



Virginia Small Business Financing Authority

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY STATE SMALL BUSINESS CREDIT INITIATIVE

CASH COLLATERAL PROGRAM BORROWER'S AGREEMENT and APPLICATION

THIS AGREEMENT (the "Borrower Agreement") is dated , 20 , and is given by ("Borrower"), whose address is ; and by , guarantor(s) of the Loan described below (collectively, "Guarantor"); and is for the benefit of , ("Lender") and the Virginia Small Business Financing Authority ("VSBFA").

Borrower's Contact Information:

Name and title of individual: E-mail address Phone #

RECITALS

- A. Lender intends to make a loan (the "Loan") to Borrower for the purpose set forth in Lender's loan commitment.
B. The Loan shall be evidenced by a promissory note payable by Borrower to the order of Lender (the "Note") and shall be made pursuant to written agreements between Borrower and Lender (the "Loan Documents").
C. As additional security for the Loan, and pursuant to the State Small Business Credit Initiative Act of 2010 (P.L. 111-240 - Sept. 27, 2010) (the "Act"), VSBFA is making a deposit of funds in the Collateral Account as described in the Cash Collateral Deposit Agreement between Lender and VSBFA (the "Agreement").
D. In consideration for Lender's making the Loan and for VSBFA's making a Cash Deposit in the amount of Dollars (\$ ), Borrower and Guarantor(s) shall execute this Borrower Agreement for the benefit of Lender and VSBFA.

NOW, THEREFORE, Borrower and Guarantor(s), jointly and severally, hereby represent, covenant and agree with VSBFA and Lender as follows:

AGREEMENT

1.1 Reimbursement, Enforcement and Indemnification. Borrower and Guarantor(s), jointly and severally, agree to reimburse VSBFA for any payment made by VSBFA under the Agreement, together with interest and costs of collection, including attorney's fees. Borrower and Guarantor(s), jointly and severally, acknowledge and agree that VSBFA may at its option assume (and in such event shall be subrogated to) all rights and remedies of Lender under the Loan Documents and may enforce any such rights or remedies against any collateral for the Loan, and against Borrower and Guarantor(s). Additionally, Borrower and Guarantor(s) shall jointly and severally hold VSBFA and Lender harmless from, and hereby indemnify each of VSBFA and Lender against, and agree to pay to VSBFA and Lender any and all liabilities,

damages, claims, costs and losses incurred or suffered by either of VSBFA or Lender, including attorneys' fees and costs, resulting from (a) any materially incorrect certification, statement, representation or warranty made by Borrower, Guarantor(s), or an agent of Borrower or Guarantor(s), to VSBFA or Lender in connection with the Loan, the Agreement, this Borrower Agreement or any of the other Loan Documents or (b) any breach by Borrower or Guarantor(s) of the terms and conditions of this Agreement or any of the other Loan Documents. Borrower and Guarantor(s) also acknowledge that any statement, certification or representation made by Borrower or any of the Guarantor(s) in connection with the Loan is subject to the penalties provided in 18 U.S.C. § 1001.

**2.1. Set Off.** Borrower and Guarantor(s), jointly and severally, acknowledge and agree that all loan repayment obligations of Borrower and Guarantors under the Agreement, this Borrower Agreement, and the Loan **are subject to collection pursuant to the Set-Off Debt Collection Program as authorized under the Virginia Debt Collection Act** (§§ 58.1-520 - 58.1-535 of the Code of Virginia (1950), as amended).

**3.1 Use of Proceeds.** The Borrower hereby certifies to the VSBFA as follows:

(a) The loan proceeds will be used for a "business purpose." Business purpose includes, but is limited to, start up costs, working capital, business procurement, franchise fees, equipment, inventory, as well as the purchase, construction renovation or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of business purpose excludes: activities that relate to acquiring or holding passive investments, such as commercial real estate ownership and the purchase of securities; and lobbying activities, as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended.

(b) The loan proceeds will not be used to:

- i. Eliminate the bank's requirement for collateral or the principal's personal guaranty.
- ii. Finance passive real estate investment, purchase of residential housing, real estate construction or development.
- iii. Refinance a Lender's existing debt, except that if there is additional debt added to the refinance amount, the additional principal is eligible for CCP.
- iv. Repay delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority; or repay taxes held in trust or escrow, e.g. payroll or sales taxes; or
- v. Reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance; or
- vi. To purchase any portion of the ownership interest in the Borrower; or to purchase any portion of the ownership interest in any company, including 100% interest; or
- vii. To purchase goodwill, or
- viii. To finance the unguaranteed portion of SBA-guaranteed loans or other federally guaranteed loans, or
- ix. To provide financing to a religious establishment unless the proceeds of the loan are used only for a "business purpose." A "business purpose" does not include an explicitly religious purpose, and the proceeds of the loan to a religious establishment may not be used for the purposes of supporting, assisting, or furthering an explicitly religious purpose, including, but not limited to, worship, religious instruction, or proselytization.

