

**Social Enterprise Associates**  
**Tip Sheet #7**

**Co-authored with the**  
**International Transactions Clinic**  
**University of Michigan Law School**

*Tip sheets #5-8 are a series of 4 annotated commentaries to assist entrepreneurs interested in creating and operating ventures in the United States by providing easy-to-understand explanations for common legal documents.*

**Tip Sheet #7**

# Commercial Loan Agreement

**Understanding the important features of a commercial loan agreement when registering a company in the U.S.**

## Introduction

Taking an idea from conceptualization to inception and finally to market is filled with many challenges. Legal documents in particular are hard for entrepreneurs to understand, so many gloss over them. However, they carry immense importance, as bad or wrong documents can cost a lot of money.

Social Enterprise Associates (SEA) and the International Transactions Clinic (ITC) at the University of Michigan Law School collaborated to produce four annotated commentaries (Social Enterprise Associates Tip Sheets #5-8) to assist entrepreneurs interested in creating and operating ventures in the United States by providing clear and easy-to-understand language that deciphers common business legal documents. These four documents are:

- Tip Sheet #5 – Articles of Incorporation
- Tip Sheet #6 – Articles of Organization (LLC)
- Tip Sheet #7 – Commercial Loan Agreement
- Tip Sheet #8 – Biggest Concerns for Foreign Investment in the U.S.

## Commercial Loan Agreement

As the name indicates, a commercial loan agreement is the basic document used by an entrepreneur to receive debt financing from a bank. The specifics of the document will vary depending on the type of lending institution, the location of the lending institution, the type of loan, and the nature of the entrepreneur's business. However, a number of important features will remain constant for all commercial loans. Representations, Negative Covenants, Affirmative Covenants, Conditions Precedent, and Defaults and Remedies are found in nearly every loan agreement. The following is a sample or template Loan Agreement that includes all the aforementioned categories and is annotated with brief, layman explanations of the important features of the Agreement.

## LOAN AGREEMENT

This Loan Agreement ("Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between \_\_\_\_\_, a corporation, a limited liability company, a limited partnership, an individual, a general partnership, other with its principal place of business at \_\_\_\_\_

(the "Borrower") and \_\_\_\_\_, with offices at \_\_\_\_\_ (the "Bank").

The Borrower has applied to the Bank for a \_\_\_\_ Term Loan; \_\_\_\_ Line of Credit; \_\_\_\_ Revolving Credit; \_\_\_\_ Standby Credit/Term Loan, and the Bank is willing to provide such credit facility to the Borrower on the terms set forth herein.

Therefore, the parties hereto hereby agree as follows:

**1. THE LOAN.** The Bank agrees to loan to the Borrower the principal amount of \_\_\_\_\_ DOLLARS (\_\_\_\_\_) on the basis designated in the preamble hereto (the "Loan"). The Loan is evidenced by a note executed and delivered by the Borrower to the Bank and bearing even date herewith (the "Note"). The Borrower has executed and delivered or has caused to be executed and delivered, to the Bank, at or before the time of execution hereof, the related documents (the "Related Documents") listed in Section 1 of the schedule ("Schedule") annexed hereto. The terms and provisions of the Note and each of the Related Documents executed by the Borrower are hereby incorporated herein by reference.

**2. ADVANCES AND REPAYMENT.** Advances and repayments of the Loan shall be as follows:  
 (a) Term Loan. If this Agreement provides for a Term Loan, the amount of the Loan shall be advanced to or for the account of the Borrower upon the execution hereof. Loan principal shall bear interest and shall be due and payable as set forth in the Note.  
 (b) Line of Credit. If this Agreement provides for a Line of Credit, Loan principal shall bear interest and shall be due

The yellow boxes below provide explanations in regular English, about what the document says and what it means.

The beginning of the form contains the introductory clause. The introductory clause simply recites the parties to the agreement (*i.e.*, You and the Bank), the date of the agreement, and the type of agreement being entered (*e.g.*, a Line of Credit).

Form Agreements like the one here will often have checkboxes and blank lines to fill in.

