



RECORDING REQUESTED BY

Greater Indiana Title Company

2017 084940

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2017 DEC 14 AM 9:13

AND WHEN RECORDED MAIL TO

MICHAEL B. BROWN
RECORDER

NAME Regional Development Company

ADDRESS 1757 Thornapple Circle

CITY & STATE Valparaiso, IN 46385

Attn: Laura Tavitas

928-729-5005

Lowell Animal Hospital, Inc.

KEY NO. 45-19-23-253-001.000-008 (PARCEL 1)

KEY NO. 45-19-23-253-002.000-008 (PARCEL 2)

**Document is
THIRD PARTY LENDER AGREEMENT
NOT OFFICIAL!**

THIS THIRD PARTY LENDER AGREEMENT ("Agreement") is dated the 8th day of December, 2017, by and between First Merchants Bank, ("Third Party Lender") whose address is 707 Ridge Road, Munster, IN 46321 and Regional Development Company, ("CDC") whose address is 1757 Thornapple Circle, Valparaiso, IN 46385.

RECITALS

1. The Third Party Lender and CDC will provide separate loans to the Borrower and Operating Company, if any (collectively "Borrower"), according to the terms in the Authorization for Debenture Guarantee (SBA 504 Loan), as amended ("Authorization"). The Third Party Lender will provide term financing ("Third Party Loan"), and the CDC will provide a loan ("504 Loan") funded by a debenture issued by the CDC and guaranteed by the U.S. Small Business Administration ("SBA"), for purposes of financing the Project described in the Authorization, which involves the acquisition and/or improvement of the real and/or personal property described below, and in Exhibit A attached hereto and incorporated herein by reference ("Project Property"):

SBA Loan #: 928-729-5005

SBA Loan Name: Lowell Animal Hospital, Inc.

Borrower: Lowell Animal Hospital Real Estate, LLC

Co-Borrower and Operating Company: Lowell Animal Hospital, Inc.

Third Party Loan Amount: \$286,500.00

Term of Third Party Loan: 10 Years

If Real Property – Project Property Address:

Street address: 17645 Morse Street

City, State, Zip Code: Lowell, IN 46356

Legal description: **See attached Exhibit "A"**

If Personal Property: Describe property, including name of manufacturer, name of equipment, and applicable serial number(s) or other identifying numbers for property valued at \$5000 or more. All equipment, fixtures and furniture, whether now owned or later

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HOLD FOR GREATER INDIANA TITLE COMPANY

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acquired, wherever located.

2. The parties have required the Borrower to grant liens on the Project Property to secure the separate loans advanced by the parties ("Common Collateral"), and the lien of the CDC ("CDC Lien") will be junior and subordinate to the lien of the Third Party Lender ("Third Party Lender Lien"), unless Third Party Lender, CDC and SBA agree otherwise in writing.

TERMS AND
CONDITIONS

In consideration of the above, the mutual agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Amount of Third Party Loan.** The Third Party Lender represents that the Third Party Loan is fully advanced; does not exceed the amount stated in the Authorization; and, will not exceed the amount allowed by the Authorization, plus reasonable costs of collection, maintenance, and protection of the Third Party Lender Lien. Any amounts owed by Borrower to Lender in excess of the Third Party Lender Lien amount stated in the Authorization cannot be secured by a lien on the Common Collateral unless it is subordinate to the 504 Loan.
2. **Subordination of 504 Loan.** CDC agrees to make the 504 Loan to the Borrower, subject to SBA's approval, and accept a junior and subordinate lien position in the Common Collateral upon the conditions that Third Party Lender executes this Agreement and disburses the Third Party Loan according to the terms represented to CDC and SBA.
3. **Accurate Information.** The Third Party Lender warrants and represents that all information provided by the Third Party Lender to CDC, including, without limitation, all information regarding the Borrower's financial condition, is accurate to the best of its knowledge and that Third Party Lender has not withheld any material information. Third Party Lender acknowledges that for purpose of this transaction, CDC is acting on behalf of SBA, an agency in the United States Government, except that SBA accepts no liability or responsibility for any wrongful act or omission by CDC. Third Party Lender further acknowledges that any false statements to CDC can be considered false statements to the federal government under 18 U.S.C. §1001, and may subject the Third Party Lender to criminal penalties, and that CDC and SBA are relying upon the information submitted by the Third Party Lender.
4. **Waiver of Provision Not to Encumber Common Collateral.** Third Party Lender waives its rights to enforce, as against CDC and SBA, any provisions in its documents that prohibit Borrower from further encumbering the Common Collateral or which restrict Borrower's ability to assign its lease on, or rents, income or profits from, the Common Collateral.
5. **Compliance with 504 Loan Program Requirements.** Third Party Lender agrees that all documents evidencing the Third Party Loan and the Third Party Lender Lien will comply with the 504 Loan Program Requirements as established by SBA, including those identified in the following subparagraphs, and, in the event one or more of the provisions in such documents do not comply with these 504 Loan Program Requirements, Third Party Lender waives any right to enforce such provisions while the 504 Loan has any unpaid balance and agrees that it must act in a commercially reasonable manner with regard to any enforcement action.

