

## LOAN AGREEMENT

**THIS LOAN AGREEMENT** (“Agreement”) made as of this \_\_\_\_ day of \_\_\_\_\_ 2020, by and between \_\_\_\_\_ (“Borrower”), with a principal place of business at \_\_\_\_\_, Bloomington, Indiana, and the City of Bloomington, Indiana (“CITY”)

**WHEREAS**, the Common Council of the City of Bloomington (“Council”) and the Bloomington Urban Enterprise Association (“BUEA”) have approved funds for an emergency response fund to be administered as loans to organizations that support and bear a nexus to the tourism and related attraction to the City or support and enhance the Urban Enterprise Zone; and

**WHEREAS**, the Council and the BUEA approved administration of the fund by the City of Bloomington Economic and Sustainable Development Department and the City Controller; and

**WHEREAS**, the Borrower wishes to obtain a loan from the CITY in the principal amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ .00) (“Loan”); and

**WHEREAS**, the CITY’s Rapid Response Loan Advisory Commission has recommended to the CITY that the Loan be extended to the Borrower, and the CITY hereby agrees and authorizes the Loan; and

**NOW, THEREFORE**, the parties agree as follows:

### **ARTICLE I: DEFINITIONS, ACCOUNTING and OTHER TERMS**

**1.1. Certain Defined Terms.** As used in this Agreement, the following words, or phrases shall have the following meanings:

“Agreement” means this Loan Agreement.

“Collateral” means, with respect to the Borrower, any property or interests in property in or upon which the Borrower has granted the CITY a Lien, pursuant to the Security Documents or otherwise, to secure performance of the Loan.

“Events of Default” has the meaning assigned to that term in section 6.1 of this Agreement.

“Financing Documents” means, collectively, this Agreement, the Note, and each other agreement, instrument or document now or hereafter executed in connection herewith or therewith.

“GAAP” means Generally Accepted Accounting Principles in effect from time to time in the United States of America applied on a basis consistent with those used in the financial statements referred to in section 4.1(E).

“Indebtedness” means all obligations and liabilities of the Borrower to any Person (including without limitation all debts, claims and indebtedness) whether primary, secondary, direct, contingent, fixed or payable, heretofore, now and from time to time hereafter owing, due or payable, however evidenced, created, incurred, acquired or owing and however arising, whether under written or oral agreement, operation of law, or otherwise.

“Lien” means any mortgage, pledge, assignment, encumbrances, lien (statutory or other) or other security agreement or preferential arrangement of any kind or nature whatsoever (including without limitation any conditional sale or other title retention agreement) having substantially the same economic effect as any of the foregoing and the filing of any financing statement under the applicable Uniform Commercial Code or comparable law of any jurisdiction in respect of any of the foregoing.

“Loan” means at any time, the amount of Indebtedness owed to the CITY pursuant to this Agreement.

“Note” means the promissory note executed by the Borrower payable to the CITY of even date herewith and any and all replacements thereof.

“Person” means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, institution, entity, party or government (whether national, federal, state, county, city, municipal or otherwise, including without limitation, any instrumentality, division, agency, body or department thereof).

“Security Documents” means any and all documents, instruments and agreements now or hereafter providing security for the Loan.

**1.2. Accounting Terms.** All accounting terms not specifically defined herein, calculations for any financial covenants or ratios, and all financial data submitted pursuant to this Agreement shall be construed in accordance with GAAP.

## **ARTICLE II: AMOUNT and TERMS of the LOAN**

### **2.1. Loan**

- (A) Amount. The CITY agrees, subject to the terms and conditions of this Agreement, to make the Loan to the Borrower in the principal amount of \_\_\_\_\_ Thousand Dollars (\$ \_\_\_\_\_ .00) (“Principal Amount”). In the event that Borrower decides to take less than the full Principal Amount in a loan, the Parties agree to amend the Note and all other necessary documents to ensure Borrower’s payments reflect the actual amount borrowed.
- (B) Interest. Interest shall accrue on the Loan at the rate per annum of two percent 2.0% subject to and in accordance with the terms and conditions of this Agreement and the Note. Regardless of when the Principal Amount is obtained, interest on the Principal Amount shall begin to accrue 180 days from date of this Agreement. In the event that the Borrower ultimately borrows less than the full Principal Amount, interest shall only accrue on the amount of the Principal Amount that the Borrower borrows. The Borrower shall pay such interest in arrears on the balance of the Loan outstanding from time to time in accordance with the terms and conditions of the accompanying Promissory Note.
- (C) Prepayments. The unpaid principal and unpaid and accruing interest of the Loan may be prepaid, in whole or in part, without penalty at any time by a payment to the CITY. If the Borrower prepays the total unpaid principal of the Loan within twelve (12) months of the date of this Agreement, the City shall credit accrued interest paid as of the date of prepayment toward the payoff balance of the loan Principal Amount.
- (D) Payments. Payments of principal and interest on the Loan shall be due and payable in accordance with the terms and conditions of the Note.
- (E) Maturity. If not sooner paid, the balance of the unpaid principal and all accrued and unpaid interest shall be due and payable no later than thirty-six (36) months from the date of this Agreement, or December 31, 2023, whichever is earlier.
- (F) Forgiveness. The CITY may, in its sole discretion and in accordance with its policies, forgive all or part of the Loan.