*Note:* Introductory clauses often contain a lot of legalese; *i.e.*, words like Whereas, Therefore, and Resolved. Lawyers don't always do this just to be obnoxious. Often, depending on the type of agreement and the jurisdiction, certain elements of an agreement must be expressed a certain way in order to be enforceable. This makes it risky for lawyers to depart from tried and true formulas. They don't like to fix things that aren't broken.

After the introductory clause, Section 1 will often be additional information regarding the financial product. Usually this would be the most basic characteristics of the loan, such as the amount.

Notice in this particular loan, the Borrower (You) executes and delivers to the Bank a "note" which becomes incorporated by reference into the agreement itself.

Nearly all agreements will incorporate by reference other documents, usually attached to the back of the agreement in "annexes." When something is incorporated by reference, it carries all of the legal weight that everything else in the agreement carries.

Section 2 describing precisely the mechanics of the loan, including disbursement, repayment of the principal, and how interest works.

This is a section you should certainly read thoroughly – it explains how and when interest is calculated, your ability to re-borrow (if any), and how your payments are applied to the outstanding balance.

and payable as set forth in the Note. The Borrower may borrow, repay and reborrow amounts hereunder provided that the aggregate principal amount outstanding shall not, at any time, exceed the amount of the Loan. **ADVANCES OF LOAN PRINCIPAL ARE AT THE BANK'S SOLE DISCRETION, AND THE BANK MAY ELECT TO MAKE OR DECLINE TO MAKE ANY ADVANCE REQUESTED BY THE BORROWER.**

(c) Revolving Credit. If this Agreement provides for a Revolving Credit, the Borrower may borrow, repay and reborrow amounts hereunder provided that the aggregate principal amount outstanding shall not, at any time, exceed the amount of the Loan. Loan principal shall bear interest and be due and payable in accordance with the terms of the Note. The Borrower agrees to pay to the Bank, on a quarterly basis, a commitment fee calculated at the rate of per annum on the daily unused amount of the Bank's revolving credit commitment hereunder. The Bank agrees, so long as the Borrower is not in default, to make advances as requested by the Borrower.

(d) Standby Credit and Term Loan. If this Agreement provides for a Standby Credit and Term Loan, from the date hereof and continuing for a period ending on \_\_\_\_\_ (the "Draw Period"), the Borrower may borrow from time to time, amounts hereunder provided that the aggregate principal amount borrowed shall not, at any time, exceed the amount of the Loan. The Bank agrees, so long as the Borrower is not in default, to make advances as requested by the Borrower. Commencing upon the expiration of the Draw Period the principal Loan balance then outstanding shall be repaid over a period of \_\_\_\_\_ (\_\_\_\_\_) months (the "Repayment Period"). The Loan principal shall bear interest and shall be due and payable as set forth in the Note.

**3. REPRESENTATIONS.** The Borrower hereby represents to the Bank that:

- (a) Type of organization. The Borrower is a a corporation, a limited liability company, a limited partnership, an individual, a general partnership, other.
- (b) Jurisdiction of organization and State I.D. No. If the Borrower is a corporation, limited liability company, limited partnership or other organization requiring registration in its jurisdiction of organization (a "Registered Organization"), the Borrower is duly incorporated or

Also in Section 2, because this particular agreement is a form designed to work for multiple types of financial products, it describes the mechanics of multiple products. When you get your own loan, your bank might delete all the language that isn't applicable to your particular agreement.

It may go without saying, but when a clause uses **BOLDFACE ALLCAPS**, it is probably because (1) courts have determined that such a clause is only enforceable if it is *conspicuous*; (2) it is a really big deal; or (3) *both*. Obviously, you should make sure that you read and understand these clauses.

Section 3 details representations. Often called Representations and Warranties (or just Reps and Warrants), representations are some of the most important words in an agreement. This is because these statements are the assertions you make to the Bank to secure the loan. This means that if you make a statement that isn't true, you could be declared in default. If you willfully made a false statement, you might be liable for fraud and misrepresentation.

otherwise organized, is in good standing and is registered under the laws of the \_\_\_\_\_ of \_\_\_\_\_ and its state organizational I.D.