a. **No Open-Ended Features and No Future Advances.** The Third Party Loan must not be open-ended. After completion of the Project, the Third Party Lender may not make future advances under the Third Party Loan except for reasonable costs of collection, maintenance, and protection of the Third Party Loan and Third Party Lender Lien.

b. **No Early Call or Demand Provisions.** Third Party Lender agrees that documents evidencing the Third Party Loan and the Third Party Lender Lien do not contain an early call feature or any provision which allows Third Party Lender to make demand under the Third Party Lender Loan other than when there is a material default under the terms of its Third Party Loan documents, which shall include, but not be limited to, failure to make timely payments on the Third Party Loan, failure to pay taxes when due or violation of any financial covenants which would cause a prudent lender to believe that the prospect of payment or performance of the Third Party Note is impaired.

c. **No Cross-Collateralization.** Third Party Lender agrees that the Common Collateral will only secure its Third Party Loan and the Common Collateral is not currently, and will not be used in the future, as security for any other financing provided by Third Party Lender to Borrower, that purports to be in a superior position to that of the CDC Lien, unless authorized in writing by CDC and SBA.

d. **No Cross-Default.** During the term of the 504 Loan, Third Party Lender will not exercise any cross-default, "deem at-risk," or any other provisions in documents evidencing the Third Party Loan or Third Party Lender Lien which allow Third Party Lender to make demand on the Third Party Loan prior to maturity unless the Third Party Loan is in material default.

e. **Maturity and Balloon Payments.** The Third Party Loan must have a term of at least 7 years (when the 504 loan is for a term of 10 years), or a term of at least 10 years (when the 504 loan is for 20 years). If the Third Party Lender has made more than one loan, then an overall loan maturity must be calculated, taking into account the amounts and maturities of each loan. Any balloon payment for the Third Party Loan must be clearly identified and disclosed to SBA and approved at application or subsequently approved by SBA.

f. **Reasonable Interest Rate.** The Third Party Loan has a reasonable interest rate which does not and will not exceed the maximum interest rate for Third Party Loans from commercial financial institutions as published periodically by SBA in the Federal Register and in effect as of the date of this Agreement.

6. **Marshaling of Assets.** If the Third Party Lender takes additional collateral as security for the Third Party Loan, in the case of liquidation, any proceeds received from such additional collateral, must be applied to the Third Party Lender's Loan prior to the proceeds from the liquidation of the Common Collateral held by the CDC/SBA and the Third Party Lender. If the additional collateral no longer exists at the time of liquidation, or has insufficient value to justify the cost of collection, then the Third Party Lender is not required to liquidate such collateral, provided the Third Party Lender notifies CDC/SBA.

7. Notice of Default under the Third Party Loan. Within thirty (30) days after the expiration of any cure period for any continuing material default of the Third Party Loan or Third Party Lender Lien, Third Party Lender must provide written notice (referencing SBA's loan number for the 504 Loan) of the default to CDC and SBA. At least sixty (60) days prior to any legal proceedings against or liquidation of the Common Collateral (not including sending a demand letter), Third Party Lender must provide SBA with written notice of its intent to do so.

