

Authorization ID:
Contact ID:
Use Code:

**AGREEMENT CONCERNING
A SMALL BUSINESS ADMINISTRATION LOAN
FOR A HOLDER OF A SPECIAL USE PERMIT**

(Reference FSM 2717.2)

<Delete instructions prior to printing.>

<This form may be used for loans guaranteed by USDA Rural Development. Substitute "Rural Development" for "the SBA" throughout the form and in the signature block.>

This agreement (Agreement) is made by two agencies of the United States Government, the UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE (the Forest Service); the UNITED STATES SMALL BUSINESS ADMINISTRATION (the SBA); [name of lender], a [name of state] [type of institution, e.g., bank or credit union] (the Lender); and [name of borrower], a [name of state] [corporation, partnership, other entity, or individual] (the Borrower).

A. STATEMENT OF MUTUAL BENEFITS AND INTERESTS

1. On [date], the Forest Service issued a Special Use Permit, Authorization ID _____ (the Permit) to the Borrower for a term of _____ years.
2. The Permit authorizes the Borrower to use and occupy certain National Forest System lands for the purpose of constructing, operating, or maintaining a [describe authorized use, e.g., winter sports resort or resort]. The Permit covers National Forest System lands in [legal description of property], [county name] County, [name of state] (the Property).
3. The Property is owned by the United States and managed under statutory authority granted to the Forest Service.
4. Under the Permit, physical improvements, machinery, and equipment owned by the Borrower that are located on the Property (the Improvements) are personal property, not fixtures.
5. The Borrower ["intends to provide" or "provides"] products and services to the public under the terms of the Permit.
6. The Borrower has applied to the Lender for a loan to be guaranteed by the SBA. As collateral for the loan, the Lender and the SBA have proposed to take a security interest in the Improvements.
7. The Lender has agreed to make a loan to the Borrower in the amount of \$ _____ (the Loan), with a maturity of _____ months from the date of the note (the Note) for the Loan, and the SBA has authorized a guarantee of the Loan, subject to the execution of this Agreement.
8. The Forest Service believes that the public will benefit from the products and services provided by the Borrower under the terms of the Permit.
9. The Forest Service desires the cooperation of the SBA and the Lender in connection with the financing of the Improvements by the SBA and the Lender.

10. The SBA and the Lender desire to provide a Loan to the Borrower, which will finance recreational or other operations that provide a public service on National Forest System lands, thereby benefiting the Forest Service's special uses program.

11. The SBA, the Lender, and the Borrower desire the cooperation of the Forest Service in connection with financing of the Improvements by the Lender and the SBA.

B. THE PARTIES AGREE AS FOLLOWS:

1. The Permit is revocable, terminable, and not transferable in accordance with its terms and federal regulations. The Permit is not real property, does not convey any interest in real property, and may not be used as collateral for the Loan.

2. As collateral for the Loan, the Borrower is giving the Lender a security interest in the Improvements, and the Forest Service acknowledges the creation of that security interest at the request of the Lender. No security interest is created in the Property or in any improvements owned by the United States. Nothing in this Agreement is intended to abridge any rights that the SBA or the Lender may have under applicable law in connection with the Improvements.

3. The Borrower is in compliance with the terms of the Permit.

4. The United States receives permit fees from the Borrower based on a fee system contained in the Permit. The fee system and other Permit provisions may be modified or replaced under the terms of the Permit or federal regulations.

<USER NOTES FOR PARAGRAPH B.5>

<Include the bracketed phrases "or change in majority control of the Borrower," "or have control of the Borrower," and "or change in control of the Borrower" if the Permit provides for termination upon a change in control of the holder. Otherwise delete these bracketed phrases.>

5. Any transfer of title to the Improvements [or change in majority control of the Borrower] shall result in termination of the Permit. Prior to any transfer of title to the Improvements [or change in majority control of the Borrower], the Forest Service, the SBA, and the Lender shall cooperate in obtaining an acceptable permit holder. Issuance of a new permit shall be at the sole discretion of the Forest Service. The Forest Service shall determine that the prospective holder meets requirements under Forest Service regulations, including financial and technical capability. Pursuant to federal regulations, it is Forest Service policy not to issue a new permit for a [describe authorized use, e.g., winter sports resort or resort] to any individual or entity that does not hold title to the Improvements [or have control of the Borrower]. Transfer of title to the Improvements [or change in control of the Borrower] shall be subject to the terms of the Note, security agreement, and any other documentation made or executed in conjunction with the Loan (the Loan Documents). The SBA and the Lender shall determine in their sole discretion that the prospective holder meets their requirements, and shall grant their prior written consent before transfer of title to the Improvements [or change in control of the Borrower] may occur.