Number is \_\_\_\_\_ .

(c) Address. If the Borrower is an individual, a general partnership, or other entity not required to register in its jurisdiction of organization, Borrower's principal residence or chief executive office is located at \_\_\_\_\_ .

(d) Authority, Binding Effect. If the Borrower is a Registered Organization or a general partnership, the making and performance of this Agreement, the Note and the Related Documents have been duly authorized by all necessary action, will not violate any provision of law or of its Organizational Documents (as defined below), or result in a breach of or constitute a default under, or result in a lien, charge or encumbrance upon any property or assets of the Borrower pursuant to any agreement or instrument to which the Borrower is a party or by which the Borrower or its property may be bound or affected. The term "Organization Documents" means, with respect to: (1) a corporation, its charter and by-laws; (2) a limited liability company, its articles of organization and operating agreement; or (3) a partnership, its partnership agreement. This Agreement, the Note and the Related Documents, when executed by the Borrower and delivered to the Bank, will constitute legal and binding obligations of the Borrower, enforceable in accordance with their respective terms.

(e) Power. The Borrower is duly qualified to transact business or own real property in each state or other jurisdiction in which it conducts any important or material part of its business or in which its principal real properties are located.

(f) Trade Names. The Borrower is doing business under the name set forth at the beginning of this Agreement and does not use any other trade names except those, if any, set forth in Section 2 of the Schedule. Any assumed or fictitious name registration required by law has been accomplished. The Borrower will notify the Bank in writing at least thirty (30) days prior to any change in its name.

(g) Composition. If the Borrower is a Partnership, the names of all of its general partners are as set forth in Section 3 of the Schedule; the Borrower will promptly advise the Bank in writing of the addition, removal or substitution of any general partner within thirty (30) days

Also in Section 3, most representations are "plain-vanilla." For example, you will represent that your business is located where you say it is; that you have the authority and ability to enter into an agreement; etc.

of such change.

(h) Financial Condition. The Borrower has furnished to the Bank its most current financial statements, which statements represent correctly and fairly the results of the operations and transactions of the Borrower as of the dates and for the periods referred to and have been prepared in accordance with generally accepted accounting principles consistently applied during each interval involved and from period to period. From the date of such financial statements to the date of the execution of this Agreement, there have not been any material adverse changes in the financial condition of the Borrower.

(i) Taxes. The Borrower, and if the Borrower is a partnership, each general partner of the Borrower, has duly filed all federal and other tax returns required to be filed and has duly paid all taxes required by such returns. Neither the Borrower nor any general partner, if the Borrower is a partnership, has received any notice from the Internal Revenue Service or any other taxing authority relating to the payment of additional taxes (including interest and penalties) in excess of \_\_\_\_\_.

(j) ERISA. All of Borrower's Defined Benefit Pension Plans, as defined in the Employment Retirement Income Security Act of 1974 ("ERISA"), as amended, meet, as of the date hereof, the minimum funding standards of *Section 302 of ERISA*, and, with respect to all of Borrower's Employee Benefit Plans, as defined in ERISA, no Reportable Event or Prohibited Transaction (as defined in ERISA) has occurred, except only such events or transactions as have been previously reported to the Bank in writing.

(k) Litigation. There is no pending or threatened action or proceeding against or affecting the Borrower before any court, governmental agency or arbitrator which is not covered by insurance that could result in payment of \_\_\_\_\_ or more if adversely determined.

**4. CONDITIONS PRECEDENT.** The obligation of the Bank to make the Loan is subject to the additional conditions precedent listed in Section 4 of the Schedule and, except for any marked with an "N/A" and initialed by an officer of the Bank, to the following conditions precedent:

\_\_\_\_\_(a) The Bank shall have received a certified copy of all partnership, corporate, or limited liability company action taken by the Borrower to authorize the execution, delivery and performance of this Agreement, the Note, the Related

Also in Section 3, other representations are more complex, detailing every claim that someone else may have upon your assets – after all: claims such as those affect the bank’s risk.

Section 4 describes Conditions Precedent (or “CPs”), which are critical to the mechanics of the loan. These are the events that must occur before the bank has any obligation to perform (i.e., give you your loan).

