

**Personal Loan Guaranty of the Payment of
A Sarasota County Government
Small Business Resiliency Loan Agreement
and Promissory Note**

THIS PERSONAL LOAN GUARANTY OF THE PAYMENT OF A SMALL BUSINESS RESILIENCY LOAN AGREEMENT AND PROMISSORY NOTE (referred to hereafter as the “Guaranty” or “Agreement”) is entered into between the SARASOTA COUNTY (the "County"), and [name of each guarantor] _____ (the “GUARANTOR(S)”), each individual jointly and severally with other named Guarantors. The County and Guarantors shall be referred jointly to as the “Parties.”

RECITALS

A. The Novel Coronavirus Disease (COVID-19) has created a public health emergency resulting declarations of emergencies under the respective authorities of the President of the United States, the Governor of the State of Florida, and the Sarasota County Administrator.

B. In addition to the respective declarations of emergency described above, the Governor of the State of Florida has issued Executive Orders 20-91 in response to the COVID-19 public health emergency that limits the movement of persons outside of their homes to movements necessary to provide or receive essential services and to conduct essential activities as defined in the order.

C. The COVID-19 public health emergency and the necessary health mitigation measures imposed have impacted the local economy of Sarasota County with a particularly significant impact upon small businesses.

D. In order to minimize the impacts to the local economy and to promote the public welfare, the Board of County Commissioners of Sarasota County has created a Small Business Assistance Program that provides for issuance of resiliency loans to qualifying small business in Sarasota County upon certain terms, as more particularly set forth below.

E. _____, as Borrower, has applied for a Sarasota County Small Business Resiliency Loan and is contemporaneously entering into a Small Business Resiliency Loan and Promissory Note in favor of the County (“Loan and Note”) that provides the terms for the repayment of the Loan and other obligations on the part of Borrower.

F. Guarantor(s) are the individual owners of Borrower and they each individually accept the joint and several obligation to timely repay the loan issued to Borrower in accordance with the terms of the Loan and Note made by Borrower to the County.

NOW, THEREFORE, for good and valuable consideration, the mutual receipt and sufficiency of which are hereby acknowledged, the County and Guarantor(s) agrees as follows:

1. **Recitals**. The above recitals are true and corrected and incorporated herein.

2. **Loan Guaranty.** The Guarantor(s) hereby unconditionally and irrevocably guarantees to County the due and punctual payment in full (and not merely the collectability) of all Loan Payments required to be made to County under the Loan and Note with Borrower with is hereby incorporated by reference. As Guarantor(s) are the owners of Borrower, Guarantor(s) hereby acknowledge and agree that they are each fully aware of the terms and conditions of the Loan and Note.

3. **Guaranty Unconditional.** The Guarantor(s) expressly agrees that the County may, in its sole and absolute discretion, without in any way releasing, affecting or impairing the obligations and liabilities of the Guarantor(s) hereunder: (a) waive compliance with, or any defaults under, or grant any other indulgences with respect to the Loan and Note; (b) modify, amend, change or terminate any provisions of any of the Loan and Note; (c) effect any release, subordination, compromise or settlement in connection with the Loan and Note; (d) assign or otherwise transfer the County interests in the Loan and Note and/or this Guaranty; and (f) deal in all respects with the Borrower as if this Guaranty were not in effect. The obligations of the Guarantor(s) under this Guaranty shall be unconditional, irrespective of the genuineness, validity, regularity or enforceability of the Loan and Note, or any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor. The County shall endeavor to deliver written notices of default to Guarantor(s) of any matters under the Loan Agreement and Note giving rise to a claim hereunder; provided, however, that the failure to deliver any such notice to Guarantor(s) shall not limit or impair any rights or remedies of the County in any way hereunder.

4. **Guaranty Primary.** The obligations and liability of the Guarantor(s) under this Guaranty shall be joint and several, primary, direct and immediate, subject to the notice and cure provisions set forth herein and in the Loan and Note; shall not be conditional or contingent upon pursuit by the County of any remedies it may have against the Borrower with respect to the Loan and Note, whether pursuant to the terms thereof or by law; and shall not be subject to any counterclaim, recoupment, set-off, reduction or defense based upon any claim that the Guarantor(s) may have against the County. Without limiting the generality of the foregoing, the County shall not be required to make any demand on the Borrower, or to otherwise pursue or exhaust its remedies against the Borrower, before, simultaneously with or after enforcing its rights and remedies hereunder against the Guarantor(s), subject to notice and cure provisions set forth in the applicable Loan and Note. Any one or more successive and/or concurrent actions may be brought hereon against the any or all of the Guarantor(s) either in the same action, if any, brought against the Borrower or in separate actions, as often as the County may deem advisable.