8. Limitation on Default Interest Rate. Third Party Lender may not escalate the rate of interest upon default to a rate greater than the maximum rate published by SBA in the Federal Register. SBA will only pay the interest rate on the note in effect before the date of Borrower's default.

9. Subordination to 504 Loan and/or CDC Lien, of Amounts Attributable to Default Provisions.

a. The term "Default Charges" used in this paragraph includes, but is not limited to, prepayment penalties, late fees, other default charges, and escalated interest after default due under the Third Party Loan.

b. To the extent the Third Party Lender Lien secures any amounts attributable to Default Charges, which may exist in the Third Party Loan and Third Party Lender Lien, Third Party Lender Lien is and will be subordinate to the 504 Loan and the CDC Lien. This subordination applies only to CDC and SBA and their successors and assigns, and shall not inure to the benefit of Borrower or any guarantor of the Third Party Loan.

c. In the event of default under the Third Party Loan, CDC or SBA may bring the Third Party Loan current or may acquire the Third Party Loan secured by the Third Party Lender Lien. Third Party Lender agrees that in either of these circumstances, the amount to bring the Third Party Loan current or the purchase price of that loan will be net of all amounts attributable to the Default Charges so subordinated to the 504 Loan and the CDC Lien. Third Party Lender further agrees that if it receives from CDC or SBA any amounts attributable to such Default Charges, Third Party Lender holds such funds in trust for SBA and will remit such funds to SBA as soon as possible. In addition, Third Party Lender shall charge as against SBA only the interest rate on the Third Party Loan that was in effect before the date of Borrower's default. Should CDC or SBA not purchase the Third Party Loan but rather bring the Third Party Loan current, Default Charges on the Third Party Loan may remain due and owing from the Borrower.

d. The Third Party Lender agrees:

(1) If the Third Party Lender sells its Note (other than when liquidating the Third Party Loan), then the Third Party Lender must provide CDC/SBA, within fifteen (15) days of the sale, with written notice of the purchaser's name, address and telephone number and confirmation that the purchaser has received a copy of the executed Third Party Lender Agreement.

(2) If the Third Party Loan is in default and the Third Party Lender, as part of its liquidation strategy,

(i) proposes to sell its note, or

(ii) receives an offer from a third party, then the Third Party Lender must provide CDC/SBA with the option to purchase the note at the same price offered by the potential purchaser, net any Default Charges per paragraph 9(c). SBA will have forty- five (45) days from receipt of the notice from the Third Party Lender to exercise its option to purchase the note. If SBA does not exercise its option and the Third Party Lender sells its note, then the Third Party Lender must provide CDC/SBA, within fifteen (15) days of the sale, with written notice of the purchaser's name, address and telephone number, and must provide the purchaser with a copy of the executed Third Party Lender Agreement.

e. If the Third Party Lender sells or otherwise transfers its note to a third party, then any Default Charges, including, but not limited to, prepayment penalties, late fees, other Default Charges, and escalated interest after default due under the Third Party Loan must be subordinate to the amounts outstanding on the 504 Loan and/or CDC Lien.

f. If the Third Party Lender loan documents contain a swap component or hedging contract (hereinafter defined as "swap agreement"), all costs associated with this swap agreement, which may be termed swap fees, termination fees, default fees or other related fees, shall be subordinate to the amounts outstanding on the 504 Loan and/or CDC Lien.

10. **Liquidation.** In the event that either the Third Party Loan or the 504 Loan is declared in default, Third Party Lender and CDC and SBA agree to cooperate in liquidating and/or selling the Common Collateral. Third Party Lender agrees to (a) accept a U.S. Treasury check(s) in connection with any purchase of Third Party Lender's note or any foreclosure or liquidation bid by CDC or SBA; (b) to provide CDC and SBA with the loan payment status, loan payment history, and an itemized payoff statement of the Third Party Loan; (c) to provide CDC and SBA, at no charge (except for reasonable charges for photocopies) with copies of any appraisals, environmental investigations, or title examinations, or searches of the Collateral conducted by or for Third Party Lender; and (d) to provide any other information about Borrower or the Third Party Loan requested by CDC and SBA in writing.