Banks will likely require many CPs. Some will be relatively easy, like providing all your business’ corporate documents. Others might cost you a little, like having an opinion, prepared by a professional, detailing the financial health of your business.

Documents (as applicable) and the borrowing by it hereunder, all of which shall be subject to the Bank's approval.

\_\_\_\_(b) The Bank shall have received an opinion of counsel of the Borrower, in form and substance satisfactory to the Bank and its counsel, as to the matters referred to in Paragraphs 3(a), 3(b), 3(c), 3(d), 3(e), 3(f), 3(g), and 3(k) hereof, and further to the effect that this Agreement, the Note and the Related Documents have been duly authorized, executed, and delivered and are the legal and binding agreements of the Borrower enforceable in accordance with their respective terms.

\_\_\_\_(c) With respect to subsequent advances (in addition to the Bank's absolute discretion to decline advances under a Line of Credit), it shall be a condition precedent that no event of default specified in Paragraph 7 hereof, and no event which, with the giving of notice or lapse of time or both, would become such an event of default, shall have occurred and be continuing.

\_\_\_\_(d) With respect to subsequent advances, a request for an advance shall constitute an affirmation by the Borrower that the representations made in Paragraph 3 hereof are and shall be true on and as of the date of the making of each such advance, with the same force and effect as if made on and as of such date.

\_\_\_\_(e) All legal matters incident to the transaction hereby contemplated shall be satisfactory to the Bank and its counsel.

Also in Section 4, don't underestimate clauses like 4(d) here. If the agreement is for a line of revolving credit that allows for subsequent advances, each request for an advance is considered a reaffirmation of all the representations you made in Section 4. Take care to make sure that all those situations remain the same as they were back when you originally

Also in Section 4, "satisfactory" clauses are common, and given your situation, you probably cannot do anything about it. Know, however, that it provides a catch-all for the bank to justify

**5. AFFIRMATIVE COVENANTS.** Except for the following covenants which are marked with an "N/A" and initialed by an officer of the Bank, so long as any lending arrangement of the Bank shall be outstanding, and until payment in full of the Note and the performance of all other obligations of the Borrower hereunder and under any and all Related Documents, the Borrower will comply with additional covenants contained in Section 5 (a) of the Schedule, and the Borrower shall:

\_\_\_\_(a) **Furnish Financial Statements.** The Borrower shall furnish the Bank: (indicate statements by marking with an "X")

(1) within days after the end of each fiscal year of the Borrower, a financial statement of the Borrower and its consolidated subsidiaries, as of the close of such fiscal year which shall consist of a balance sheet, statement of income and retained earnings covering the period of the Borrower's

After you make all your representations, and fulfill the conditions precedent for the loan disbursement, in Section 5 you must keep a close eye on the covenants you make. Covenants are promises, and you will make them in both affirmative and negative forms.

Put simply, affirmative covenants are promises that you *will do* something. Negative covenants are promises that you *will not do* something. You must continue to maintain these promises through the life of the loan.

immediately preceding fiscal year and which shall be a compilation a review audited and in consolidating consolidated form. A review or audit shall be prepared by independent certified public accountants selected by the Borrower and satisfactory to the Bank. A compilation shall be certified by: (a) an authorized financial or accounting officer of the Borrower if the Borrower is a corporation, (b) a general partner if the Borrower is a partnership, (c) a member or manager, as appropriate, if the Borrower is a limited liability company, or (d) the Borrower, if the Borrower is an individual; and

(2) within days after the end of each of the first three quarters of each fiscal year of the Borrower, an unaudited, consolidated financial statement of the Borrower and any consolidated subsidiaries as of the end of such quarter, which statement shall consist of a balance sheet, statement of income and retained earnings covering the period from the end of the Borrower's immediately preceding fiscal year to the end of such quarter, all in such detail as the Bank may request and certified to be correct by: (a) an authorized financial or accounting officer of the Borrower if the Borrower is a corporation, (b) a general partner if the Borrower is a partnership, (c) a member or manager, as appropriate, if the Borrower is a limited liability company, or (d) the Borrower, if the Borrower is an individual; and