6. If the Borrower fails to comply with the terms of the Permit and the noncompliance could lead to suspension or revocation of the Permit, the Forest Service shall (1) notify the SBA and the Lender in writing of the noncompliance; (2) inform the SBA and the Lender of any action taken in response to the noncompliance; and (3) apprise the SBA and the Lender of the resolution of any disputes with the Borrower or any proposed agreement to modify the terms of the Permit arising out of the noncompliance; provided, however, that prior notice is not required under clauses (1) and (2) of this paragraph where immediate action is deemed necessary under federal regulations. Notice shall be mailed "certified return receipt requested" to the following addresses:

[name and address of local SBA office]

[name and address of the Lender]

Nothing in this paragraph limits the Forest Service's authority to administer the Permit under federal regulations. Neither the SBA nor the Lender shall have any claim or remedy against the Forest Service if the Forest Service fails to comply with this paragraph; provided, however, that notice shall be given as specified in this paragraph. Neither the SBA nor the Lender shall have any obligation to take any action as a result of this notice, and no borrower or third party shall have any claim as a result of this notice or any action or failure to act as a result of this notice.

7. The SBA and the Lender shall advise the Forest Service of liquidation or litigation actions which may be taken against the Borrower.

8. Upon completion of liquidation or litigation actions against the Borrower under the Loan Documents that result in loss of ownership of the Improvements, the Permit shall terminate. All the provisions of paragraph B.5 apply to a transfer of title to the Improvements resulting from liquidation or litigation actions against the Borrower under the Loan Documents.

9. The SBA and the Lender shall have physical access to National Forest System lands not subject to a special use permit or other restrictions imposed under applicable law. While the Borrower holds the Permit, the Borrower agrees to allow the SBA and the Lender to gain physical access to the Improvements as is necessary to service or liquidate the Loan in the SBA's and the Lender's discretion. During any period, the SBA or the Lender has title to the Improvements, or during any period the Property is not subject to a special use permit during the life of the Loan, the Forest Service shall, to the extent permitted under applicable law, allow physical access to the Improvement by the SBA, the Lender, or their agents as is necessary to service or liquidate the loan or to secure the Improvements. The SBA and the Lender shall give prior notice to the Forest Service of such access to the Improvements. The SBA and the Lender shall obtain a temporary authorization from the Forest Service in accordance with federal regulations in order to operate a business in or otherwise occupy the Improvements.

10. If the Permit is revoked, the Forest Service, the SBA, and the Lender shall cooperate in obtaining an acceptable permit holder. Issuance of a new permit shall be at the sole discretion of the Forest Service. The Forest Service shall determine that the prospective holder meets requirements under Forest Service regulations, including financial and technical capability. As part of this cooperation, the Forest Service shall not issue a new permit for a [describe authorized use, e.g., winter sports resort or resort] to any individual or entity that does not hold title to the Improvements. The SBA and the Lender shall determine in their sole discretion that the prospective holder meets their requirements in this regard.

11. Nothing in this Agreement precludes the SBA or the Lender from exercising remedies against the Borrower associated with other security interests.

12. The Borrower acknowledges that its liability and the liability of any guarantors under the Loan Documents shall not be released if the Loan is assumed by a new permit holder.

13. The parties to this Agreement do not intend to confer any rights on any third party as a beneficiary under this Agreement. In addition, this Agreement does not confer the status or privileges of a permit holder on the SBA, the Lender, or any third party.

14. The Borrower, the Lender, and the SBA acknowledge that the Permit and the Property are not encumbered by any of the Loan Documents and are not subject to foreclosure if the Borrower defaults. Any statement in the Permit or the Loan Documents that appears to create a security interest in the Permit or the Property is ineffective and contrary to law.

15. This Agreement shall terminate automatically upon repayment of the Loan. The SBA and the Lender shall give the Forest Service notice of repayment of the Loan.

16. Nothing in this Agreement shall be construed to limit in any way the sole discretion of the Forest Service to determine the allocation of National Forest System lands, including decisions not to reauthorize any use which may be inconsistent with a land management plan or applicable law.

17. This Agreement is intended to foster consultation among the parties in order to coordinate more effectively the fulfillment of their respective rights and obligations.

18. This Agreement is not transferable.

19. The Borrower warrants that it has full authority to enter into this Agreement and covenants that it shall be binding on its representatives, successors, and assigns.

20. The undersigned officials of the SBA, the Forest Service, and the Lender warrant that they have the delegated authority to execute this Agreement.

21. This Agreement may be executed by different parties in separate counterparts. When all parties have signed this Agreement and all executed signature pages are attached to a single counterpart, it shall be deemed an original, fully executed copy of this Agreement.

UNITED STATES SMALL BUSINESS ADMINISTRATION

By:

Name:

Title:

Date:

UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE

By:

Name:

Title:

Date:

[name], **BORROWER**

By:

Name:

Title:

Date:

[name] , **LENDER**

By:

Name:

Title:

Date:

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