
GUARANTY AGREEMENT

from

HITACHI CONSTRUCTION MACHINERY AMERICAS INC. as Guarantor

in favor of

HITACHI CONSTRUCTION MACHINERY AMERICAS INC. as Bondholder

Dated as of August 1, 2023

This instrument was prepared by:

Murray Barnes Finister LLP
3525 Piedmont Road NE
5 Piedmont Center, Suite 515
Atlanta, Georgia 30305
Telephone: (678)-999-0350

THIS GUARANTY AGREEMENT (the “Guaranty”) is entered into as of August 1, 2023, between HITACHI CONSTRUCTION MACHINERY AMERICAS INC., as guarantor (the “Guarantor”), and HITACHI CONSTRUCTION MACHINERY AMERICAS INC., as owner of the Bond (hereinafter defined) (the “Bondholder”);

W I T N E S S E T H:

WHEREAS, at the request of the Guarantor, the Coweta County Development Authority (the “Issuer”) has agreed to issue its Taxable Revenue Bond (Hitachi Construction Machinery Americas Inc. Project), Series 2023 in the principal amount of \$33,000,000 (the “Bond”); and

WHEREAS, the Bond is to be issued under and pursuant to a resolution adopted by the Issuer on August 3, 2023 (the “Resolution”), a true and correct copy of which has been delivered to the Guarantor, and the Bond is more particularly described in Articles II and III of the Resolution; and

WHEREAS, the Bond is being issued for the purpose of (a) financing the costs of acquiring and constructing the Project Site and the Improvements (each as defined in the Lease defined below) in Coweta County, Georgia (the “Project”) and (b) paying the costs of issuing the Bond; and

WHEREAS, the Project will be leased to the Guarantor pursuant to a Lease, dated as of August 1, 2023 (the “Lease”), between the Issuer, as lessor, and the Guarantor, as lessee; and

WHEREAS, the Guarantor desires that the Issuer issue the Bond and apply the proceeds derived therefrom as described above and is willing to enter into this Guaranty, intending to be legally bound hereby;

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor does hereby agree with the Bondholder as follows:

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ARTICLE I

REPRESENTATIONS AND WARRANTIES

Section 1.1. Representations and Warranties of Guarantor. The Guarantor represents and warrants as follows:

(a) The Guarantor is a corporation duly created, validly existing and in good standing under the laws of the State of Georgia. The Guarantor has the power to execute, deliver and perform its obligations under this Guaranty.

(b) The Guarantor has duly authorized the execution, delivery and performance of its obligations under this Guaranty. This Guaranty is the valid, binding and enforceable obligation of the Guarantor.

(c) No approval or other action by any governmental authority or agency or other person is required to be obtained by the Guarantor as of the date hereof in connection with the execution, delivery and performance of its obligations under this Guaranty except as shall have been obtained.

(d) The execution, delivery and performance of its obligations under this Guaranty do not (i) violate any laws, consent orders, administrative regulations or other legal decrees to which the Guarantor or its property is bound or (ii) violate or constitute a breach of or a default under its articles of incorporation, by-laws or any agreement, indenture, mortgage lease, note or other instrument to which the Guarantor is a party or by which the Guarantor or its property is bound.

(e) This Guaranty is made in furtherance of the purposes for which the Guarantor was created and promotes and furthers the business of the Guarantor, and the assumption by the Guarantor of its obligations hereunder in connection with the financing of the Project will result in financial benefit to the Guarantor.

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ARTICLE II

COVENANTS AND GUARANTEES

Section 2.1. Guarantee of Bond. The Guarantor hereby absolutely and unconditionally guarantees to the Bondholder the full payment of the principal of and interest on the Bond; provided, however, the Guarantor shall not be obligated to make the payments hereunder prior to the time the corresponding Lease Payments (as defined in the Lease) become due and payable or to make payments hereunder in an amount greater than such corresponding Lease Payments. This guarantee is a primary and original obligation of the Guarantor and, subject to the first sentence of this Section 2.1, is an absolute, unconditional, continuing and irrevocable guarantee of payment and is not a guarantee of collectability or performance and is in no way conditioned or contingent upon any attempt to collect from the Issuer or any other party or to realize upon any of the Pledged Revenues (as defined in the Resolution). This Guaranty shall remain in full force and effect without respect to future changes in conditions, including change in law, until the payment in full of the Bond. Unless the Bond shall have become due at stated maturity or by acceleration or mandatory or optional prepayment prior to stated maturity or otherwise, each and every default in payment of the principal of or interest on the Bond shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises. The Guarantor hereby waives (a) notice of the acceptance hereof and of any action taken or omitted in reliance hereon, (b) any presentment, demand, notice or protest of any kind, except as required under the Lease and the Resolution, and (c) to the fullest extent permitted by law, any other act or thing or omission or delay to do any other act or thing which might in any manner or to any extent vary the risk of the Guarantor or which might otherwise operate as a discharge of the Guarantor's obligations hereunder, except payment.