(c) The Borrower is not:

- i. an executive officer, director, or principal shareholder of the lender; or
- ii. a member of the immediate family of an executive officer, director, or principal shareholder of the lenders; or
- iii. a related interest of such executive officer, director, principal shareholder, or member of the immediate family.

For the purposes of these three restrictions, the terms "executive officer", "director", "principal shareholder", "immediate family", and "related interest" refer to the same relationship to a lender as the relationship described in Part 215 of Title 12 of the Code of Federal Regulations, or any successor to such part.

(d) The Borrower is not:

- i. a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business; or
- ii. a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company Community Development Financial Institutions; or
- iii. a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants; or
- iv. a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); or
- v. a business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from lottery sales.

**4.1** Borrower Sex Offender Certification. As required by Section 3011(c)(2) of the Small Business Jobs Act of 2010, the private entity hereby certifies to the participating State that no Principals of the private entity have been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). National registry is at <http://www.nsopw.gov/Core/Portal.aspx>. For the purposes of this Certification, "Principal" means the following: if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20% or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the private entity, and each natural person who is a direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the private entity.

**5.1** Miscellaneous.

- (a) This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia. The parties agree that jurisdiction shall be solely in the courts of the Commonwealth of Virginia and that venue shall be solely in the Circuit Court for the City of Richmond, Virginia. In the event of any lawsuit by VSBFA to enforce the provision of this Agreement, Borrower and Guarantor(s), jointly and

severally, agree that the jurisdiction and venue provisions of this Section 3.1 shall apply to the Note, the Loan Documents and any guaranties executed by Guarantor(s).

- (b) All notifications required by this Agreement shall be given in the manner provided in the Loan Documents. Borrower and Guarantor shall promptly notify VSBFA and the Lender in writing of any change in its or their addresses.
- (c) If at any time any provision of this Agreement becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, the validity, nor the enforceability of the remaining provisions hereof shall in any way be affected or impaired. This Agreement may be executed in counterpart originals, with each counterpart to be deemed an original Agreement, constituting a single instrument. This Agreement cannot be changed or terminated orally. This Agreement shall inure to the benefit of, and be binding upon the parties, their successors and assigns.
- (d) Borrower and Guarantor(s) authorize Lender to provide to VSBFA any and all information, including financial information, relating to the Loan, Borrower or any of Guarantor(s), at the request of VSBFA.

**6.1** Additional Information Required:

OWNERSHIP (%): Male  Female

RACE: (Voluntary) American Indian or Alaska Native   
Asian   
Black or African-American   
Native Hawaiian or Pacific Islander   
White

ETHNICITY (Voluntary) Hispanic or Latino

VETERAN STATUS: Veteran  Non-Veteran

Primary Business Activity:

NAICS

Annual Sales in Last Fiscal Year: \_\_\_\_\_

Year Business Established:

Total Full Time Employees (2 half time employees equals 1 full time employee): .

Estimated Jobs Created by this Loan over next 3 years:

Estimated Jobs Retained by this Loan over next 3 years:

Does the Borrower, including any parent or subsidiary or affiliated entity, in Virginia:

have 250 or fewer employees? Yes  No  Current #

OR have less than \$10,000,000 in annual gross revenues over each of the last three (3) fiscal years? Yes  No

OR have less than \$2,000,000 in net worth? Yes  No

*If the answer to any of the following questions is "yes", please furnish details on an attached sheet.*

Have any owners, officers, directors, guarantors, general partners, stockholders or limited partners owning 20% or more of the Borrower ever been charged with, or convicted of, any criminal offense, other than minor motor vehicle violations?

Yes  No

Has the Borrower or management of the Borrower been informed of any current or on-going investigation of the Borrower with respect to possible violations of state or federal securities laws? Yes  No

Has the Borrower or any owners, officers, directors, guarantors, general partners, stockholders or limited partners owning 20% or more of the Borrower been in receivership or adjudicated as bankrupt? Yes  No

Is the Borrower or any of its owners, officers, directors, guarantors, general partners, stockholders or limited partners owning 20% or more of the Borrower involved in any pending lawsuits? Yes  No

Does the Borrower or any guarantors owe past due federal, state or local taxes of any nature? Yes  No

IN WITNESS WHEREOF, Borrower and Guarantor(s) have caused this Agreement to be duly executed as of the date first above written.

\_\_\_\_\_  
**Borrower (Type or Print name of borrowing entity)**

By: \_\_\_\_\_  
Authorized signer for Borrower

Name: \_\_\_\_\_  
Type or Print name of authorized signer

Title: \_\_\_\_\_

**Guarantors:**  
**(each Guarantor must sign)**

\_\_\_\_\_  
\_\_\_\_\_

If applicable

**Corporate Guarantor**

**Name**

By: \_\_\_\_\_  
Authorized signer for Borrower

Name & Title: \_\_\_\_\_  
Type or Print name of authorized signer, include title