Sarasota County Government
Small Business Resiliency Loan Agreement
and Promissory Note

THIS SMALL BUSINESS RESILIENCY LOAN AGREEMENT AND PROMISSORY NOTE (referred to hereafter as the “Loan and Note” or “Agreement”) is entered into between the SARASOTA COUNTY (the “County”), and _________________________ (the “Borrower”). The County and Borrower 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. The Borrower has submitted an application through the Economic Development Corporation of Sarasota County for a Sarasota County Small Business Resiliency Loan (“Loan Application”) that includes a completed U.S. Small Business Administration (“the SBA”) loan application for the Paycheck Protection Program (the “PPP”) as well as a Sarasota County application form. All requirements of the PPP loans are hereby applied to this loan, except where the County requirements directly conflict with the PPP requirements, in which case the County requirements shall control.

NOW THEREFORE, in consideration of the County making the loan to the Borrower, in the principal amount and pursuant to the covenants expressed in this Loan and Note, which include but are not limited to the full and timely repayment of the Loan, and otherwise intending to be legally bound by this Loan and Note, the County and the Borrower agree as follows:

ARTICLE I.

WARRANTIES, REPRESENTATIONS, AND COVENANTS OF THE BORROWER.

The Borrower hereby warrants, represents, and covenants that:
(1) The above recitals are true and corrected and incorporated herein.

(2) The Borrower is duly organized, validly existing, and in good standing under the laws of the State of Florida. Furthermore, Borrower has continuously maintained any active business location in Sarasota County since February 15, 2017.

(3) The Borrower has full power and authority to enter this Loan and Note and to comply with the provisions hereof.

(4) This Loan and Note has been duly authorized, executed, accepted and delivered by the Borrower and each constitutes a valid and legally binding obligation of the Borrower, enforceable against the Borrower in accordance with the terms thereof.

(5) The Borrower’s execution of this Loan and Note as well as Borrower’s compliance with the terms hereof will not result in a default by the Borrower under the terms of any contract, bond, note, or financing arrangement to which the Borrower is a party.

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

(7) The Borrower currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is 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 the Loan and Note.

(8) 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 Borrower’s knowledge, threatened, which seeks to restrain or enjoin the Borrower from entering into or complying with this Loan and Note.

(9) All of Borrower representations, pursuant to the Loan Application and this Loan and Note, were and are true and accurate as of the date the Loan Application and this Loan and Note were each executed by the Borrower. Borrower’s Loan Application is incorporated herein and hereby made a material part of this Loan and Note. The financial information delivered by the Borrower to the County was current and correct as of its date. 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 Borrower 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 Borrower shall take such action as is necessary for compliance.

(10) The Borrower shall adhere to generally accepted accounting principles. As part of its bookkeeping system, the Borrower shall keep accurate records of the receipt and use of the Loan Proceeds and all revenues received following the execution of this Agreement.

(11) This Loan is being provided so that Borrower can maintain business operations in Sarasota County. Accordingly, Borrower covenants that the funds that will only be used for the
following Authorized Uses that have been incurred in the operation of the business in Sarasota County beginning on February 15, 2020:

a. to fund payroll for employees working in Sarasota County,

b. to pay for utility service (phone, cable, electric, water, sewerage, garbage, and internet service) used for business operations in Sarasota County,

c. to pay rent and/or mortgages on active business locations within Sarasota County,

d. to pay for marketing of the business operations in Sarasota County,

e. to pay for insurance to cover the business operations in Sarasota County, and

f. to pay for the cost of acquiring goods (materials or inventory) needed for business operations in Sarasota County.

(12) The Borrower acknowledges and agrees that Borrower shall solely be responsible for all tax obligations that may arise from this Loan and Note, including but not limited to Florida documentary stamp taxes. Since this agreement will not be recorded in the Official Records of Sarasota County, Borrower agrees to timely pay the documentary stamp taxes due based on the amount of the Loan directly to the Florida Department of Revenue (“FDOR”) in accordance with Chapter 201, Florida Statutes and all applicable rules of “FDOR”. Additionally, Borrower shall send a copy of the proof of such payment to the County within five (5) days receipt from FDOR. Borrower expressly acknowledges that the failure to timely pay the documentary stamp tax obligation will constitute a breach of this Loan and Note. Borrower further acknowledges and agrees that the failure to pay the documentary stamp taxes will in no way affect the enforceability of this Loan and Note against Borrower.