5. **Waivers by Guarantor.** The Guarantor(s) hereby unconditionally and irrevocably waives: (a) notice of acceptance of this Guaranty and of presentment, demand and protest; (b) notice of any default under this Guaranty; (c) subject to the notice and cure provisions set forth herein and in the Loan and Note, as the case may be, demand for observance, performance, or enforcement of any terms or provisions of this Guaranty and/or the Loan and Note; and (d) all other notices and demands otherwise required by law which the Guarantor(s) may each lawfully waive.

6. **Representations and Warranties.** The Guarantor hereby represents and warrants that:

A. the Guarantor(s) acknowledge and agree that this Guaranty is a material inducement to the County providing the Loan to Borrower and that without this Guaranty, Borrower would not receive a loan from the County; and

B. the Guarantor(s) each has full power and authority to enter this Guaranty and to comply with the provisions hereof.

C. this Guaranty constitutes a legal, valid and binding obligation of each Guarantor, enforceable against each Guarantor, jointly and severally, in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium, and other similar laws of general applicability relating to or affecting creditors' rights or general equity principles (regardless of whether considered at law or in equity).

D. Each Guarantor's execution of this Guaranty and compliance with the terms of this Guaranty will not result in a default by the Guarantor under the terms of any contract, bond, note, or financing arrangement to which each Guarantor(s) is a party.

E. All consents required to be obtained by the Guarantor from, and any notice or filing required to be given by Guarantor(s) to, or made by Guarantor(s) with, any person (including any governmental authority) in connection with the execution, delivery and performance by the Guarantor(s) of this Guaranty have respectively been obtained, given, and made by the Guarantor(s).

F. None of the Guarantor(s) are currently the subject of bankruptcy, insolvency, or reorganization proceedings and are not in default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Guaranty.

G. There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, before any court or public body, pending or, to the best of the Guarantor(s)' knowledge, threatened, which seeks to restrain or enjoin the Guarantor(s) from entering into or complying with this Guaranty.

H. All of each Guarantor's representations, pursuant to the Loan Application and this Guaranty, were and are true and accurate as of the date the Loan Application and this Guaranty were each executed by the Guarantor(s). Borrower's Loan Application is incorporated herein and hereby made a material part of this Guaranty. To the best of each Guarantor's knowledge, the financial information delivered by the Borrower to the Economic Development Corporation and/or the County was current and correct as of its date. Furthermore, to the best of each Guarantor's knowledge, since the date of such financial information, there has not been any material adverse change in the financial condition or revenues and expenditures of the Borrower. The Guarantor shall comply with all applicable State and Federal laws, rules, and regulations. To the extent that any assurance, representation, or covenant requires a future action, the Guarantor(s) shall take such action as is necessary for compliance.

7. **Reimbursement for Expenses.** If County must resort to any efforts other than a simple demand to collect payment from Guarantor(s), the Guarantors shall be responsible to reimburse County for such expenses associated with such collection efforts, including reasonable

attorneys' fees and cost. This obligation to reimburse the County shall also include the obligation that should the County prevail in any action or proceeding for the enforcement of this Guaranty, the Guarantor(s) shall reimburse the County promptly upon demand, for all expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees.

8. **Subordination; Subrogation.** If the Guarantor(s) shall advance any sums to the Borrower or if the Borrower shall hereafter become indebted to the Guarantor(s), such sums and payments or other financial obligations shall be subordinate in all respects to the amounts then or thereafter due and owing to the County under the Loan and Note.

9. **Prohibited Interest.** The Guarantor(s) each affirms and certifies that each Guarantor does not have any relationship with any the officials or employees of the County or the Economic Development Corporation of Sarasota County that would prohibit the County and Borrower from engaging in this transaction under any provision of Chapter 112, Florida Statutes, relating to conflicts of interest and prohibited transactions.

10. **Governing Law.** The provisions of this Guaranty shall be construed, interpreted and enforced in accordance with the laws of the State of Florida as the same may be in effect from time to time.

11. **WAIVER OF JURY TRIAL. THE GUARANTOR AND COUNTY HEREBY IRREVOCABLY, KNOWINGLY, WILLINGLY, VOLUNTARILY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH THE GUARANTOR AND THE COUNTY MAY BE PARTIES, ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS GUARANTY, THE LOAN AGREEMENT, OR THE PROMISSORY NOTE.**

12. **Voidable Preference; Fraudulent Conveyance.** If at any time any payment, or portion thereof, made by, or for the account of, the Guarantor(s) on account of any of the obligations and liabilities hereunder is set aside by any court or trustee having jurisdiction as a voidable preference or fraudulent conveyance or must otherwise be restored or returned by the County under any insolvency, bankruptcy or other federal and/or state laws or as a result of any dissolution, liquidation or reorganization of the Borrower or upon, or as a result of, the appointment of any receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any substantial part of its properties or assets, the Guarantor hereby agrees that this Guaranty shall continue and remain in full force and effect or be reinstated, as the case may be, all as though such payments) had not been made.