If the principal of the Bond shall have been accelerated pursuant to the Resolution, and such acceleration shall have been rescinded and annulled pursuant to the Resolution, then the amount of principal that was the subject of such acceleration shall no longer be considered as due under the provisions of this Section and Section 3.1 of this Guaranty.

Section 2.2. Unconditional Obligation. Subject to the first sentence of Section 2.1 above, the obligations of the Guarantor under this Guaranty shall be absolute and unconditional and shall remain in full force and effect until payment in full of the Bond in accordance with the Resolution and, until payment in full of the Bond, shall not to the fullest extent permitted by law, be affected, modified or impaired upon the happening from time to time of any event, including, without limitation, any of the following, whether or not with notice to or the consent of the Guarantor:

- (a) the failure to give notice to the Guarantor of the occurrence of an event of default under the terms and provisions of this Guaranty or an Event of Default under the Resolution or the Lease;
- (b) the assigning or mortgaging or the purported assigning or mortgaging of all or any part of the interest of the Issuer in the Project in accordance with Section 6.1 of the Lease;

(c) the waiver of the payment, performance or observance by the Issuer of any of its obligations, covenants or agreements contained in the Resolution or the Lease or by the Guarantor of any of its obligations, covenants or agreements contained in this Guaranty or the Lease;

(d) the extension of the time for payment of principal of or interest on the Bond or any part thereof owing or payable on such Bond or under this Guaranty or of the time for performance of any other obligation, covenant or agreement under or arising out of the Resolution, the Lease, this Guaranty or the extension or the renewal thereof;

(e) the modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in the Resolution or the Lease;

(f) the taking of or the omitting to take any of the actions referred to in, or required by, the Resolution, the Lease or this Guaranty;

(g) any failure, omission, delay or lack on the part of the Issuer or the Bondholder to enforce, assert or exercise any right, power or remedy conferred on the Bondholder by this Guaranty or on the Issuer or the Bondholder by the Resolution, the Lease or any other act or acts on the part of the Issuer other than one which constitutes non-performance or a default under the Resolution, or any other act or acts on the part of the Bondholder;

(h) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets of the Guarantor or the Issuer, the marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings affecting the Guarantor or the Issuer or any of the assets of either of them, or any allegation or contest of the validity of this Guaranty or the Lease in any proceeding;

(i) to the extent permitted by law, any event or action that would, in the absence of this clause, result in the release or discharge of the Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guaranty by operation of law;

(j) any right of set-off, counterclaim, reduction, or diminution which the Guarantor might have against the Issuer or the Bondholder other than payment under this Guaranty;

(k) payment or prepayment (whether by payment or refunding) of any portion of the Bond, except to the extent of such payment; or

(l) the failure of the Guarantor fully to perform any of its obligations set forth in this Guaranty.

Section 2.3. Waiver of Notice. The Guarantor hereby expressly waives notice in writing, or otherwise, from the Bondholder of its acceptance and reliance on this Guaranty.

Section 2.4. Costs, Expenses and Fees. The Guarantor agrees to pay all reasonable costs, expenses and fees, including all reasonable attorneys' fees, which may be incurred by the Bondholder in connection with this Guaranty, whether the same shall be enforced by suit or otherwise.

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ARTICLE III

EVENTS OF DEFAULT AND REMEDIES

Section 3.1. Events of Default. If any of the following events occurs and is continuing, it is hereby defined and declared to be and constitute an “event of default” hereunder:

(a) failure by the Guarantor to make any payment required to be made under Section 2.1 hereof as and when the same shall become due and payable two business days after written notice of such failure shall have been given to the Guarantor in accordance with Section 4.6 hereof; or

(b) failure by the Guarantor to comply with any other provision of this Guaranty and continuance of such failure for more than 60 days after written notice of such failure to comply with this Guaranty has been given to the Guarantor in accordance with Section 4.6 hereof.