**2.2. Use of Proceeds.** The Borrower shall use the proceeds of the Loan for wages, payroll costs, rent, utilities, or other immediate, essential expenses. The proceeds may not be distributed to

equity investors or owners, unless the owner is a primary employee of the business or the sole proprietor

- 2.3. Other Loans.** The Borrower confirms that the loan from the CITY, subject to this Agreement, is subordinate only to any mortgage or outstanding loan that existed at the time this Agreement was executed, and as described in Exhibit A (“Existing Debts”).

### **ARTICLE III: CONDITIONS of LENDING**

- 3.1. Conditions Precedent to the Loan.** The obligation of the CITY to make the Loan is subject to performance by the Borrower of all of its obligations under this Agreement and to the satisfaction of the conditions precedent that all legal matters incidental to the Loan shall be satisfactory to counsel for the CITY and to the Borrower’s compliance, from the date hereof, with the affirmative covenants contained in section 5.1 of this Agreement.

- 3.2. Necessary Documents.** The obligation of the CITY to make the Loan is subject to the receipt by the CITY on or before the closing date of all of the following, each dated on a date acceptable to the CITY and each to be in the form and substance approved by the CITY:

- (A) The Promissory Note and any other Financing Documents.
- (B) A Certificate of Business/Authorization from the Secretary of State of Indiana, stating that the Borrower is duly organized or qualified in Indiana.
- (C) The Borrower’s Articles of Incorporation, Articles of Organization, bylaws, and/or operating agreements, and any amendments.
- (D) Such other information about the Borrower and/or its assets, business and/or financial condition as the CITY, the City’s representatives, or its staff may reasonably request.
- (E) Any document authorizing the Borrower to enter into the loan, including but not limited to board resolutions, and an incumbency certificate certifying the authority of the officers to sign on behalf of the Borrower.

### **ARTICLE IV: REPRESENTATIONS and WARRANTIES**

- 4.1. Representations and Warranties of the Borrower.** The Borrower represents and warrants to the CITY (which representations and warranties shall survive the making of the Loan) that, after giving effect to the Loan and the application of the proceeds thereof:

- (A) Organization and Existence. \_\_\_\_\_ [Borrower] is duly organized as an Indiana \_\_\_\_\_ [Nonprofit, Corporation, LLC, etc.] and validly exists under the laws of Indiana, and is duly qualified to do business in all jurisdictions in which such qualification is required, except where failure to so qualify would not have a material adverse effect on the financial condition or business of the Borrower, and has all requisite power and authority to conduct its business, to own its properties, and to execute and deliver and perform all of its obligations under the Financing Documents.

- (B) Authorization and Absence of Defaults. The execution, delivery to the CITY and performance by the Borrower of the security and financial documents have been duly authorized and do not and will not (1) require any consent or approval which has not been obtained, (2) violate any provision of any law, rule, regulation, order, or determination (“Legal Requirements”) presently in effect having applicability to the Borrower, (3) result in a material breach of or constitute a material default under any indenture or loan or credit agreement or any other agreement, lease or instrument to which the Borrower is a party or by which it or its properties may be bound or affected (“Financial Conditions”); or (4) result in, or require, the creation or imposition of any Lien on any of its properties or revenues other than Liens granted to the CITY by the Security Documents. The Borrower is in compliance with any Legal Requirements of any Financial Conditions.
- (C) Acquisition of Consents. No authorization, consent, exemption of or filing or registration with any court or governmental entity, domestic or foreign, is or will be necessary to the valid execution and delivery to the CITY or performance by the Borrower of the Financing Documents.
- (D) Validity and Enforceability. Each of the Security Documents will constitute the legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms, except as the enforcement of may be limited by applicable debtor relief laws affecting the rights of creditors.
- (E) Financial Information. All financial statements and data which have been or will be furnished to the CITY by the Borrower are, and will be, true and correct and when delivered will reflect fairly the financial condition of the Borrower and have been prepared in accordance with GAAP. The Borrower has no contingent liabilities, material liabilities for taxes, unusual forward or long term commitments outside the ordinary course of business, or material unrealized or anticipated losses which are material to the financial condition or business of the Borrower except as reflected in the loan application and such financial statements.
- (F) No Litigation. There are no actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any of its properties before any court or governmental entity, domestic or foreign, which, if determined adversely to the Borrower, would draw into question the legal existence of the Borrower or the validity, authorization or enforceability of the Financing Documents or Security Documents or any provision thereof or could have a material adverse effect on the financial condition, properties, or operations on a combined basis of the Borrower.
- (G) Absence of Adverse Agreements. The Borrower is not a party to any indenture, loan or credit agreement or any lease or other agreement or instrument or subject to any corporate or partnership restriction which would alter the manner in which the Borrower does business and which would have a material adverse effect on the business, properties, assets, operations or condition, financial or otherwise, of the Borrower or on the ability of

the Borrower to carry out its obligations under the Financing Documents.

