000,000), exclusive of interest, costs and attorneys' fees. The arbitrator(s) will decide if any inconsistency exists between the USA&M Arbitration Rules and the arbitration provisions contained herein. If such inconsistency exists, the arbitration provisions contained herein will control and supersede such rules. The arbitrator shall follow the terms of this agreement and the applicable law, including without limitation, the attorney-client privilege and the attorney work product doctrine.
- 3. Hearings.** Each party hereby consents to a documentary hearing for all arbitration claims, by submitting the dispute to the arbitrator(s) by written briefs and affidavits, along with relevant documents. However, arbitration claims will be submitted by way of an oral hearing, if any party requests an oral hearing within forty (40) days after service of the claim, and that party remits the appropriate deposit for USA&M's fees and arbitrator compensation within ten (10) days of making the request. The site of all oral arbitration hearings will be in the Federal Judicial District that is closest to Borrower.

4. **Discovery.** Discovery permitted in any arbitration proceeding commenced hereunder is limited as follows. No later than forty (40) days after the filing and service of a claim for arbitration, the parties in contested cases will exchange detailed statements setting forth the facts supporting the claim(s) and all defenses to be raised during the arbitration, and a list of all exhibits and witnesses. No later than twenty-one (21) days prior to the oral arbitration hearing, the parties will exchange a final list of all exhibits and all witnesses, including any designation of any expert witness(es) together with a summary of their testimony; a copy of all documents and a detailed description of any property to be introduced at the hearing. Under no circumstances will the use of interrogatories, requests for admission, requests for the production of documents or the taking of depositions be permitted. However, in the event of the designation of any expert witness(es), the following will occur: (a) all information and documents relied upon by the expert witness(es) will be delivered to the opposing party; (b) the opposing party will be permitted to depose the expert witness(es); (c) the opposing party will be permitted to designate rebuttal expert witness(es); and (d) the arbitration hearing will be continued to the earliest possible date that enables the foregoing limited discovery to be accomplished.
5. **Confidentiality of Awards.** All arbitration proceedings, including testimony or evidence at hearings, will be kept confidential, although any award or order rendered by the arbitrator(s) pursuant to the terms of this Agreement may be confirmed as a judgment or order in any state or federal court of competent jurisdiction within the federal judicial district which includes the residence of the party against whom such award or order was entered. This Agreement concerns transactions involving commerce among the several states. The Federal Arbitration Act, Title 9 U.S.C. Sections 1 et seq., as amended ("FAA") will govern all arbitration(s) and confirmation proceedings hereunder.
6. **Prejudgment and Provisional Remedies.** Nothing herein will be construed to prevent Lender's or Borrower's use of bankruptcy, receivership, injunction, repossession, replevin, claim and delivery, sequestration, seizure, attachment, foreclosure, and/or any other prejudgment or provisional action or remedy relating to any Collateral for any current or future debt owed by either party to the other. Any such action or remedy will not waive Lender's or Borrower's right to compel arbitration of any Dispute.
7. **Attorneys' Fees.** If either Borrower or LENDER brings any other action for judicial relief with respect to any Dispute (other than those set forth in Sections 1.1 or 1.7), the party bringing such action will be liable for and immediately pay all of the other party's costs and expenses (including attorneys' fees) incurred to stay or dismiss such action and remove or refer such Dispute to arbitration. If either Borrower or LENDER brings or appeals an action to vacate or modify an arbitration award and such party does not prevail, such party will pay all costs and expenses, including attorneys' fees, incurred by the other party in defending such action. Additionally, if Borrower sues LENDER or institutes any arbitration claim or counterclaim against LENDER in which LENDER is the prevailing party, Borrower will pay all costs and

expenses (including attorneys' fees) incurred by LENDER in the course of defending such action or proceeding.

8. **Limitations.** Any arbitration proceeding must be instituted: (a) with respect to any Dispute for the collection of any debt owed by either party to the other, within two (2) years after the date the last payment by or on behalf of the payor was received and applied in respect of such debt by the payee; and (b) with respect to any other Dispute, within two (2) years after the date the incident giving rise thereto occurred, whether or not any damage was sustained or capable of ascertainment or either party knew of such incident. Failure to institute an arbitration proceeding within such period will constitute an absolute bar and waiver to the institution of any proceeding, whether arbitration or a court proceeding, with respect to such Dispute.
9. **Survival After Termination.** The agreement to arbitrate will survive the termination of this Agreement.
10. **INVALIDITY/UNENFORCEABILITY OF BINDING ARBITRATION. IF THIS AGREEMENT IS FOUND TO BE NOT SUBJECT TO ARBITRATION, ANY LEGAL PROCEEDING WITH RESPECT TO ANY DISPUTE WILL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE WITHOUT A JURY. BORROWER AND LENDER WAIVE ANY RIGHT TO A JURY TRIAL IN ANY SUCH PROCEEDING.**
11. **Governing Law.** This Agreement and all other agreements between Borrower and LENDER have been substantially negotiated, and will be substantially performed, in the state of \_\_\_\_\_. Accordingly, all Disputes will be governed by, and construed in accordance with, the laws of such state, except to the extent inconsistent with the provisions of the FAA which shall govern all arbitration proceedings hereunder.

**THIS CONTRACT CONTAINS BINDING ARBITRATION and JURY WAIVER PROVISIONS.**

This Agreement is dated this \_\_\_ day of \_\_\_\_\_, 20\_\_.