(13) The Borrower shall provide monthly reports to the County certifying and demonstrating the Authorized Use(s) of the loan proceeds. The monthly reports shall account for the cumulative use(s) of the loan proceeds. If Borrower does not use any loan proceeds during any period of the time covered by a monthly report, then Borrower shall certify that they have not used any loan proceeds during such period to the County. The monthly reports certifying and demonstrating the Authorized Use(s) of the loan proceeds will begin with a first report covering the time from loan disbursement through and including June 30, 2020 with such report due to the County no later than July 15, 2020. All subsequent monthly reports will be made by the 15th day of the month and shall cover the authorized use(s) of the loan proceeds through the end of the preceding month. The monthly reports shall continue to be made until the full amount of the loan proceeds are expended. All monthly reports shall demonstrate the specific authorized use(s) of the loan proceeds and shall be supported by itemized documentation (account statements, invoices, receipts, cancelled checks or bank statements) that correspond to specific authorized use(s) evidencing in proper detail the nature and propriety of the charges paid. Should the County or its designee have any questions or seek additional information about the use of Loan Proceeds, Borrower agrees to provide such additional answers and/or information within ten (10) business days of a request from County or designee.
(14) The Borrower reasonably anticipates that the Borrower will be able to return to business operations and to pay all Loan Payments when due. In the event Borrower discovers that Borrower will not be able to make the Loan Payments when due, the Borrower shall immediately notify the County. Nothing in the foregoing sentence shall be read to relieve Borrower of the obligation to timely make each loan payment required under this Loan and Note.

ARTICLE II

PROMISSORY NOTE & DETAILS OF FINANCING

(1) PROMISSORY NOTE

In return for the Loan from County, Borrower promises to pay to the order of the County the Principal Loan amount of _______________________ Dollars, along with interest imposed below on the unpaid balance, and all other amounts required by this Note. The principal amount of the Loan (“Principal”) as of any date shall consist of the Loan Amount plus interest, if any, that has accrued and been added to the principal amount of the Loan, less the aggregate principal component of all Loan repayments made (including Loan Payments and any prepayments), all as of such date.

(2) DISBURSEMENT

The proceeds from the Loan will be provided to Borrower in a single disbursement made by check made payable to the Borrower (“Disbursement”).

(3) INTEREST RATE.

Provided Borrower does not default on any of the obligations of this Loan and Note, interest will not begin to accrue on the Principal amount of the loan until May 15, 2021. Beginning on May 15, 2021 and continuing thereafter, interest shall accrue on the Principal amount of the Loan at three and one-half percent (3.5%) per annum, compounded monthly.

(4) LOAN PAYMENTS.

Provided Borrower does not default on any of the obligations of this Loan and Note, then Borrower shall not be required to make any payments until June 15, 2021. Beginning on June 15, 2021 and continuing each month thereafter until the Loan is repaid in full, Borrower shall pay thirty-six (36) consecutive monthly installment payments in the amount of $ ___________ (“Required Monthly Payment”) to the County on or before the 15th day of each month without further notice or demand. Partial payments will not satisfy Borrower’s obligations to make a full and timely monthly payment. However, any partial Loan Payments by the Borrower shall be allocated first to interest and second to principal. All payments required under this Loan and Note shall be made by deliver of a check made payable to Sarasota County and delivered on or before the 1st day of each month to the following address:

Sarasota County Government
Attn: Government Relations
1660 Ringling Blvd., 2nd Floor
Sarasota, Florida 34236
The County reserves the right to reasonably alter how and where Borrower shall make the Required Monthly Payments under this Loan and Note. Borrower will be provided at least Thirty (30) days advance written notice of any change in the loan payment process.

Should the County find the Borrower in default on the obligations of this Loan and Note prior April 15, 2021, then County shall provide Borrower written notice of the default. Such notice may provide instructions on how to cure the default, if any. If Borrower fails to cure the default to the satisfaction of the County Administrator, then the default status shall continue and Borrower deemed shall be obligated to begin repaying the Loan, which will then be and remain subject to interest. Such payments following default on the 15th day of the month following receipt of the notice of default and continue making monthly installment payments in the amount noted above, without further notice or demand until, until the Loan Principal, interest, and late fees are paid in full.

(5) PARTIAL GRANT CONVERSION/LOAN FOREGIVENESS

Provided Borrower does not default on any of the obligations under this Loan Agreement and Borrower repays 80% of the Principal Loan Amount before June 1, 2021, then the outstanding 20% of the Loan shall be shall convert into a grant and the remainder of Borrower’s payment obligations shall be forgiven and Borrower’s obligations under this Loan Agreement shall be satisfied. The Borrower will be issued a IRS Form 1099 for the amount of the loan converted into a grant. If Borrower has any questions about the tax implications of the grant conversion/loan forgiveness, Borrower should consult with a tax professional.