- (H) Taxes. The Borrower has, as of March 1, 2020, filed all tax returns (federal, state and local) required to be filed and paid all taxes shown thereon to be due, including interest and penalties, or provided adequate reserves for payment thereof.
- (I) Properties. The Borrower owns its properties and assets free and clear of all Liens except those which the Borrower has fully disclosed to the CITY.
- (J) Accuracy of Representations and Warranties. None of the Borrower's representations or warranties set forth in this Agreement or in any document furnished pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit a material fact necessary to make any statement of fact not misleading; except that unless provided otherwise any such document or certificate which is dated speaks as of the date stated and not the present.
- (K) Solvency. After giving effect to the consummation of the Loan as of the time this representation and warranty is given, the Borrower (a) will be able to pay its debts as they become due, (b) will have funds and capital sufficient to carry on its business, and (c) will own property having a value both at fair valuation and at fair saleable value in the ordinary course of the Borrower's business greater than the amount required to pay its Indebtedness, including for this purpose, unliquidated and disputed claims. The Borrower will not be rendered insolvent by the execution and delivery of this Agreement and the consummation of any transactions contemplated herein.
- (L) Licenses, Registrations, and Compliance with Laws. The Borrower has or shall obtain all permits and other governmental or other approvals material to and required by law, or by any other entity having jurisdiction over the Borrower, for carrying out its business. There is no violation or allegation of violation on the part of the Borrower with any of the foregoing permits or approvals and there is no action, proceeding, or investigation pending or, to the knowledge of the Borrower, threatened, nor has the Borrower received any notice of such which might result in the termination or suspension of any such permit, or approval.
- (M) Principal Place of Business; Books and Records. The Borrower's chief executive office is located at the Borrower's address set forth in Section 8.5, and the Borrower's principal place of business is within the city limits of Bloomington, Indiana. All of the Borrower's books and records are kept at one or more of its addresses set forth in Section 8.5.
- (N) Title to Assets and Properties. The Borrower has good and marketable title to all of its properties and assets owned as of the date of this Agreement.
- (O) Application for Authority Disaster Relief or Governmental Funding. The Borrower hereby certifies that it will make a good faith effort, if it has not already done so, to apply for any available state and federal disaster relief funding, including but not limited to those

programs passed as part of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act of 2020. In the event that the Borrower receives state or federal disaster relief funding, the Borrower shall prepay the balance and any remaining interest on the Loan within twelve (12) months of the date of this Agreement or within ninety (90) days of receiving the state or federal funding, whichever is later.

## ARTICLE V: COVENANTS of the BORROWER

**5.1. Affirmative Covenants of the Borrower Other Than Reporting Requirements.** From the date hereof and for so long as any portion of the Loan is outstanding or the Borrower is indebted to the CITY under any of the Financing Documents, the Borrower shall:

- (A) Payment of Taxes. Pay and discharge all taxes and assessments and governmental charges or levies imposed upon it or its income, profits, or properties, prior to the date on which penalties attach, and all lawful claims for the same which, if unpaid, might become a Lien upon any of its properties; provided that (unless and until foreclosure, restraint, sale or any similar proceeding has commenced) the Borrower shall not be required to pay any such tax, assessment, charge, levy which is being contested in good faith and for which proper reserve has been made under GAAP.
- (C) Preservation of Existence. Preserve and maintain in full force and effect its legal existence, rights, and privileges in the jurisdiction of its organization, preserve and maintain all licenses, governmental approvals, trademarks, patents, trade secrets, copyrights, and trade names owned or possessed by it and which are necessary or desirable for its business, and qualify or remain qualified to do business in each jurisdiction in which such qualification is necessary or desirable for its business.
- (D) Compliance with Laws. Comply with the requirements of all present and future applicable laws, rules, regulations, and orders of any governmental authority having jurisdiction over it and/or its business.
- (E) Keeping of Records and Books of Account. Keep adequate records and books of account in accordance with GAAP and with applicable requirements of any governmental authority having jurisdiction over the Borrower, reflecting all financial transactions.
- (F) Accounting System. Maintain a standard system of accounting in accordance with the requirements of any governmental authority having jurisdiction over the Borrower.
- (G) Other Documents. Except as otherwise required by this Agreement, pay, perform, and fulfill all of its obligations and covenants under each material document, instrument, or agreement to which it is a party.
- (H) Non-Profit Status. If the Borrower is a non-profit, Borrower shall remain compliant with all requirements associated with Internal Revenue Code § 501(c)(3). In the event Borrower does not comply with these requirements, or has reason to believe that it may not have

complied with these requirements, Borrower will—within seven (7) days of its knowledge of the issue—notify the CITY. Upon receipt of this notice, the CITY, in its sole discretion, may declare the loan to be in default, and may take any action permitted in this Agreement or by law to address the default.