(3) within \_\_\_\_\_ days after the end of each fiscal year of the Borrower, a certificate of such independent public accountants, and within days after the end of each of the first three quarters of each fiscal year of the Borrower a certificate as to whether any event of default specified in Paragraph 7, or any event which, with the giving of notice or lapse of time or both, would become an event of default, has occurred and is continuing and certified to be correct by: (a) an authorized financial or accounting officer of the Borrower if the Borrower is a corporation, (b) a general partner if the Borrower is a partnership, (c) a member or manager, as appropriate, if the Borrower is a limited liability company, or (d) the Borrower, if the Borrower is an individual; and

(4) from time to time, such further information regarding the business, affairs, and financial condition of the Borrower as the Bank may request.

All financial statements delivered hereunder shall be prepared on the basis of generally accepted accounting principles and practices applied on a basis consistent with those used in the preparation of the financial statements of

Also in Section 5, although you will have little leverage in negotiating the terms of this agreement, you should do what you can to ensure that the covenants you make are ones that you can keep.

For example, timely reporting of financial information might seem easy enough, but sometimes the reporting requirements can be overbearing – and missing a deadline can be considered an event of default.

Don't take the covenants lightly.

the Borrower referred to above;

\_\_\_\_(b) Taxes. The Borrower shall promptly pay and discharge all of its taxes, assessments, and other governmental charges prior to the date on which penalties are attached thereto; establish adequate reserves for the payment of taxes and assessments and make all required withholding and other tax deposits; provided, however, that nothing contained herein shall require the payment of any tax, assessment, or charge so long as its validity is being contested in good faith by appropriate proceedings diligently conducted, unless and until foreclosure, distraint, sale or other similar proceedings shall have been commenced;

\_\_\_\_(c) Insurance. The Borrower shall keep all its property insured at all times with insurance carriers acceptable to the Bank against fire, theft, and other risks, in coverage, form and amount satisfactory to the Bank and see that all policies covering property given as security for the Loan have loss payable clauses in favor of the Bank in form and substance satisfactory to the Bank;

\_\_\_\_(d) Litigation. The Borrower shall promptly notify the Bank in writing as soon as the Borrower has knowledge of any threatened or pending litigation or governmental or regulatory proceeding against, or investigation of, the Borrower, the outcome of which may have a material or adverse affect on the finances or operations of the Borrower;

\_\_\_\_(e) Expenses. The Borrower shall (1) pay or reimburse the Bank, immediately upon demand, for all out-of-pocket expenses the Bank may incur in connection with the making, administration, servicing, enforcement and/or collection of the Loan, including but not limited to attorney's fees and costs, and (2) pay the Bank for services rendered in the administration and servicing of the Loan in accordance with the Bank's commercial loan service fee schedule (the "Fee Schedule"), as it may be amended from time to time;

\_\_\_\_(f) Licensing Business. The Borrower shall (1) remain or become and remain duly licensed or qualified in each jurisdiction in which the conduct of its business or ownership of its property requires such qualification or licensing; and (2) engage only in the business(es) conducted by it on the date of this Agreement;

\_\_\_\_(g) Current Ratio. The Borrower shall maintain at all times a ratio of current assets over current liabilities of at least \_\_\_\_ to \_\_\_\_ ; such current assets and current

Also in Section 5, the covenants on previous pages were minor, but these here can have a considerable effect on your pocketbook.

Still in Section 5, this is where the bank gets its fingers into your management. By taking on this loan, you agree to not leverage your business beyond the limits imposed by the bank.

