

OFFICIAL RECORD

Requested By:

NEVADA STATE DEVELOPMENT

CORP

Douglas County - NV

Werner Christen - Recorder

Page: 1 Of 4 Fee: 17.00  
BK-1005 PG- 8458 RPTT: 0.00



APN: 1320-04-001-079  
ESCROW NO.:  
WHEN RECORDED RETURN TO:

✓ Nevada State Development Corp.  
6572 S. McCarran Blvd.  
Reno, Nevada 89509

Space Above This Line For Recorder's Use Only

SBA Loan No. 763 030 4009

### THIRD PARTY LENDER AGREEMENT

This THIRD PARTY LENDER AGREEMENT, dated the 12th day of July, 2005, by and between Irwin Union Bank, whose address is 1717 E. College Parkway, Carson City, Nevada 89706 (the "Third Party Lender") and NEVADA STATE DEVELOPMENT CORPORATION, a Nevada corporation, whose address is 6572 S. McCarran Blvd., Reno, Nevada (the "CDC"), recites and provides:

#### RECITALS

Rubicon Industries, LLC, a Nevada limited liability company (the "Borrower") is the owner of the real estate and other collateral described on the attached Exhibit A (the "Collateral"). The Third Party Lender has made a loan, which has been fully advanced, in the amount of Five Hundred Thousand and no/100 Dollars (\$500,000.00) (the "Term Loan"). The Term Loan is secured, among other things, by a first lien deed of trust dated June 7, 2005, and recorded June 23, 2005, in Book 0605, Page 9882, as Document No. 647527, in the Official Records of Douglas, Nevada (together with any modifications, extensions or amendments thereof) (the "Term Loan Deed of Trust").

The CDC has agreed to make a loan in the amount of Four Hundred Thirteen Thousand and no/100 Dollars (\$413,000.00) (the "504 Loan") to the Borrower. The 504 Loan will be secured, among other things, by a deed of trust (the "504 Deed of Trust") to be recorded among the aforesaid land records in the official records of the above mentioned county and state.

#### AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing recitals, the mutual agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Third Party Lender agrees as follows:

1. Subordination of Future Advances and Default Charges. Except for advances made for reasonable costs of collection, maintenance and protection of the Third Party Lender's lien made pursuant to the Term Loan Deed of Trust, the Third Party Lender hereby subordinates to the 504 Loan and the lien of the 504 Deed of Trust (a) any sum advanced to the Borrower by the Third Party Lender after the date of this Agreement and (b) any prepayment penalties, late fees, and increased default interest in connection with the Term Loan or the Interim Loan.

2. Compliance with 504 Loan Program Requirements. The Third Party Lender confirms that the note and all other documents executed in connection with the Term Loan (a) evidence a loan that does not exceed the principal amount permitted by the Authorization for Debenture Guarantee (SBA 504 Loan) issued by the U.S. Small Business Administration ("SBA") to CDC to assist Borrower, (b) have no open-ended features and allow only future advances for the

reasonable costs of collection, maintenance and protection of the Third Party Lender's lien thereunder, (c) are not cross-collateralized with any other financing now or hereafter to be provided by the Third Party Lender, (d) have no early call features, (e) are not payable on demand unless the Term Loan is in default. No demand will be made on the Note absent any default and the terms and provisions of the Note are hereby modified to eliminate any reference to the right of the holder thereof to make demand for payment except in the event of default, (f) have a term of at least, and do not require a balloon payment prior to, ten years for a 20-year 504 loan or seven years for a 10-year 504 loan, (g) have a reasonable interest rate that does not, and will not, exceed the maximum interest rate for a Third Party Loan as published by SBA, and (h) do not establish a preference in favor of the Third Party Lender as compared to CDC or SBA other than the Third Party Lender's senior lien position. The Third Party Lender agrees that if any provision in the note or any other document executed in connection with the Term Loan does not comply with these requirements, then the Third Party Lender waives its right to enforce any such provision.