**5.2. Negative Covenants of the Borrower.** From the date hereof and for so long as any portion of the Loan is outstanding or the Borrower is indebted to the CITY under any of the Financing Documents, the Borrower shall not, without the prior written consent of the CITY, which consent shall not be unreasonably withheld:

- (A) Assumptions or Guaranties of Indebtedness. Assume, guarantee, endorse, or otherwise become directly or contingently liable in connection with any obligation, except pursuant to the provisions of this Agreement and Indebtedness to the CITY.
- (B) Dissolution. Dissolve, liquidate, wind up, merge, or consolidate with another Person.
- (C) Change in Nature of Business. Make any material change in the nature of its business.
- (D) Sale and Leaseback. Enter into any sale and leaseback arrangement with any lender or investor, or enter into any leases except in the normal course of business at reasonable rents comparable to those paid for similar leasehold interests in the area.
- (E) Sale of Accounts. Sell, assign, discount, or dispose in any way of Accounts Receivable, promissory notes or trade acceptances held by the Borrower, with or without recourse, except in the ordinary course of the Borrower's business.
- (F) Loans and Investments in or to Other Persons. Make any advance, loan or investment in or to any other Person.
- (G) Change of Fiscal Year. Change its fiscal year.
- (H) Subordination of Claims. Subordinate or permit to be subordinated any present or future claim against or obligation of another Person, except as ordered in a bankruptcy or similar creditors' remedy proceeding of such other Person.
- (I) Management and Ownership. Permit or allow any material change in the majority ownership of the Borrower.

**5.3. Reporting Requirements.** From the date hereof and for so long as any portion of the Loan is outstanding or the Borrower is indebted to the CITY under any of the Financing Documents, the Borrower shall, unless the CITY shall otherwise consent in writing, furnish or cause to be furnished to the CITY:

- (A) as soon as possible upon knowledge of an Event of Default, a written statement setting forth details of such Event of Default and the action which the Borrower proposes to take

with respect thereto;

- (B) promptly after the commencement thereof, provide notice of all material actions, suits, and proceedings before any court or governmental entity, domestic or foreign, affecting the Borrower;
- (C) once per calendar year, provide financial reports which have been reviewed or audited by a Certified Professional Accountant, as defined by the Federal Standards Accounting Board (FSAB), within thirty (30) days of the completion of the review or audit;
- (D) if applicable, a copy of Borrower's timely filed IRS Form 990, Return of Organization Exempt from Income Tax Form, within thirty (30) days of its filing with the IRS;
- (E) a copy of all tax returns and proof of payment of all applicable taxes, including payroll taxes, within thirty (30) days of their submission or payment (as appropriate) with the relevant taxing authority;
- (E) copies of all filings with the Indiana Secretary of State's Office, within thirty (30) days of filing;
- (F) such other information respecting the business, properties, or the condition or operations, financial or otherwise, of the Borrower as the CITY may, from time to time, reasonably request;
- (G) prompt written notice of any material adverse change in the Borrower's condition, financial or otherwise, and an explanation thereof and of the actions the Borrower propose to take with respect thereto; and
- (H) promptly, and in any event within five (5) days thereafter, written notice of any change in the name of the Borrower.

## **ARTICLE VI: EVENTS of DEFAULT**

**6.1. Events of Default.** The Borrower shall be in default under this Agreement and each of the Financing Documents and the Security Documents, upon the occurrence of any one or more of the following events ("Events of Default"):

- (A) if the Borrower shall fail to make due and punctual payment of the principal, or any other amounts payable under this Agreement as provided in the Note or in this Agreement when the same is due and payable, or if the Borrower shall fail to make any such payment of fees, interest, principal, or any other amounts payable under this Agreement or the Note on the date when such payment becomes due and payable by acceleration; or,
- (B) (i) if the Borrower commences a voluntary case under title 11 of the United States Code or the corresponding provisions of any successor laws;



- (ii) anyone commences an involuntary case against the Borrower under title 11 of the United States Code or the corresponding provisions of any successor laws and either (a) the case is not dismissed by midnight at the end of the 60th day after commencement or (b) the court before which the case is pending issues an order for relief or similar order approving the case;
  - (iii) a court of competent jurisdiction appoints, or the Borrower makes an assignment of all or substantially all of its assets to, a custodian (as that term is defined in title 11 of the United States Code or the corresponding provisions of any successor laws) for the Borrower or all or substantially all of its assets; and
  - (iv) the Borrower fails generally to pay its debts as they become due (unless those debts are subject to a good-faith dispute as to liability or amount) or acknowledges in writing that it is unable to do so.
- (C) if final judgment or judgments shall be rendered against the Borrower and shall remain undischarged, unstayed or unpaid for an aggregate of sixty (60) days (whether or not consecutive) after entry; or,
- (D) if there shall be a default in the performance of the Borrower's obligations under Section 5.1, or Section 5.2 of this Agreement; or,
- (E) if there shall be any default in the performance of any covenant or condition contained in this Agreement or in any of the Security Documents or any other mortgage or other agreement securing payment of the Note and/or payment of any Indebtedness to be observed or performed pursuant to the terms hereof, any Security Document or in any such mortgage or other agreement, as the case may be, other than a covenant or condition referred to in any other subsection of this Section 6.1, and such default shall continue unremedied or unwaived, (i) in the case of any covenant or condition contained in Section 5.3, for fifteen (15) days, or (ii) in the case of any other covenant or condition for which no other grace period is provided, for thirty (30) days, or (iii) if any of the representations and warranties made or deemed made by the Borrower to the CITY pursuant to this Agreement proves to have been false or misleading in any material respect when made; or,
- (F) if there shall be any attachment of any deposits or other property of the Borrower in the possession of CITY or any attachment of any other property of the Borrower, which shall not be discharged within thirty (30) days of the date of such attachment.