(6) VOIDABLE PREFERENCE/FRAUDULENT CONVEYANCE.

If at any time any payment, or portion thereof, made by, or for the account of, the Borrower 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 Borrower hereby agrees that this Loan and Note 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.

ARTICLE III

A. DEFAULTS

Each of the following events is hereby declared an event of default:

(1) Failure to make any Loan Payment when it is due shall constitute a breach of this Loan and Note. Any payments not made in full and that remains outstanding for a period of ten (10) business days following the due date set forth in Article II above, will then be subject to a late
fee of Twenty-Nine dollars ($29.00). To cure a default due solely to Borrower’s failure to make a full and timely Required Monthly Payment, Borrower may, within Fifteen (15) days of the default, cure the default by making full payment of any amounts outstanding under the Loan and Note (including Principal, accrued interest and late fees).

(2) Should Borrower fail to timely cure the default described in the preceding paragraph, then Borrower shall continue in default and the interest rate applicable to the loan Principal shall adjust to 12% and the County shall have the option to accelerate the full outstanding amount of the loan including outstanding Principal, interest, and late fees. The County shall provide Borrower written notice of the acceleration of the full outstanding amount of loan and Borrower shall then immediately owe the County the full outstanding amount of the loan.

(3) Any warranty, representation or other statement by, or on behalf of, the Borrower contained in this Loan and Note or in the Loan Application, is determined to be false or misleading at the time it was made in any material respect.

(4) An order or decree is entered, with the acquiescence of the Borrower, appointing a receiver for any part of the Project; or if such order or decree, having been entered without the consent or acquiescence of the Borrower, shall not be vacated or discharged or stayed on appeal within 60 days after the entry thereof.

(5) Any proceeding is instituted, with the acquiescence of the Borrower, for the purpose of effecting a composition between the Borrower and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted.

(6) Any bankruptcy, insolvency or other similar proceeding is instituted by, or against, the Borrower under federal or state bankruptcy or insolvency law now or hereafter in effect and, if instituted against the Borrower, is not dismissed within 60 days after filing.

(7) Any other failure to comply with the material provisions of this Loan and Note or failure in the performance or observance of any of the covenants or actions required by this Loan and Note in any material respects (a "General Non-compliance Default"), if the failure is not cured to the reasonable satisfaction of the County within 15 days after notice of the occurrence of the General Non-compliance Default by the County to the Borrower. If the Borrower fails, within the time period provided in the previous sentence, to cure the General Non-compliance Default to the reasonable satisfaction of the County, then the Borrower shall be deemed to be in default of this Agreement as of the date of the General Non-compliance Default. An Event of Default defined in subsections (1) through (5) of this section shall not be considered a General Non-compliance Default.

B. REMEDIES

Upon any event of default, the County may pursue any available remedy at law or in equity, including but not limited to:

(1) By action or suit in equity, require the Borrower to account for all moneys received pursuant to this Loan and Note.
(2) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the County.

(3) By notifying financial market credit rating agencies and potential creditors of the event of default.

(4) By suing the Borrower for payment of amounts due, or becoming due, with interest on overdue payments together with all costs of collection, including attorneys’ fees.

C. REMEDIES NOT EXCLUSIVE; DELAY AND WAIVER.

No remedy conferred upon or reserved to the County is exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy. No delay or omission by the County to exercise any right or power accruing as a result of an event of default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised as often as may be deemed expedient. No waiver of any default under this Loan and Note shall extend to or affect any subsequent event of default, whether of the same or different provision of this Agreement, nor it shall impair any of the County’s other rights or remedies.

ARTICLE IV.

GENERAL PROVISIONS

A. NO PLEDGE OF CREDIT OR TAXING AUTHORITY

Nothing contained in this Loan and Note shall be construed as creating any obligation on the part of the County to pay any debts or obligations on the part of Borrower. Furthermore, no provision of this Loan and Note shall be construed as a pledge of the County’s credit in violation of Article VII, Section 10 of the Florida Constitution, nor as giving, lending, or using the taxing power or the credit of the County to aid any corporation, association, partnership or person.

B. TIMES IS OF THE ESSENCE

Time is of the essence in the performance of all obligations required under this Loan and Note.