13. **Notices.** Notice, demand, request or other communication which either party may desire to give to the other with respect to this Guaranty, shall be deemed to have been properly given if in writing and delivered by hand, sent by overnight courier or mailed by certified mail, postage prepaid, addressed as follows:

If to the County: Sarasota County, Florida
 County Administrator
 1660 Ringling Boulevard, 2nd Floor
 Sarasota, Florida 34236

If to the Guarantor: [Name of Guarantor]

[Street Address of Guarantor]

[City, State, Zip]

Any of the parties hereto may designate a change of address by delivering notice in writing to the other parties. Whenever in this Guaranty the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person or persons entitled to receive such notice.

14. **Remedies.**

A. The County may institute litigation to recover actual damages incurred for any default or to obtain any other remedy at law or in equity (including but not limited to specific performance, permanent, preliminary or temporary injunctive relief, and any other kind of equitable remedy) consistent with the purposes of this Guaranty.

B. Litigation permitted by, arising under, or with respect to this Guaranty shall only be instituted in the Twelfth Judicial Circuit Court of Florida in Sarasota County. Guarantor and the County consent to the jurisdiction and venue of such courts for such permitted litigation. The County and Guarantor hereby irrevocably submit to the exclusive jurisdiction of such courts in any suit, action or proceeding permitted by, arising under, or with respect to this Guaranty.

C. Any failure of the County to exercise any right or remedy as provided in this Guaranty shall not be deemed a waiver of any claim for damages or future enforcement rights it may have.

15. **Remedies Cumulative.** All rights and remedies afforded to the County by reason of this Guaranty, the Loan and Note, or by law are separate and cumulative and the exercise of one shall not in any way limit or prejudice the exercise of any other such rights or remedies. Every right, power and remedy given by this Guaranty to the County shall be concurrent and may be pursued separately, successively or together against the Guarantor and each such right, power and remedy may be exercised from time to time as often as the County may deem expedient. No delay or omission by the County in exercising any such right or remedy shall operate as a waiver thereof. No waiver of any rights and remedies hereunder, and no modification or amendment hereof, shall be deemed made by the County unless in writing and duly signed by the Board of County Commissioners. Any such written waiver shall apply only to the particular instance specified therein and shall not impair the further exercise of such right or remedy or of any other right or remedy of the County and no single or partial exercise of any right or remedy hereunder shall preclude any other or further exercise thereof or any other right or remedy.

16. **Severability.** If any provision (or any part of any provision) contained in this Guaranty shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision (or remaining part of the affected provision) of this Guaranty, but this Guaranty shall be construed as if such invalid,

illegal or unenforceable provision (or part thereof) had never been contained herein but only to the extent it is invalid, illegal or unenforceable.

17. **Successors and Assigns.** Guarantor may not assign its rights, interests, or obligations hereunder to any other Person without the prior written consent of the County. Any attempted assignment in violation of this section shall be null and void. Any permitted assignee shall sign any documents reasonably requested by the County to ratify its obligations under this Guaranty.

18. **Entire Agreement.** This Guaranty along with the Loan and Note, constitutes the sole and entire agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous negotiations, proposals, undertakings, understandings, agreements, representations and warranties, both written and oral, among the Guarantor and the County with respect to such subject matter. This Guaranty may only be amended in writing signed by both parties.

19. **No Third-Party Beneficiaries.** This Guaranty is not intended to, and does not, confer any rights or cause of action to any person not a named party to this Agreement.

20. **Counterparts.** This Guaranty may be executed in counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

21. **Right to Counsel & No Presumption Against Drafting Party.** The Guarantor hereby acknowledges that it is entering into this Guaranty freely, knowingly and voluntarily. Guarantor also acknowledges that it has been provided the opportunity to have counsel of its own choice review the terms hereof and explain such terms to Guarantor. Accordingly, any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Guaranty.

22. **Headings.** The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the interpretation of this Guaranty.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the County and Guarantor(s), in their individual capacities, have each executed this Guaranty on the date of signature indicated below.

Guarantor:

[signature]

[printed name]

The foregoing Guaranty was acknowledged before me by means of physical presence or online notarization before me this ____ day of _____, 2020, by _____, GUARANTOR. They are personally known to me or have produced _____ as identification and **(did/did not)** take as oath.

(SEAL)

Notary Public: _____

Print Name: _____

Commission No.: _____

Expiration Date: _____

Sarasota County:

BY: _____

*County Administrator pursuant to
delegation from the Board of County
Commissioners made on April 22, 2020*

DATE: _____