

CONSTRUCTION LOAN AGREEMENT

Re: Loan No. 72434956 / 10 Date: 06/23/2010

Amount of Loan : \$ 1,580,047.59

Lender: CB&T A DIVISON OF SYNOVUS BANK

Address: 1148 BROADWAY
COLUMBUS, GEORGIA 31901

Owner(s): GATEWAY CENTRE LLC

Address: 121 COOSA ST STE 200
MONTGOMERY, AL 36104-

Contractor:

Architect:

Estimated Costs of Construction: \$

Description of Improvements:

Completion Date: 09/21/2010

Description of Property of Owner: Real property situated in MONTGOMERY County, State
of ALABAMA, to-wit:
1210 INDUSTRIAL PKWY
SARALAND, AL

This Construction Loan Agreement (this "Agreement") is made between lender and Owner on the date stated above.

1. Subject to the terms and conditions of this Agreement, Lender has agreed to make a loan (the "Loan") to Owner in the principal amount of up to the Amount of Loan set forth above. Owner's obligation to repay the Loan and the interest and other charges thereon, is evidenced by a promissory note (the "Note") bearing the same date as the Agreement. Payment of the Note, and any extension or renewal thereof, is secured by a mortgage or security deed (the "Security Instrument") from Owner to Lender conveying the property described above (the "Property"). Owner agrees to repay the principal of the Loan, and interest on the amount of the Loan that has been advanced by Lender from and including the date each advance is made to the date the advance is repaid, on the dates and in the amounts provided in the Note. Sums borrowed under the Loan, once repaid, cannot be re-borrowed by Owner.

2. Owner agrees to apply the net proceeds of the Loan (meaning the gross loan proceeds minus closing costs and financing costs that are financed as a part of the Loan) to the costs of the improvements described above (the "Improvements") and to construct the Improvements according to the plans and specifications and according to the construction budget that have been submitted to Lender and are hereby made a part of this Agreement by this reference. Owner agrees to provide such additional sums as shall be required, in addition to the net proceeds of the Loan, to pay the costs of completing the construction of the Improvements in accordance with the plans and specifications, whether such costs are contemplated in Owner's construction budget or result from changes in the plans and specifications or from unforeseen events.

3. Lender has reviewed the plans and specifications and the construction budget only to the extent which Lender, for its sole benefit and guidance, deems necessary in approving the making of the Loan to Owner, and Lender has approved the making of the Loan only upon the representation by Owner that the plans and specification are complete and sufficient to accomplish the construction of the Improvements and the other work contemplated by Owner in compliance with all building codes and zoning requirements applicable in the governmental jurisdiction in which the Property is located, and that the construction budget is a reasonably accurate estimate of the costs of such construction.

4. Advances of funds under this Agreement (each a "Draw") will be made upon the request of Owner. Each request for a Draw shall be submitted to the Lender at least two business days prior to the date of the requested advance. Draws may be made during construction and a final draw at the end of construction after Lender has determined that construction has been completed in substantial compliance with the plans and specifications. Lender may, at any time, require that requests for Draws must be made on a form provided by Lender and must be accompanied by evidence satisfactory to Lender that all suppliers of labor and materials through the date of the request have been paid or will be paid from the Draw. Lender may, at its discretion, disburse Draws by making payment directly to suppliers and laborers who have furnished or who propose to furnish labor or materials for use in the construction of the Improvements. If more than _____ Draws are made, Owner agrees to pay Lender a fee of \$ _____ for each Draw made in excess of that number.

5. Lender shall not be obligated to honor any request for a Draw until Lender receives evidence, satisfactory to Lender in its sole discretion, that each of the following has been obtained or complied with and is still effective:

- ☐ Building permit
- ☐ Zoning approval
- ☐ Architectural committee approval
- ☐ Approval for tap-on to water main
- ☐ Approval for sewer line tap-on
- ☐ Percolation test/septic tank approval
- ☐ Confirmation of availability of electric service
- ☐ Confirmation of availability of natural gas service
- ☐ Survey
- ☐ Appraisal
- ☐ Title insurance commitment
- ☐ Attorney's title opinion
- ☐ Evidence of property insurance (including builder's risk)
- ☐ Availability of Owner's equity
- ☐ Evidence that no work has begun on the Property
- ☐ Environmental approval
- ☐ Phase I environmental audit
- ☐ Other:
- ☐ Other:

6. Lender, in its sole discretion, may withhold from each advance certain sums of money from time to time, if, in its opinion, it is advisable that there should be on hand a retained portion of the estimated costs of construction. The exercise of this discretion for retainage shall not be construed as imposing upon Lender and liability for the failure of Owner to complete the Improvements or for exceeding the estimated costs of construction of the Improvements. The making of advances under the Loan or the retainage of a portion of the Loan proceeds by Lender shall not relieve Owner of Owner's duty and obligation to pay any and all bills of every nature going into and towards the construction of the Improvements.

7. Lender may inspect the construction work as it progresses and/or require certificates and/or affidavits from Owner in lieu of or in addition to inspections, from time to time, but Lender is not required to do so. Such inspections and /or certifications shall be for Lender's sole use and information. Lender may use or fail to use the information which it obtains from any inspections, certifications or affidavits in determining the amount of advances to be made from time to time and the amount, if any, of retainage of a portion of the estimated costs of construction which Lender, in its sole discretion, might see fit to retain. Owner shall not be entitled to rely upon any such inspections or the lack thereof in any manner, including, without limitation, as a representation or warranty by Lender of the quantity or quality of the labor and materials used in constructing the Improvements.

8. Owner covenants and agrees with Lender that:

(a) No construction will be commenced and no materials will be stored on the Property until Lender has advised Owner that the Security Instrument has been recorded and Owner may proceed;

(b) The construction of the Improvements shall be completed in a good and workmanlike manner in accordance with the plans and specifications and all applicable zoning and land use restrictions on or before the Completion Date set forth above;

(c) Owner will maintain policies of insurance (including builder's risk coverage) on the Improvements covering loss by fire, flood (if applicable), and other hazards in such amounts, form, and substance as Lender may require until the Note is paid in full; and

(d) Owner will obtain all governmental permits, including building permits and zoning and set back variances, as may be required for the construction of the Improvements in accordance with the requirements of all applicable laws, ordinances, and covenants.

9. Owner shall be in default under this Agreement upon the happening of any of the following:

(a) If, at any time prior to the completion of the construction contemplated by the plans and specifications, Owner or Owner's contractor abandons the construction or ceases work thereon for a period of more than fourteen (14) days (delays caused solely by inclement weather excepted);

(b) If Owner fails to complete the construction of the Improvements strictly in accordance with the plans and specifications, except as to changes approved by lender, or if Owner makes changes in the plans and specifications without first securing written approval of Lender;

(c) If Owner fails to make any payment when due of principal and/or interest under the terms of the Note and/or under the terms and provisions of the Security Instrument or any other Loan document in favor of the Lender in connection with the Loan;

(d) If Owner misrepresents the payment of bills for labor and materials, or causes or permits a lien to be filed against the Property, or fails to cause any claim that might result in a lien against the Property to be canceled by payment or the posting of a bond or otherwise;

(e) If Owner fails to maintain in force any required property insurance or to name Lender as mortgagee and loss payee under such policies insurance; or

(f) If Owner otherwise fails to comply with any of the terms of this Agreement or the Security Instrument.

10. Upon a default by Owner under this Agreement:

(a) Lender may, at its election and without notice, accelerate the maturity of the Note and terminate or suspend its obligation to honor any further Draws or make any further advances of funds to Owner under this Agreement;

(b) Lender shall be under no duty to, but Lender may:

(1) enter into possession of the Property and perform any and all work and labor necessary to complete the Improvements substantially according to the plans and specifications (and Owner hereby grants to Lender the right to possess and use the plans and specifications for that purpose);

(2) exercise the rights of Owner to direct the completion of the construction of the Improvements, including, without limitation, the right to make changes in the plans and specifications, if in Lender's sole discretion it is necessary or desirable to facilitate the completion of construction of the Improvements thus protecting the security of Lender for the Loan;

(3) employ such contractors, sub-contractors and agents, architects and inspectors as shall be required for said purposes;

(4) undertake the work as its own contractor;

(5) employ watchmen to protect the Property and Improvements from injury and damage;

(6) pay, settle or compromise all existing bills and claims which are or become liens against the Property or as it deems necessary or desirable for the completion of the job, or for the clearance of title;

(7) execute all applications and certificates in the name of the Owner which may be required by any of the contract documents or permits related to construction of the Improvements; and

(8) do any and every act which the Owner might do in fulfillment of Owner's obligations under this Agreement, the Security Instrument, and any of the other Loan documents.

