

Authorization ID:

FS-2700-11 (XX/XXXX)

Contact ID:

USDA Forest Service

Use Code:

OMB No. 0596-0082

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

<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, UNITED STATES 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 Holder], 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 [Type of Special Use Permit], Authorization Identification Number (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, and maintaining a [describe type of authorized use]. 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 all the terms of the Permit.

4. The United States receives land use fees from the Borrower as provided in the Permit. The land use fees 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 coordinate in obtaining a new permit holder. Issuance of a new special use 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, the prospective permit holder must have 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 of revocation of the Permit, the Forest Service shall give written notice to the SBA and the Lender of the noncompliance. The Forest Service shall give prior written notice to the SBA and the Lender of any actions taken to address the noncompliance, except for immediate suspension. The Forest Service shall send required notices via certified mail, return receipt requested, to:

[Name and Address of Local SBA Office]

[Name and Address of Lender]

Nothing in clause B.6 limits the Forest Service's authority to administer the Permit under its terms and federal laws, regulations, and directives. Neither the SBA, the Lender, nor any third party shall have any claim or remedy against the Forest Service because of the Forest Service's notice or failure to give notice to the Lender. Neither the SBA nor the Lender shall have any obligation to take any action as a result of notice given under clause B.6.

7. 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 have access to the Improvements as is necessary in the SBA's and the Lender's discretion to service or liquidate the Loan. 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, grant access to the Improvements 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 written notice to the Forest Service of such access to the Improvements.
8. Upon completion of liquidation of the Improvements under the Loan Documents, the Permit shall terminate. The SBA and the Lender shall obtain a temporary special use permit from the Forest Service in accordance with federal regulations to operate a business in or otherwise use and occupy the Improvements. All the provisions of clause B.5 apply to issuing a new special use permit.
10. If the Forest Service revokes the Permit or the Permit otherwise terminates, all the provisions of clause B.5 apply to issuing a new special use permit.
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 purports to create a security interest in the Permit or the Property is ineffective and contrary to law.
15. This Agreement shall terminate upon repayment of the Loan. The SBA and the Lender shall give the Forest Service written 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 regulate the use and occupancy 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 to allow them 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 that it shall be binding on its representatives and successors.
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:

PAPERWORK REDUCTION ACT STATEMENT

According to the Paperwork Reduction Act of 1995, a Federal agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a valid Office of Management and Budget (OMB) control number. The valid OMB control number for this information collection request is 0596-0082. Response to this information collection request is required to obtain or retain benefits, specifically, a special use authorization. The authority for this information collection request is the Organic Administration Act, 16 U.S.C. 551. The time required to complete this information collection request is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, collecting and maintaining the data needed, and completing and reviewing the information collection request. Send comments regarding this burden estimate or any other aspect of this information collection request, including suggestions for reducing the burden, to Forest Service Information Collections Officer, SM.FS.InfoCollect@usda.gov, with OMB control number 0596-0082 in the subject line.

PRIVACY ACT STATEMENT

Pursuant to 5 U.S.C. § 552a(e)(3), this Privacy Act statement serves to inform you of the following concerning the collection of the information on this form.

Purpose: The Privacy Act of 1974 requires that the Director of Recreation, Heritage, and Volunteer Resources staff and the Director of Lands, Minerals, and Geology Management staff provide the following statements to individuals from whom they request information.

Authority: Collection of this information solicited on this form is authorized by the Organic Administration Act, 16 U.S.C. 551.

Routine Uses: The information collected will be used by Forest Service officials to ensure that your use of National Forest System lands is administered in accordance with applicable statutes, regulations, and directives. The information collected from you is retained in the Special Uses Data System (SUDS) and is retrieved by the Forest Service to create reports for the Agency's Special Uses Program, generate bills for collection of land use fees for your authorization, monitor compliance with your special use authorization, and other matters pertaining to administration of your special use authorization. SUDS is a component of the Forest Service's Natural Resources Manager database (NRM). A complete list of the routine uses of NRM can be found in the system of records notice associated with this form, FS-24.

Disclosure: The submission of this information is required to obtain or retain benefits, specifically, a special use authorization.

NONDISCRIMINATION STATEMENT

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit the completed form or letter to USDA by (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

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