Do what you can to ensure that the leverage ratio is suitable for your type of business.

liabilities shall be determined in accordance with generally accepted accounting principles consistently applied;

\_\_\_\_(h) Leverage Ratio. The Borrower shall maintain at all times a ratio of consolidated total liabilities to consolidated tangible net worth of not greater than \_\_\_\_ to \_\_\_\_ ;

\_\_\_\_(i) Books and Records. The Borrower shall (1) keep proper books and records; (2) notify the Bank promptly in writing of any proposed change in the location where such books and records are maintained; and (3) permit the Bank, at any time and from time to time, to examine such books and records and to make copies thereof; and

\_\_\_\_(j) ERISA Compliance. The Borrower shall (1) fund all its Pension Plans in accordance with the minimum funding standards required under ERISA, (2) furnish the Bank, if requested, promptly after the filing of the same, with copies of all reports or other statements filed with the United States Department of Labor or the Internal Revenue Service with respect to all Employee Benefit Plans, and (3) promptly advise the Bank of the occurrence of any Reportable Event or Prohibited Transaction as defined in ERISA with respect to any of Borrower's Employee Benefit Plans.

**6. NEGATIVE COVENANTS.** Except for such of the following covenants which are marked with an "X" and initialed by an officer of the Bank, so long as any lending arrangement of the Bank shall be outstanding, and until payment in full of the Note and the performance of all other obligations of the Borrower hereunder and under any and all Related Documents, the Borrower will not violate any additional covenant contained in Section 5 (b) of the Schedule, and the Borrower shall not:

\_\_\_\_(a) Organization. Change Borrower's name, jurisdiction of organization, organization type or state organizational I.D. number without the prior written consent of the Bank.

\_\_\_\_(b) Borrowed Money. Create or assume any obligation for money borrowed other than from the Bank or as may be specified in Section 6 of the Schedule;

\_\_\_\_(c) Encumbrances. Create or suffer to exist any mortgage, lien, security interest, pledge or other encumbrance on any of its property or assets, whether now owned or hereafter acquired, except (1) for taxes not delinquent or being contested in good faith, (2) resulting from deposits to secure payments of workers' compensation or other social security obligations or to secure the

Just as you make promises to do something, in Section 6, you also make promises to abstain from certain acts.

Some of the most common are here in this example: the promise not to change your business name, organization, or location without consent of the bank;

The promise not to take on additional debt;

The promise not to allow any lien or mortgage to take effect over the business (after all, the bank has a claim on that as security against the loan its providing you).

performance of bids or contracts in the ordinary course of business, (3) in favor of the Bank, and (4) as may be specified in Section 7 of the Schedule;

\_\_\_\_ (d) Guaranties. Become a guarantor, surety or otherwise liable for the obligations of any other person, firm or corporation, except that the Borrower may endorse checks or other instruments for deposit or collection in the ordinary course of business;

\_\_\_\_ (e) Sale of Assets. Convey, sell, transfer, lease or sell and lease back any of its property, assets, or business in any fiscal year in excess of 10% of its assets at the start of such fiscal year, except for inventory disposed of in the ordinary course of business;

\_\_\_\_ (f) Investments and Loans. Make or suffer to exist any investments in or loan or advances to any other person, firm or entity, except commercial paper rated P-1 and A-1 + by Moody's and Standard & Poor's respectively, direct obligations of the United States government and its agencies, and obligations of the Bank;

\_\_\_\_ (g) Mergers. Merge or consolidate with or into any other firm or entity or enter into any joint venture or partnership with any other person, firm or entity;

\_\_\_\_ (h) Capital Expenditures. Make capital expenditures in any 12-month period in excess of \_\_\_\_\_, in the aggregate for such period.

\_\_\_\_ (i) Compensation. Permit any withdrawals from or distribution of the assets of the Borrower except as reasonable compensation for services actually rendered, and such further payments in cash or in kind, including without limitation dividends (except stock dividends), withdrawals, distributions, salary, compensation, and bonuses shall be limited to the persons and amounts set forth in Section 8 of the Schedule; and

\_\_\_\_ (j) Leases. At any time enter into or suffer to exist any agreement to lease, as lessee, any real or personal property, except leases in effect as of the date hereof, having aggregate annual rental payments not more than \_\_\_\_\_ .

**7. DEFAULTS; REMEDIES.** The occurrence of any one or more of the Additional Events of Default set forth in Section 9 of the Schedule or any of the following events shall be an event of default:

\_\_\_\_ (a) Misrepresentation. If any representation or warranty made by the Borrower in this Agreement, in any Related Document or in any other writing delivered by the Borrower to the Bank in connection with the Loan shall

As you read through these negative covenants in Section 6, notice that you give up considerable freedom over the future of your business (e.g., you can't sell it, or sell significant assets) throughout the term of the loan (unless the bank consents otherwise).