## **ARTICLE VII: REMEDIES of the CITY**

**7.1. Acceleration.** Upon the occurrence and during the continuance of any one or more of the Events of Default, the CITY may declare the obligation of the CITY to make the Loan to be terminated, whereupon the loan obligation shall terminate and the CITY may declare the entire unpaid principal amount of the Note and all fees and interest accrued and unpaid and/or under any of the other Financing Documents and any and all other Indebtedness hereunder to be due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower. In case of an Event of Default under Section 6.1(B) or (C) of

this Agreement, all of the unpaid principal amounts of the Note, all fees and interest accrued and unpaid and/or under any of the other Financing Documents and any and all other such Indebtedness of the Borrower to the CITY and/or to any such holder shall be due and payable in full without any need for the CITY to make any such declaration or take any action and the CITY's obligations to make the Loan shall simultaneously terminate.

**7.2. Attorney Fees; Costs.** The Borrower agrees to pay on demand all reasonable costs and expenses (including, without limitation, reasonable attorney fees) incurred by the CITY upon or after an Event of Default, if any, in connection with the enforcement of any of the Financing Documents and any related amendments, waivers, or consents.

## **ARTICLE VIII: MISCELLANEOUS**

**8.1. Consent to Jurisdiction and Service of Process.** Except to the extent prohibited by applicable law, the Borrower irrevocably:

- (i) agrees that any suit, action, or other legal proceeding arising out of this Agreement or the Loan must be brought in the courts of record of Monroe County, Indiana or the courts of the United States located in the Southern District of Indiana;
- (ii) consents and waives any objection to the jurisdiction of each such court in any such action or proceeding; and,

**8.2. Rights and Remedies Cumulative.** No right or remedy of the CITY in this Agreement is intended to be exclusive of any other right or remedy and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given under this Agreement or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy under this Agreement, shall not prevent the concurrent assertion or employment of any other right or remedy.

**8.3. Delay or Omission Not Waiver.** No delay or failure by the CITY to exercise any right or remedy upon any Event of Default shall impair any right or remedy or constitute a waiver of any Event of Default. Every right and remedy of the CITY under this Agreement or any law may be exercised in the CITY's sole discretion.

**8.4. Amendments.** No amendment, modification, termination, or waiver of any provision of this Agreement or of the Note nor consent to any departure by the Borrower from such shall be effective unless given in a written notice to the Borrower by the CITY.

**8.5. Addresses for Notices.** All notices and other communications provided for hereunder (other than by telephone as permitted under the terms of this Agreement, which shall be effective when received verbally) shall be in writing (including electronic communication) and mailed or delivered to the applicable party at the addresses indicated below:

If to Borrower:

With a Copy To:

If to CITY: City of Bloomington Legal Department  
ATTN: Larry Allen  
P.O. Box 100  
401 North Morton Street  
Bloomington, Indiana 47402  
EMAIL:

or, at such other address as provided in a written notice to the other party in accordance with the terms of this section. Any change in address shall be reported to the other party in writing within three (3) days of such a change.

- 8.6. Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of the Borrower and the CITY and their respective successors and assigns, except that the Borrower may not assign its rights or interests hereunder without the prior written consent of the CITY. The CITY shall notify the Borrower within thirty (30) days of any assignment of this Agreement. This Agreement and all covenants, representations and warranties made herein or in any of the Financing Documents, and this Section, shall survive the making of the Loan, and the execution/delivery of the Financing Documents and shall continue in effect so long as any amounts payable under the Financing Documents or any other Indebtedness of the Borrower to the CITY remain unpaid.
- 8.7. Governing Law.** This Agreement and the Note shall be governed by and construed in accordance with the laws of the State of Indiana.
- 8.8. Severability of Provisions.** Any provision of this Agreement which is deemed prohibited or unenforceable will be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions.
- 8.9. Headings.** Article and Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
- 8.10. Waiver of Right to Trial by Jury.** Unless the parties agree otherwise in writing, each party hereby waives any right to trial by jury in the event of any dispute between the Borrower and the CITY with respect to this Agreement, the Financing Documents, the Security Documents or any of the transactions contemplated thereby.
- 8.11. Indemnification.** Borrower agrees to indemnify and hold the CITY and all its officers, agents and employees harmless against any and all claims, actions, damages, liability, and expenses, of whatever nature or kind, including reasonable attorneys' fees and court costs ("Claims"), which may arise from this Agreement or the Financing Documents or that may occur as a result of acts or omissions of the CITY's officers, agents and employees in the performance of this

Agreement, whether such Claims would be brought by Borrower or a third party.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date first above written.