Section 3.2. Remedies. Whenever any event of default referred to in Section 3.1 hereof shall have occurred and is continuing beyond the applicable notice and cure period set forth above, the Bondholder may proceed hereunder, and the Bondholder shall have the right to proceed first and directly against the Guarantor under this Guaranty without proceeding against or exhausting any other remedies which it may have and without resorting to any other security held by the Issuer or the Bondholder.

Section 3.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Bondholder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default, event of default, omission or failure of performance hereunder shall impair any such right or power or be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bondholder to exercise any remedy reserved to it in this Guaranty, it shall not be necessary to physically produce the Bond in any proceedings instituted by the Bondholder or to give any notice, other than such notice as may be herein expressly required.

Section 3.4. Guaranty for Benefit of the Bondholder. This Guaranty is entered into by the Guarantor for the benefit of the Bondholder and any future Bondholder and their respective successors and assigns under the Resolution, all of whom shall be entitled to enforce performance and observance of this Guaranty, and of the guarantees and other provisions herein contained to the same extent as if they were parties signatory hereto.

Section 3.5. Remedies Cumulative. The terms of this Guaranty may be enforced as to any one or more breaches, either separately or cumulatively.

ARTICLE IV

WAIVERS, AMENDMENTS AND MISCELLANEOUS

Section 4.1. Waivers, Amendments, Modifications and Assignments. In the event any provision contained in this Guaranty should be breached by the Guarantor and thereafter duly waived by the Bondholder, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, release or modification of this Guaranty shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the Bondholder.

Amendments to this Guaranty shall be made in writing by all the parties hereto.

Notwithstanding anything to the contrary in this Guaranty, no amendment, change, modification, alteration or termination of the Resolution shall be effective that would in any way increase the Guarantor's obligations under this Guaranty without obtaining the prior written consent of the Guarantor.

This Guaranty may be assigned by the Guarantor in connection with an assignment of the Lease in whole consented to by the owner of the Bond or to an affiliate as authorized by Section 6.4 of the Lease.

Section 4.2. Effective Date. The obligations of the Guarantor hereunder shall arise absolutely and unconditionally (except as provided for herein) when the Bond shall have been initially issued, sold and delivered by the Issuer as contemplated in the Resolution.

Section 4.3. Governing Law. This Guaranty and the rights and obligations of the parties hereto (including third party beneficiaries) shall be governed, construed and interpreted according to the laws of the State of Georgia.

Section 4.4. Entire Agreement; Counterparts. This Guaranty constitutes the entire agreement, and supersedes all prior agreements, both written and oral, between the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 4.5. Severability. If any provision of this Guaranty shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any Constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

Section 4.6. Notices. All notices, certificates or other communications hereunder shall be given by (a) registered mail, postage prepaid, (b) overnight delivery or (c) hand delivery to, addressed as follows:

If to the Guarantor: Hitachi Construction Machinery Americas Inc.
60 Amlajack Blvd
Newnan, Georgia 30265
Attn: Director of General Affairs

With a copy to:

Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700
Atlanta, Georgia 30363
Attention: Earle R. Taylor III

If to the Bondholder: Hitachi Construction Machinery Americas Inc.
60 Amlajack Blvd
Newnan, Georgia 30265
Attn: Director of General Affairs

With a copy to:

Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700
Atlanta, Georgia 30363
Attention: Earle R. Taylor III

Either party may, by notice given hereunder, designate any further or different address to which subsequent notices shall be sent.

Section 4.7. Headings. The headings of the several Articles and Sections of this Guaranty are for convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

Section 4.8. Successors. This Guaranty shall be binding upon the undersigned Guarantor and its successors and assigns and shall inure to the benefit of, and shall be enforceable by, the Bondholder and its successors and assigns.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed by its duly authorized officer as of the date first written above.

HITACHI CONSTRUCTION MACHINERY
AMERICAS INC., as Guarantor

By: _____
CEO

(Guaranty Agreement)

Accepted by:

HITACHI CONSTRUCTION MACHINERY
AMERICAS INC., as Bondholder

By: _____
CEO

(Guaranty Agreement)