3. Waiver of Enforcement of Covenant Not to Encumber the Collateral. If the Term Loan Deed of Trust or any document executed in connection with the Term Loan, or the Interim Loan Deed of Trust or any document executed in connection with the Interim Loan, contains any provision prohibiting the Borrower from further encumbering the Collateral, the Third Party Lender waives its right to enforce any such provision as it might apply to the lien arising from the 504 Deed of Trust securing or any other document securing or evidencing the 504 Loan.

4. Notice of Default Under the Third Party Lender Loan. If any default, event of default or delinquency, upon which the Third Party Lender intends to take action, occurs (a) under the Term Loan Deed of Trust or any document executed in connection with the Term Loan or (b) under the Interim Loan Deed of Trust or any document executed in connection with the Interim Loan, then the Third Party Lender agrees to give the CDC and the U.S. Small Business Administration (the "SBA") written notice of such default, event of default or delinquency and the opportunity to cure or to purchase the Third Party Lender's note(s) and the Term Loan Deed of Trust and/or the Interim Loan Deed of Trust prior to foreclosure. Such notice must be given within thirty (30) days after the default, event of default or delinquency upon which the Third Party Lender intends to take action and at least sixty (60) days prior to the date of any proposed sale; and the Third Party Lender will not sell all or any portion of the Collateral without giving the CDC and the SBA such notice. Notice under this Agreement shall be deemed to have been given when sent by certified or registered mail, return receipt requested, addressed, as the case may be, to the CDC at 6572 South McCarran Blvd., Reno, Nevada 89509, Attention: Servicing, and to the SBA at 400 S. 4<sup>th</sup> Street, Suite 250, Las Vegas, Nevada 89101 Attention: District Counsel.

5. Successors and Assigns. This Agreement shall inure to the benefit of and bind the respective parties to this Agreement and their successors and assigns.

DATED 7-12, 2005.

Irwin Union Bank

  
By Werner Heinrich  
Its AUT



ASSIGNMENT TO SBA

CDC assigns this Third Party Lender Agreement to SBA.

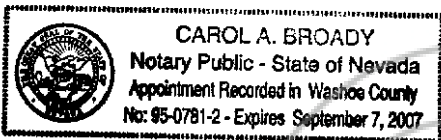
DATED July 13, 2005.

NEVADA STATE DEVELOPMENT CORPORATION, a Nevada corporation

By Roberta Bennett  
Roberta Bennett, President

STATE OF NEVADA )  
 ) ss.  
COUNTY OF CARSON CITY )

This instrument was acknowledged before me on July 12  
2005, by Warren Heinrich as Assistant Vice President of Irwin Union Bank.



Carol A Broady  
Notary Public

STATE OF NEVADA )  
 ) ss.  
COUNTY OF WASHOE )

This instrument was acknowledged before me on July 13, 2005, by  
Roberta Bennett, President of NEVADA STATE DEVELOPMENT CORPORATION.



Stephanie Morris  
Notary Public



**Exhibit A**

Real Estate Collateral as described below:

The land referred to herein is situated in the State of Nevada, County of Douglas, described as follows;

Lot 2 in Block C as shown on the official map of Carson Valley Business Park Phase 1, recorded in the office of the Douglas County Recorder, State of Nevada, on September 21, 1993, in Book 993, at Page 3579, as File No. 318019, Official Records.

Parcel 2A as shown on Record of Survey for Carson Valley Business Park (a Commercial Subdivision) filed for record in the office of the County Recorder of Douglas County, State of Nevada on May 20, 2005, in Book 0505, Page 9310, as Document No. 644905.

APN: 1320-04-001-081

Other Collateral:

Fixtures described in that certain Deed of Trust dated June 7, 2005, recorded on June 22, 2005 in Douglas County, Nevada in Book 0605, Page 9882 as Document Number 647527.



0658181

Page: 4 Of 4

BK- 1005  
PG- 8461  
10/19/2005