C. DISCHARGE OF OBLIGATIONS

All payments required to be made under this Agreement shall be cumulative and any deficiencies in any month during which payments are due shall be added to the payments due in the succeeding month and continuing thereafter until fully paid. Loan Payments shall continue to be secured by this Loan and Note until all payments required shall be fully paid to the County. If at any time the Borrower has paid all amounts owed under this Loan and Note, this Loan and Note shall terminate.

D. PREPAYMENT.
Notwithstanding any other term of this agreement, the Borrower may prepay this Loan at any time without penalty but subject to inclusion of all outstanding amounts owed to the County under this Agreement.

E. ASSIGNMENTS.

The Borrower shall not assign its rights and obligations under this Agreement. Notwithstanding the foregoing, the County may assign its rights under this Loan and Note.

F. AMENDMENTS.

This Loan and Note may be amended, modified, or superseded only upon the written by a written agreement and signed agreement of the Parties.

G. SEVERABILITY.

If any provision of this Loan and Note shall be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Loan and Note will remain in full force and effect so long as that the original intent of the Parties can still be met. The County and the Borrower shall endeavor in good-faith negotiations to replace the invalid, illegal, or unenforceable provision with valid provisions the economic effect of which comes as close as possible as meeting original intent of the Parties as the nullified provision.

H. PROHIBITED INTERESTS.

The Borrower affirms and certifies that Borrow or any actual or equitable owner 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.

I. WHEN RIGHTS AND REMEDIES NOT WAIVED.

In no event shall the making by the County of the Disbursement of the loan constitute or be construed as a waiver by the County of any breach of covenant or any default which may then exist, and the making of such Disbursement by the County while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the County with respect to such breach or default.

J. BONUS OR COMMISSION.

By execution of this Loan and Note the Borrower represents that it has not paid and, also, agrees not to pay, any bonus or commission for the purpose of obtaining an approval of the application for the Loan established hereunder.

K. INDEMNITY.
The Borrower shall indemnify, defend, and hold harmless the County and all of its officers, agents, and employees from any claim, loss, damages, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Borrower, its agents, employees, contractors and/or subcontractors during the performance of the Agreement.

L. **NO THIRD-PARTY BENEFICIARY.**

This Agreement is solely for the benefit of the named parties hereto. Nothing in this Agreement shall be read or construed as creating any rights or cause of action in favor of any person or entity not a named party to this Agreement.

M. **NOTICES.**

Any notice, demand, request or other instrument which is required to be given under this Agreement in writing shall be delivered to the following addresses:

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

If to Borrower: [Borrower Legal Name]  
Attn: [Authorized Signatory of Borrower]  
[Borrower Street Address]  
[Borrower City, State, Zip]

Borrower and County may each change their respective designated address above by informing the other party of the replacement address by sending written notice to the other party at the last designated address.

N. **GOVERNING LAW.**

THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF FLORIDA.

O. **JURY TRIAL WAIVER.**

THE BORROWER AND THE COUNTY HEREBY IRREVOCABLY, KNOWINGLY, WILLINGLY, VOLUNTARILY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO, ARISING OUT OF, OR IN ANY WAY PERTAINING TO THIS LOAN AND NOTE.

P. **RIGHT TO COUNSEL & NO PRESUMPTION AGAINST DRAFTING PARTY.**

The Borrower hereby acknowledges that it is entering into this Loan and Note freely, knowingly, and voluntarily. Borrower 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 Borrower.
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 Loan and Note.

Q. **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.

R. **ENTIRE AGREEMENT.**

This Loan and Note including the Loan Application, which is incorporated herein by reference, sets forth the entire agreement between the Parties and incorporate and supersede all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the Parties hereto agree that there are no commitments, agreements or understandings concerning the subject matter of this Loan and Note that are not contained herein. Accordingly, it is agreed that no deviation from the terms of this Loan and Note shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed that no modification, amendment or alteration in the terms and conditions contained in this Loan and Note shall be effective unless contained in a written document executed by the parties hereto.

[SIGNATURE PAGES FOLLOW]
IN WITNESS WHEREOF, the County and Borrower have each executed this Loan and Note on the date of signature indicated below.

BORROWER:
[legal name of business entity]

By: _____________________

[signature]

____________________
[printed name]

The foregoing Loan Agreement was acknowledged before me by means of ☐ physical presence or ☐ online notarization before me this ___ day of __________, 2020, by ___________________, as ______________ on behalf of the [legal name of business entity] as Borrower. 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: _____________________