You absolutely cannot neglect to fully understand everything about Section 7. This is where the bank will describe exactly what it will consider a default: it isn't just when you fail to pay on time. Many fact-scenarios can trigger an event of default.

prove to have been incorrect;

\_\_\_\_(b) Nonpayment. If the Borrower shall fail to pay when due any principal of, or interest on, the Loan or the Note or any other sum payable by the Borrower under this Agreement or the Related Documents;

\_\_\_\_(c) Other Obligations. If the Borrower shall default in the payment or performance of any debt or obligation to any person or entity other than the Bank;

\_\_\_\_(d) Covenants. Failure to observe or perform any covenants or obligations (other than payment obligations) contained herein or in the Related Documents which failure is not remedied within fifteen (15) days after notice thereof from the Bank;

\_\_\_\_(e) Death, Dissolution, etc. If the Borrower is an individual, death of the Borrower; if the Borrower is a partnership, death of a general partner; if a guarantor or surety named in Section 10 of the Schedule is an individual, death of such individual; if the Borrower or any guarantor or surety named in Section 10 of the Schedule is a Registered Organization, dissolution or termination of the existence of such Registered Organization, or failure of the Registered Organization to continue to operate as a going concern;

\_\_\_\_(f) Insolvency; Receivership; Bankruptcy. The Borrower or any guarantor or surety of the Loan shall (1) apply for or consent to the appointment of a receiver, trustee, or liquidator of itself, or of all or a substantial part of its assets, (2) be unable, or admit in writing its inability to pay its debts as they fall due, (3) make a general assignment for the benefit of its creditors, (4) be adjudicated a bankrupt or insolvent, (5) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any insolvency law or file any answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding, or any action shall be taken by the Borrower for the purpose of effecting any of the foregoing; or an order, judgment, or decree shall be entered without the application, approval or consent of the Borrower, by any court of competent jurisdiction, approving a petition seeking reorganization of the Borrower or appointing a receiver, trustee or liquidator of the Borrower or of all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for a period of more than thirty (30) consecutive days;

Also in Section 7, for example, death can be considered an event of default, and your default on any other loan you have can trigger default on this agreement as well.

\_\_\_\_(g) Default Under Other Documents. The occurrence of an event of default under any of the Related Documents;

\_\_\_\_(h) Adverse Change in Business. A determination by the Bank, which determination shall be conclusive if made in good faith, that a material adverse change has occurred in the financial or business condition of the Borrower; In the event of the occurrence of any event of default, then and in any such case, the Bank may, in addition to other remedies available to it hereunder, under the Related Documents, at law, in equity or otherwise, by written notice to the Borrower immediately terminate any commitment to make advances to the Borrower and/or declare the principal and interest due on the Note, together with all other sums then due and payable by the Borrower hereunder, under the Note and under the Related Documents, to be forthwith due and payable whereupon the same shall become forthwith due and payable; provided, however, that upon the occurrence of any event of default described in subparagraph (f) of this Section 7, such commitment shall be automatically terminated and such obligations shall automatically become immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by the Borrower.

**8. SETOFF.** The Borrower hereby grants the Bank a security interest in, and a continuing lien on, all property and deposit accounts at or under the control of the Bank ("Bank Accounts") in which the Borrower now or hereafter has an interest, including joint accounts. Borrower and may be set-off against all or any part of the Borrower's obligations to the Bank at any time. This security interest and lien is in addition to the Bank's right to set-off at any time, without notice, against all Bank Accounts in which Borrower or any guarantor hereof now or hereafter has an interest, including joint accounts. The Borrower hereby authorizes the Bank to set-off any of the Borrower's Bank Accounts for the payment of expenses the Bank incurs and fees payable to the Bank.

**9. MISCELLANEOUS.**

(a) Consolidated Subsidiary. The term "Consolidated Subsidiary" as used in this Agreement means any corporation of which at least 50% of the voting stock is owned by the Borrower directly or indirectly.