[BORROWER]

By: \_\_\_\_\_  
Printed Name and Title

CITY OF BLOOMINGTON

By: \_\_\_\_\_  
Printed Name and Title

Exhibit A  
List of Debts

Exhibit B  
Release of Funds Authorization

Exhibit C  
Promissory Note

[Intentionally Left Blank]

**REHABILITATION LOAN**  
**PROMISSORY NOTE**

**Borrower:** \_\_\_\_\_

**Address:** \_\_\_\_\_

Bloomington, IN 4740\_

**Loan Amount: \$** \_\_\_\_\_

**Date:** \_\_\_\_\_

1. FOR VALUE RECEIVED AND HEREBY ACKNOWLEDGED, \_\_\_\_\_, an Indiana \_\_\_\_\_ (“Borrower”), hereby promises to pay to the order of the City of Bloomington, Indiana, or its successors, the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (“Principal”), and to pay interest on the principal amount of the Promissory Note at the rate of \_\_\_\_\_ percent (\_\_\_%) except as provided herein.
2. This Promissory Note (“Note”) is given to secure repayment of a loan under the Bloomington Rapid Response Loan Program.
3. Principal on this Note shall become payable on the first day of each month in 30 monthly installments, commencing with a payment of \$ \_\_\_\_\_ on \_\_\_\_\_, and \$ \_\_\_\_\_ on the first day of each month for the next 30 months, with a final payment of \$ \_\_\_\_\_ on \_\_\_\_\_. All payments are due and payable in lawful money of the United States at the Bloomington Urban Enterprise Association, P.O. Box 100, Bloomington, Indiana 47402. Checks should be made payable to: **Bloomington Urban Enterprise Association**
4. The Principal on this Note is payable in full within thirty (30) days upon the sale or other transfer of any kind of the Property, in lawful money of the United States at the Bloomington Urban Enterprise Association, P.O. Box 100, Bloomington, Indiana 47402, or at such other places as shall be designated by the Board of Directors. If the Borrower vacates the Property the Principle is due in full within (30) days.
5. This Note is secured by a personal guarantee from Borrower’s \_\_\_\_\_ (Title) \_\_\_\_\_ (Name), in substantially the form attached to this Promissory Note as Exhibit 1
6. In the event Borrower shall fail to pay the Principal and interest of this Note when due and payable, and if such failure be subsisting on the fifteenth (15<sup>th</sup>) day of the month when due, the unpaid Principal of this Note and any late charges, shall become due and payable, at the option of the Bloomington Urban Enterprise Association, without notice to the Borrowers. Failure of the Bloomington Urban Enterprise Association to exercise such option shall not constitute a waiver of any such default. If the Principal and interest of this Note is not paid by the fifteenth (15<sup>th</sup>) day of the month when due, Borrower shall pay to the Bloomington Urban Enterprise Association a late charge of five percent (5%) per calendar month, or fraction thereof, on the amount past due and



remaining unpaid. If this Note be reduced to judgment, such judgment shall bear the statutory interest rate on judgments.

- 7. If suit is instituted by or on behalf of the Bloomington Urban Enterprise Association, to recover on this Note, Borrower agrees to pay all costs of such collection including reasonable attorneys' fees and court costs.
- 8. Demand, protest and notice of demand and protest are hereby waived, and Borrower hereby waives, to the extent authorized by law, any and all homestead and other exemption rights which otherwise would apply to the debt evidenced by this Note.
- 9. The undersigned person executing this Note on behalf of Borrower represents and certifies that he has been fully empowered by proper resolution or designation to execute and deliver this Note; that Borrower is a corporation in good standing in the State of Indiana; that Borrower has full authority to execute this Note; and that all necessary corporate action for the making of this Note has been duly taken.

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name, Title

STATE OF INDIANA        )  
  )SS:  
COUNTY OF MONROE    )

Before me, a Notary Public in and for said county and state, personally appeared Michael Cassady, President of Michael's Uptown Café, Inc., who acknowledged the execution of this Promissory Note to be his voluntary act and deed.

Witness my hand and Notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2011.

My commission expires:

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Resident of Monroe County

\_\_\_\_\_  
Printed Name

This instrument prepared by Larry D. Allen, Attorney at Law, P. O. Box 100, Bloomington, IN 47402.

