

PPP LOAN CONSENT AGREEMENT

THIS PPP LOAN CONSENT AGREEMENT (this “Agreement”), dated effective as of _____, 2020, is entered into between [_____] a _____ (“Borrower”) and [_____] a _____ (“Lender”).

Recitals

A. Borrower and Lender are parties to that certain [Loan Agreement] dated as of _____ (as amended, the “Loan Agreement”) pursuant to which Lender made a loan to Borrower in the original principal amount of \$[_____] secured by the real property and improvements located at _____ (the “Property”).

B. Borrower intends to obtain an unsecured loan in the maximum principal amount of \$_____ pursuant to the Paycheck Protection Program (the “PPP Loan”) established under the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. 116-136) (the “CARES Act”) in order to pay certain permitted expenses relating to the Property.

C. Under the terms and conditions of the Loan Agreement, Borrower has limited rights to incur additional indebtedness without the prior written consent of Lender. Borrower has requested that Lender consent to Borrower’s obtaining of the PPP Loan and Lender has agreed to consent to such PPP Loan, on the terms and subject to the conditions set forth in this Agreement.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender hereby agree as follows:

1. Consent and Waiver. Lender hereby (i) waives the provisions of Sections _____ and _____ of the Loan Agreement to the extent necessary to permit the Borrower obtaining the PPP Loan, and (ii) consents to the Borrower obtaining the PPP Loan. This waiver and consent is on a one-time basis for the PPP Loan only, does not constitute a waiver of any rights of Lender or obligations of Borrower, Guarantor or any other parties under the Loan Documents except to the extent specifically set forth here, and no waiver set forth in this Agreement will constitute a continuing waiver or a waiver of any future rights or obligations of Borrower or Guarantor arising from and after the date hereof.

2. Conditions to Consent and Waiver. The consent and waiver set forth in Section 1 above is subject to the satisfaction in full of the conditions set forth below:

- (a) Borrower shall be the sole obligor under the PPP Loan.
- (b) Borrower shall deliver to Lender a copy of its application for the PPP Loan and all supplemental materials delivered from time to time by Borrower to the lender

under the PPP Loan (each of which deliveries Borrower hereby certifies as being true, correct and complete at the time of delivery).

- (c) Borrower shall deposit the proceeds of the PPP Loan (the “Proceeds”) into an account owned by Borrower [and pledged to the Lender]¹;
- (d) Borrower shall use the Proceeds solely for uses, and in respective amounts, that are (i) permitted under the CARES Act, (ii) intended to maximize the amount of the PPP Loan that may be forgiven pursuant to the terms and conditions of the CARES Act to the extent necessary and appropriate in Borrower’s good faith business judgment under the prevailing facts and circumstances, and (iii) set forth on the budget attached hereto as **Exhibit A** (the “Budget”);
- (e) Borrower shall not amend, restate, replace, supplement or otherwise modify the PPP Loan without Lender’s prior written consent;
- (f) Borrower shall pay and perform timely all of Borrower’s obligations under the PPP Loan in compliance with the CARES Act and all other laws, rules, regulations, statutes, ordinances, orders, directives, decrees and other legal requirements relating thereto in effect from time to time.
- (g) Borrower shall, simultaneously with the delivery of each item of financial reporting required under the Loan Agreement, include a certification by Borrower that all Proceeds have been used in accordance with the Budget, and shall thereafter provide any back-up information requested by Lender with respect thereto.
- (h) To the fullest extent permitted by applicable law, Borrower hereby subordinates its obligations under the PPP Loan to its obligations to Lender under the Loan Documents. Consistent with the foregoing, Borrower shall make all payments due and payable to Lender prior to making any repayments under the PPP Loan to the extent all or any portion of the PPP Loan is not forgiven pursuant to the applicable provisions of the CARES Act.

3. Indemnification² Notwithstanding any limitation on personal recourse to Borrower set forth in the Loan Agreement or any other Loan Documents (as defined in the Loan Agreement) (the “Loan Documents”), Borrower shall, and hereby does, indemnify Lender and its affiliates and hold the same harmless from and against any liabilities, obligations, losses, demands, damages, penalties, assessments, actions, causes of action, judgments, proceedings, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including reasonable attorneys’ fees) arising at any time or from time to time from the PPP Loan, and all of Borrower’s obligations and liabilities thereunder and in respect thereof, including, without limitation, repayment of the PPP Loan (together with all interest and other amounts due to the lender thereunder) as and when due and payable. The indemnity and covenant to hold harmless

¹ Address Cash Management features for the Loan, if any, as appropriate.

² The Indemnification may be integrated with any loss-based carve-outs appearing in the Loan Agreement and/or any accompanying guaranty.

set forth in this Section 3 (the “PPP Recourse Obligations”) is in addition to, and not in limitation of, any other item of personal recourse to Borrower set forth in the Loan Documents.

4. Representations and Certifications. Borrower hereby represents, warrants, certifies and confirms to Lender as follows:

- (a) that any consent, waiver or approval required from any other third party with respect to Borrower’s obtaining the PPP Loan has or will be obtained prior to the closing of the PPP Loan.
- (b) As of the date hereof, except as disclosed in writing by Borrower to Lender on or prior to the date hereof, the representations and warranties in the Loan Agreement and each applicable Loan Document are true and correct in all material respects on and as of date hereof (except to the extent such representations and warranties expressly relate to an earlier date).
- (c) Borrower has the power and authority to execute, deliver and carry out the terms and provisions of this Agreement, the PPP Loan, and the transactions contemplated hereby and, to the extent applicable, has taken or caused to be taken all necessary action to authorize the execution, delivery and performance of this Agreement, the PPP Loan and the transactions contemplated hereby.

5. Miscellaneous.

- (a) In the event any provision of this Agreement shall be invalid, illegal, or unenforceable, such provision shall be deemed to have been modified to the extent necessary to make it valid, legal, and enforceable. The validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.
- (b) None of the terms of this Agreement may be waived, altered, amended, modified or otherwise changed except by an instrument in writing duly executed by all of the parties hereto.
- (c) This Agreement may be executed in several counterparts, each of which shall constitute an original but which, collectively, shall constitute one agreement. This Agreement may be executed and/or delivered by facsimile, electronic mail or other electronic transmission (including .pdf, .tif or any electronic signature complying with the U.S. federal ESIGN Act of 2000 or applicable State law, e.g., www.docuSign.com) and such facsimile, electronic mail or other electronic transmission shall be valid and binding to the same extent as if it were the original version thereof that was signed and delivered in person.
- (d) This Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, successors and assigns.
- (e) This Agreement shall be governed by and construed in accordance with the choice

of law provisions set forth in the Loan Agreement.

- (f) All capitalized terms herein, unless otherwise defined herein, have the same meanings as defined in the Loan Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered as of the date set forth above.

LENDER:

[_____] , a [_____]

By: _____

Name:

Title:

BORROWER:

[_____], a _____

By: _____

Name:

Title:

By its signature below, Guarantor hereby acknowledges and agrees that, in addition to, and without limiting the obligations guaranteed by Guarantor under the Loan Documents, Guarantor hereby irrevocably and unconditionally (and, if there is more than one Guarantor, jointly and severally), guarantees to Lender, and its successors and assigns, the payment and performance of all PPP Recourse Obligations as and when the same shall be due and payable. Guarantor's obligations hereunder shall be subject to all of the same terms, conditions, provisions, covenants and waivers applicable to Guarantor's other guaranteed obligations under the Loan Documents.

GUARANTOR:

[_____]