

CHAPTER 14

CONTRACTS



14.1 *Assignment Clause*

Assignor hereby transfers and assigns to Assignee all of Assignor's right, title, and interest in and to the contracts set forth on Exhibit A attached hereto (the "Contracts"). Assignor represents and warrants to Assignee that Assignor has the right and authority to assign the Contracts to Assignee. Assignee hereby accepts the assignment of the Contracts and assumes all liabilities relating thereto, whether contingent or accrued. This Assignment has been delivered within the Commonwealth of Virginia and shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Virginia without regard to its choice of law provisions.

**14.2 *Joint and Several Liability Provision—Note***

For value received, the undersigned (hereinafter either individually or collectively called the “Maker”) unconditionally and jointly and severally promise to pay to the order of _____
(the “Noteholder”), without offset, \$_____, together with interest at the rate and payable on the basis set forth below.

COMMENT

Pursuant to section 8.3A-116 of the Virginia Code, liability under a negotiable instrument is joint and several unless otherwise specified. Nevertheless, promissory notes generally use the words “jointly and severally” out of an abundance of caution.



14.3 *Joint and Several Liability Provision—Guaranty*

Guarantor's heirs, personal representatives, successors, and assigns. Upon the death of Guarantor, if Guarantor is a natural person, this Guaranty shall continue against Guarantor's estate as to all of the Guaranteed Obligations, including that portion incurred or arising after the death of Guarantor and shall be provable in full against Guarantor's estate, whether or not the Guaranteed Obligations are then due and payable. If this Guaranty is signed by more than one Person, then all of the obligations of Guarantor arising hereunder shall be jointly and severally binding on each of the undersigned and their respective heirs, personal representatives, successors, and assigns, and the term "Guarantor" shall mean all of such Persons and each of them individually.

COMMENT

Since a guaranty is not a negotiable instrument, it is important to make sure that a guaranty signed by more than one person is joint and several. This provision accomplishes that purpose.

**14.4 *Joint and Several Liability Provision—Lease***

Multiple Tenants. If this Lease is executed by more than one person or entity as Tenant, each such person or entity shall be jointly and severally liable hereunder.

COMMENT

This provision is used in a lease in order to impose joint and several liability on multiple tenants.

**14.5 *Joint and Several Liability Provision—Lease***

Joint and Several Liability. If two or more individuals, corporations, partnerships, or other persons (or any combination of two or more thereof) shall sign this Lease as Tenant, the liability of each such individual, corporation, partnership, or other persons to pay the rent and perform all other obligations hereunder shall be deemed to be joint and several, and all notices, payments, and agreements given or made by, with, or to any one of such individuals, corporations, partnerships, or other persons shall be deemed to have been given or made by, with, or to all of them. In like manner, if Tenant shall be a partnership or other legal entity, the partners or members of which are, by virtue of any applicable law, rule, or regulation subject to personal liability, the liability of each partner or member under this Lease shall be joint and several, and each partner or member shall be fully obligated hereunder and bound hereby as if each partner or member had personally signed this Lease.

COMMENT

Another provision imposing joint and several liability on multiple tenants.

**14.6 *Several Liability Provision—Loan Agreement***

Obligations of Banks Several. The rights and obligations of the Banks under this Agreement and the other Loan Documents are several and not joint. Nothing contained in this Agreement or any other Loan Document and no action taken by any Bank or the Borrower pursuant hereto or thereto shall be deemed to constitute the Banks as a partnership, association, joint venture, or other entity.

COMMENT

Typically, multiple lenders will wish to limit their funding liability to a specified committed amount. Accordingly, this provision accomplishes that objective by making the lending obligation several.