EXHIBIT A

**GUARANTY**

This Guaranty ("**Guaranty**"), dated as of this \_\_\_\_ day of \_\_\_\_\_, 2020, is made by {NAME OF GUARANTOR} (the "**Guarantor**"), an individual who resides at {STREET ADDRESS}, {CITY}, Select State {ZIP CODE}, in favor and for the benefit of City of Bloomington an Indiana (the "**Lender**").

**Guaranty.** In consideration of the substantial direct and indirect benefits derived by the Guarantor from the loans and other extensions of credit made by the Lender to {NAME OF BORROWER} an Indiana {type of entity} with a business address located at {STREET ADDRESS}, {CITY}, Select State {ZIP CODE} (the "**Borrower**") under the Loan Agreement, dated as of {DATE OF LOAN AGREEMENT}, by and between the Lender[ and the Borrower][, the Borrower, and {NAMES OF ADDITIONAL PARTIES}] (the "**Loan Agreement**"), the parties hereby agree as follows:

The Guarantor absolutely, unconditionally and irrevocably guarantees, as primary obligor and not merely as surety, the punctual payment, when due, whether at stated maturity, by acceleration or otherwise, of all present and future obligations, liabilities, covenants and agreements required to be observed, performed, or paid by the Borrower whether for principal, interest (including interest accrued after the commencement of any insolvency, bankruptcy or reorganization of the Borrower), costs, expenses and fees and agrees to pay any and all reasonable costs, fees and expenses incurred by the Lender in any way related to the enforcement or protection of the Lender's rights hereunder (collectively, the "**Obligations**").

Notwithstanding any provision herein contained to the contrary, the Guarantor's liability with respect to the Obligations shall be limited to an amount not to exceed, as of any date of determination, the amount that could be claimed by the Lender from the Guarantor without rendering such claim voidable or avoidable under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law.

**Guaranty of Payment Absolute and Unconditional; Waivers.** This Guaranty is a guaranty of payment and is absolute. The Guarantor agrees that the Lender need not attempt to collect any Obligations from the Borrower to enforce the obligations hereunder.

The Guarantor guarantees that the Obligations will be paid strictly in accordance with the terms of the Loan Agreement and Promissory Note, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Lender with respect thereto. The obligations of the Guarantor under this Guaranty are independent of the Obligations, and a separate action or actions may be brought and prosecuted against the Borrower or any other guarantors, or the Borrower or any other guarantor may be joined in any such action or actions. The liability of the Guarantor under this Guaranty constitutes a primary obligation and not a contract of surety, and to the extent permitted by law, shall be irrevocable, continuing, absolute and unconditional.

The Guarantor hereby irrevocably waives any defenses it may now or hereafter have in any way relating to any or all of the following:

Any lack of validity or enforceability of the Obligations or any agreement or instrument relating thereto.

Any change in the time, manner or place of payment of, or in any other term of any of the Obligations, or any other amendment or waiver of, or any consent to depart from, the agreements entered into by the parties, including, without limitation, any increase in the Obligations resulting from the extension of additional credit to the Borrower or otherwise.

Any taking, exchange, release, subordination or non-perfection of any Collateral, or any taking, release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Obligations.

Promptness, diligence, notice of acceptance and any other notice with respect to any of the Obligations and this Guaranty and any requirement that the Lender exhausts any right or take any action against the Borrower or any other person or entity or any Collateral. The Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated herein and that the waiver set forth in this Section 2.4 is knowingly made in contemplation of such benefits.

The Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guaranty and acknowledges that this Guaranty is continuing in nature and applies to all presently existing and future Obligations.

Any other circumstance (including, without limitation, any statute of limitations) or manner of administering the Obligations or any existence of or reliance on any representation by the Lender that might vary the risk of the Guarantor or otherwise operate as a defense available to, or a legal or equitable discharge of, the Borrower or any other guarantor or surety.

**Reinstatement.** This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the Lender or any other entity upon the insolvency, bankruptcy or reorganization of the Borrower or otherwise (and whether as a result of any demand, settlement, litigation or otherwise), all as though such payment had not been made.

**Subrogation.** The Guarantor will not exercise any rights that he may now or hereafter acquire against the Borrower or other guarantors (if any) that arise from the existence, payment, performance or enforcement of such Guarantor's obligations under this Guaranty, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from the Borrower or any other guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until all of the Obligations and all other amounts payable under this Guaranty shall have been indefeasibly paid in full.

**Subordination.** The Guarantor hereby subordinates any and all obligations owed to the Guarantor by the Borrower (the "**Subordinated Obligations**") to the Obligations to the extent that the Obligations (including post-petition interest) are paid in full in any proceeding under the Bankruptcy Code or similar debtor relief laws or upon any default or event of default to the Lender before the Guarantor receives any payment on account of the Subordinated Obligations.

The Guarantor may receive regularly scheduled payments of principal and interest on the Subordinated Obligations from the Borrower, but shall not accept, demand or take any action to collect any payment on the Subordinated Obligations during the continuance of a default or event of default without the prior written consent of the Lender.