(c) If Lender does not elect, at its sole option, to complete the construction of the Improvements, then Lender may, at its discretion:

(1) apply any or all of any funds held by it under this Agreement or arising out of the proceeds of the Loan to any accrued interest and other charges and then to the reduction of the principal of the Loan; and

(2) proceed either prior thereto or thereafter to exercise all of its remedies under the Security Instrument and/or under applicable law.

under the Security Instrument and/or under applicable law.

(d) All sums expended by Lender in taking actions authorized in the Agreement and under applicable law shall be deemed paid to or for the benefit of Owner, shall be payable on demand, shall bear interest at the rate provided in the Note, and shall be secured by the Security Instrument;

(e) The rights of Lender to take any such actions shall be at its option, and its failure to exercise any right hereunder shall not constitute a neglect of duty; or

(f) Owner constitutes and appoints Lenders as the true and lawful attorney-in-fact of Owner, with full power of substitution, to exercise any right or power of Owner under this Agreement. This power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked by Owner. The attorney-in-fact shall also have power to prosecute and defend all actions or proceedings in connection with the construction of the Improvements on the Property and to take such action and require such performance as Lender may deem necessary to assure completion.

11. Owner hereby agrees to indemnify and hold Lender harmless from and against any loss, damage, or expenses incurred by or claimed against Lender relating to or arising from the construction of the Improvements. Borrower further agrees to indemnify and hold Lender harmless from and against any and all liability under federal, state, or local environmental laws, ordinances or regulations that arises out of or is related to the ownership or operation of the Property or any of the Improvements thereon. This paragraph shall survive payment in full of the Loan and termination of this Agreement.

12. Time is of the essence in the Agreement.

13. This Agreement shall be governed by and construed in accordance with the laws of the United States and, to the extent not inconsistent therewith, the state in which Lender is located.

14. If any provision of this Agreement violates the law or is unenforceable, the balance of the Agreement shall remain valid and enforceable.

15. This Agreement may be amended only by a writing signed by all of the parties hereto. This Agreement shall be binding upon and inure to the benefit of Owner and Lender, their executor, administrators, successors, and assigns. This Agreement is not assignable by Owner unless Lender consents to the assignment in writing. Lender may withhold or give consent to any such assignment in its sole discretion. Lender may assign all of its rights under this Agreement, including the obligation to make advances under this Agreement, without Owner's consent.

16. If this Agreement is signed by more than the Owner, (a) the term "Owner" wherever used herein means each and all of such Owners, and they shall be bound jointly and severally by all provisions hereof and all obligations hereunder; (b) each Owner shall have full power to deal with Lender in all matters pertinent to this Agreement, with binding effect upon all Owners; and (c) any notice or other communication given by Lender to any one Owner shall be deemed effectively given to all Owners.

17. The following additional provisions shall apply to this Agreement:

18. Owner acknowledges that Lender is a bank in the business of making loans secured by real estate and improvements on real estate and that Lender does not provide architectural, engineering or construction management services.

- Lender is not responsible for assuring that the Loan proceeds are actually used to pay the cost of construction.
- Lender is not responsible for monitoring the quality of the construction.
- Owner is responsible for assuring that all Loan proceeds are used to pay costs of construction of the Improvements, that the plans and specifications are followed, and that all necessary inspections, permits and approvals are obtained.

IN WITNESS WHEREOF, Lender and Owner have hereunto set their hands and affixed their seals to this Agreement or have caused this Agreement to be executed by their duly authorized officers or agents on the date above written.

CAUTION—IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.

OWNER(S): GATEWAY CENTRE LLC

WILLIAM R. HELMS MEMBER (SEAL)

RANDY ROARK MEMBER (SEAL)

LENDER:

CB&T A DIVISION OF SYNOVUS BANK

By: _____
ASHLEY L JOHNSON

Title: _____
VICE-PRESIDENT