(b) Amendments and Waivers. No waiver hereunder or amendment hereto shall be effective unless in writing

Also, in Section 7, if the bank determines that your business has suffered an "adverse change", it can in its own discretion declare you in

Section 8 is where you pledge all the assets of your business within the control of the bank to the bank as collateral to the loan.

A set-off clause authorizes the bank to seize your deposits as a form of reimbursement in an event of default.

DO NOT ignore Section 9 (the Miscellaneous section) of a loan agreement. Even lawyers have a tendency to fall asleep by the time they reach this part of a loan agreement, but even though the heading of this section seems rather sterile, the substance of this section is quite potent.

No Amendments or Waivers unless duly authorized by the bank: this is a standard clause, and it means that even if you have a conversation with someone about changing the terms of the loan, that conversation means nothing unless it is in writing, with a duly authorized agent of the bank.

signed by the Borrower or a duly authorized officer, general partner, or member/manager of the Borrower, as appropriate, and a duly authorized officer of the Bank.

(c) Termination; Binding Effect. This Agreement will terminate when all obligations of the Borrower to the Bank hereunder, under the Note and under the Related Documents have been paid or otherwise satisfied in full; the provisions hereof shall be binding on and inure to the benefit of the heirs, executors, successors, and assigns of the parties hereto, provided, however, that the Borrower may not assign any of its rights or delegate any of its duties hereunder without the prior written consent of the Bank.

(d) Notices. Any notice or demand to be given hereunder shall be duly given if delivered or mailed to the Borrower or the Bank at the address specified at the beginning of this Agreement or such other address as the parties may designate in writing for the receipt of notices, and shall be deemed given upon delivery if hand delivered and, if mailed, shall be deemed given two (2) business days after deposit with postage paid in an official depository maintained by the United States Postal Service for the collection of mail.

(e) Governing Law. This Agreement shall be construed and interpreted in accordance with, and governed by, the laws of the \_\_\_\_\_ of \_\_\_\_\_ .

Also in Section 9, note that the agreement will specify which law applies to the agreement. Don't assume that just because you are located in, say, Nebraska, that Nebraska law will apply. Contracting parties get to pick the governing law, and since the bank is probably holding most of the cards in this negotiation, it will pick a jurisdiction that is more favorable to it – not necessarily to you.



INTENDING TO BE BOUND, the parties hereto have signed this Agreement as of the date first written above.

\_\_\_\_\_ By: \_\_\_\_\_  
Title: \_\_\_\_\_  
(Name of Borrower)  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Finally! The signature block – where you and the bank will both sign to execute the loan.

**Schedule To Loan Agreement With**  
\_\_\_\_\_ (Name of Borrower)  
Dated \_\_\_\_\_

Section 1. Related Documents Commitment Dated \_\_\_\_\_ ;  
 Security Agreement Dated \_\_\_\_\_ ;  
 Mortgage Dated \_\_\_\_\_ ; Guaranty and  
 Suretyship Agreement Dated \_\_\_\_\_ ;  
 Other (List):

Section 2. All Trade, Assumed or Fictitious Names: Section  
 3. Names of all General Partners: Section 4. Additional  
 Conditions Precedent: Section 5(a). Additional Affirmative  
 Covenants: Section 5(b). Additional Negative Covenants:  
 Section 6. Permitted Borrowings:  
 Section 7. Permitted Encumbrances:  
 Section 8. Compensation:  
 Section 9. Additional Events of Default:  
 Section 10. Guarantors/Sureties:

Following the signature page will be a number of annexes (mentioned earlier). These will include many of the documents you provided to bank (as required under Conditions Precedent and Representations), as well as any other documents that go along with the loan.

Don't forget, all of these attachments are *incorporated* into the agreement by reference – so false information contained in one of these attachments carries the same result as false information in the agreement itself.

About the author: **Drew Tulchin** of Social Enterprise Associates, and International Transactions Clinic students **Benjamin Lawless** and **Rory Wellever**, who graduated from Michigan Law School in May 2011, created this document under the supervision of ITC director **Rachel Deming**.



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