Any sum paid to the Guarantor in violation of this Section 5 shall be held in trust for the benefit of the Lender, segregated from other funds of the Guarantor, and promptly paid or delivered to the Lender in the same form as so received to be credited against the Obligations.

**Representations and Warranties.** The Guarantor represents and warrants as to itself that all representations and warranties relating to it contained in the Loan Agreement are true and correct. The Guarantor further represents and warrants that (a) there are no conditions precedent to the effectiveness of this Guaranty that have not been satisfied or waived and (b) the Guarantor has, independently and without reliance upon the Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Guaranty, and has established adequate procedures for continually obtaining information pertaining to, and is now and at all times will be completely familiar with, the business, condition (financial or otherwise), operations, performance, properties and prospects of the Borrower.

**Covenants.** The Guarantor covenants and agrees that, until such time as the Obligations shall have been paid in full, the Guarantor will:

Furnish or cause to be furnished to the Lender upon request: (a) copies of all income tax returns of the Guarantor and any requests for extensions of filing deadlines, within thirty (30) days of the filing of such returns or requests for extensions and (b) such other financial and other information related to the Guarantor as the Lender may from time to time request.

**Miscellaneous.** The Parties further agree as follows:

**Expenses.** The Guarantor shall pay to the Lender, on demand, the amount of any and all reasonable expenses, including, without limitation, attorneys' fees, legal expenses and brokers' fees, which the Lender may incur in connection with exercise or enforcement of any the rights, remedies or powers of the Lender hereunder or with respect to any or all of the Obligations.

**Waivers, Amendments, Remedies.** No course of dealing by the Lender and no failure by the Lender to exercise, or delay by the Lender in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right, remedy or power of the Lender. No amendment, modification or waiver of any provision of this Guaranty and no consent to any departure by the Guarantor therefrom, shall, in any event, be effective unless contained in a writing signed by the Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. The rights, remedies and powers of the Lender, not only hereunder, but also under any instruments and agreements evidencing or securing the Obligations and under applicable law are cumulative, and may be exercised by the Lender from time to time in such order as the Lender may elect.

**Notices.** All notices or other communications given or made hereunder shall be in writing and shall be personally delivered or deemed delivered the first business day after being delivered by electronic means to the party to receive the same at its address set forth below or to such other address as either party shall hereafter give to the other by notice duly made under this Section:

{NAME OF GUARANTOR}  
{STREET ADDRESS}  
{CITY}, {STATE CODE} {ZIP CODE}

City of Bloomington Legal Dept.

ATTN: Larry Allen  
401 N. Morton St., Ste. 220  
Bloomington, IN 47404

**Term; Binding Effect.** This Guaranty shall (a) remain in full force and effect until payment and satisfaction in full of all of the Obligations; (b) be binding upon the Guarantor and its successors and permitted assigns; and (c) inure to the benefit of the Lender and its successors and assigns. Upon the payment in full of the Obligations (a) this Guaranty shall terminate and (b) the Lender will, upon the Guarantor's request and at the Guarantor's expense, execute and deliver to the Guarantor such documents as the Guarantor shall reasonably request to evidence such termination, all without any representation, warranty or recourse whatsoever.

**Satisfaction of Obligations.** For all purposes of this Guaranty, the payment in full of the Obligations shall be conclusively deemed to have occurred when the Obligations shall have been indefeasibly paid.

**Counterparties, Execution.** This Guaranty may be executed in any number of counterparts and by the different signatories hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument. This Guaranty may be executed by facsimile signature and delivered by facsimile transmission.

**Governing Law.** This Guaranty and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Guaranty and the transactions contemplated hereby shall be governed by, and construed in accordance with, the laws of the State of Indiana.

**Submission to Jurisdiction.** The Guarantor irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever, whether in law or equity, or whether in contract or tort or otherwise, against the Lender, in any way relating to this Guaranty or the transactions contemplated hereby, in any forum other than the courts of the State of Indiana sitting in Monroe County, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees that any such action, litigation or proceeding may be brought in any such Indiana State court or, to the fullest extent permitted by applicable law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing herein or in the Loan Agreement shall affect any right that the Lender may otherwise have to bring any action or proceeding relating to this Guaranty against the Guarantor or its properties in the courts of any jurisdiction.

**Waiver of Venue.** The Guarantor irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court referred to in Section 8.8. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

**Service of Process.** Each party hereto irrevocably consents to the service of process in the manner provided for notices in Section 8.3 and agrees that nothing herein will affect the right of any party hereto to serve process in any other manner permitted by applicable law.

Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY RELATING TO THIS GUARANTY OR THE LOAN AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY. EACH PARTY HERETO (A) CERTIFIES THAT NO AGENT, ATTORNEY, REPRESENTATIVE OR ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF LITIGATION, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS GUARANTY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Guaranty as of the date first above written.

**GUARANTOR**

By: \_\_\_\_\_

Name:

ACCEPTED AND AGREED TO:

**CITY OF BLOOMINGTON**

By: \_\_\_\_\_

Name: Alex Crowley

Title: Director, Economic and Sustainable Development