



## VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

### *LOAN GUARANTY PROGRAM*

#### BORROWER'S AGREEMENT

THIS BORROWER'S AGREEMENT (the "Agreement") is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ and is entered into by \_\_\_\_\_ (the "Borrower"), a \_\_\_\_\_ (e.g. "a Virginia Corporation), located at \_\_\_\_\_; and by \_\_\_\_\_ the guarantor(s) of the Loan (the "Guarantor(s)"); and is for the benefit of \_\_\_\_\_ (the "Lender") and the Virginia Small Business Financing Authority (VSBFA).

#### RECITALS

A. The Lender shall make a loan (the "Loan") to the Borrower for the purpose set forth in the Lender's loan commitment.

B. The Loan shall be evidenced by a valid and enforceable promissory note payable by the Borrower to the order of the Lender (the "Note") and shall be made pursuant to written agreements between the Borrower and the Lender (the "Loan Documents").

C. In consideration for and as a condition precedent to the Lender's making the Loan and VSBFA approving its guarantee of the Loan in accordance with the Loan Guaranty Agreement (the "Guaranty Agreement") between the Lender and VSBFA dated \_\_\_\_\_ and VSBFA's Approval Letter, the Borrower and the Guarantor(s) shall execute this Agreement for the benefit of the Lender and VSBFA.

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

#### ARTICLE I

##### OBLIGATIONS OF THE BORROWER

Section 1.1 Acknowledgement of VSBFA's Approval Letter. The Borrower and the Guarantor(s) hereby acknowledge and agree that they have received, seen, understand and agree to be bound by VSBFA's Approval Letter and agree to perform, jointly and severally, any and all terms, conditions and obligations of VSBFA's Approval Letter.

#### ARTICLE II

##### RIGHTS AND REMEDIES

Section 2.1 Enforcement and Indemnification. In accordance with the Guaranty Agreement, the Borrower and the Guarantor(s), jointly and severally, acknowledge and agree that VSBFA may at its option

assume all rights and remedies of the Lender under the Loan Documents and may enforce any such rights or remedies against the collateral, the Borrower, or the Guarantor(s), jointly and severally. Additionally, the Borrower and the Guarantor(s) shall hold VSBFA and the Lender harmless from and indemnify them against any and all liabilities, damages, claims, costs and losses incurred or suffered by either of them, including attorneys' fees and costs, resulting from (a) any materially incorrect certification or statement knowingly made by the Borrower, the Guarantor(s), or an agent of the Borrower or Guarantor(s) to VSBFA or the Lender in connection with the Loan, this Agreement or any of the other Loan Documents or (b) any breach by the Borrower or the Guarantor(s) of the terms and conditions of this Agreement or any of the other Loan Documents. The Borrower and the Guarantor(s), jointly and severally, also acknowledge that any statement, certification or representation made by the Borrower or any of the Guarantor(s) in connection with the Loan is subject to the penalties provided in Article 18 U.S.C. Section 1001.

Section 2.2 Setting Off. Upon a default or event of default under the Loan Documents and payment by VSBFA under the Guaranty Agreement, the Borrower and the Guarantor(s), jointly and severally, acknowledge and agree that VSBFA may set off, collect and retain any payments or monies due or owing the Borrower or any Guarantor from the Commonwealth of Virginia, and/or any governmental authority or agency of the Commonwealth of Virginia.

### ARTICLE III

#### MISCELLANEOUS

Section 3.1 Interpretation, Jurisdiction, and Venue. 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, the 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 the Guarantor(s).

Section 3.2 Notification. All notifications required by this Agreement shall be given in the manner provided in the Loan Documents. Each Guarantor shall promptly notify VSBFA and the Lender in writing of any change in his/her/its address.

Section 3.3 Partial Invalidity. If at any time any of the provisions 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.

Section 3.4 Benefit. This Agreement is for the sole and exclusive benefit of VSBFA and the Lender.

Section 3.5 Counterparts. This Agreement may be executed in counterpart originals, with each counterpart to be deemed an original Agreement, constituting a single instrument.

Section 3.6. Request for Information. The Borrower and the Guarantor(s) authorize the Lender to provide to VSBFA any and all information relating to the Loan, the Borrower, or any of the Guarantor(s), at the request of VSBFA.

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

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(Name of Borrower)

By: \_\_\_\_\_ Name: \_\_\_\_\_  
(Signature) (Print or Type)

Title: \_\_\_\_\_  
(Print or Type)

Guarantors:

\_\_\_\_\_ Name: \_\_\_\_\_  
(Signature) (Print or Type)

\_\_\_\_\_  
(Address)

\_\_\_\_\_ Name: \_\_\_\_\_  
(Signature) (Print or Type)

\_\_\_\_\_  
(Address)