11. **Waiver of Right to Indemnification by SBA or CDC.** If Third Party Lender's documents contain provisions granting Third Party Lender the right to indemnification by subsequent owners of the Project Property, then Third Party Lender waives its right to enforce such provisions against SBA or CDC in the event SBA or CDC acquires title to the Project Property through foreclosure of the CDC Lien, acceptance of a deed in lieu of foreclosure, or otherwise.

12. **Bank Regulatory Issues.** If Third Party Lender is regulated by one of the Federal functional regulators (Comptroller of the Currency, Federal Deposit Insurance Corporation, or National Credit Union Administration), Third Party Lender represents that it is subject to the Joint Final Rule on Customer Identification Programs (CIP) in 31 C.F.R. 103.121 and that it or its agent will perform with respect to the Borrower the specified requirements of its CIP.

13. No Implied Third Party Beneficiaries. To the extent there is a conflict between this Agreement and any provision in any agreement either Party may have with a third party, including but not limited to, Borrower, the terms and conditions in this Agreement shall supersede any such provision. The parties agree that SBA may enforce this agreement as a third party beneficiary, and further agree that this Agreement shall not grant any right, benefit, priority, or interest to any other third party, including but not limited to, Borrower and Guarantor(s).

14. Successors and Assigns. This Agreement will inure to the benefit of and bind the respective parties to this Agreement, and their successors and assigns, including any party acquiring the Third Party Loan and Third Party Lender Lien by sale, assignment, or other transfer from Third Party Lender. Third Party Lender agrees that CDC may assign this Agreement to SBA, and waives all rights to contest such assignment.

15. Federal Law. When SBA is the holder of the loan instruments evidencing the 504 Loan and any security for that loan (including but not limited to the CDC Lien on the Common Collateral), this Agreement and all such instruments will be construed in accordance with Federal law. CDC or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes, but by using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax, or liability. The Third Party Lender may not claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to the 504 Loan.

16. Termination: This document will be released and terminated upon the payment in full of either the Third Party Loan or the 504 loan and all costs related thereto.

17. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument.


18. Validity of Provisions. In the event that any provision of this Agreement is deemed invalid by a court of competent jurisdiction, all other provisions of this Agreement shall remain valid and enforceable.

19. Revision of this Agreement. Both Third Party Lender and CDC agree that this Agreement is a standard SBA Form, and, as such, neither party has authority to modify or delete any provision in this Agreement, or add any additional provisions, without prior written authorization from the SBA.

20. Authority to Execute Agreement. The persons signing below certify that they have been duly authorized to execute this Agreement on behalf of their respective party.

LENDER: First Merchants Bank

By:


Print Name & Title: Chris A. Chatfield, Vice
President – Business Banking

STATE OF Indiana)
) SS.
COUNTY OF Porter)

On 12/8/2017, before me, a Notary Public, personally appeared Erica Dombey, President and Scott Casbon, Secretary of Regional Development Company, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signatures on the instrument the persons, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

[SEAL]

My commission expires: 6/14/2024
My county of residence: Porter



For value received, the Regional Development Company hereby assigns, transfers, and conveys to the United States Small Business Administration all of the Regional Development Company's right, title and interest in the within guaranty.

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law." Laura Tavitas

This document was prepared by Laura Tavitas
c/o RDC, 1757 Thornapple Circle
Valparaiso, IN 46385

EXHIBIT "A"

PARCEL 1:

THE NORTH 100 FEET OF THE FOLLOWING DESCRIBED PARCEL OF LAND:
PART OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 33 NORTH, RANGE 9 WEST OF THE SECOND PRINCIPAL MERIDIAN IN LAKE COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS COMMENCING AT A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 23 AND 314.70 FEET NORTH OF THE SOUTHWEST CORNER THEREOF; THENCE NORTH 00 DEGREES 01 MINUTE 50 SECONDS EAST ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 23 A DISTANCE OF 481.30 FEET; THENCE SOUTH 88 DEGREES 43 MINUTES 00 SECONDS EAST AND PARALLEL TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 23 A DISTANCE OF 240.00 FEET TO THE CENTERLINE OF A PUBLIC DRAIN OR DITCH KNOWN AND COMMONLY CALLED THE MCCONNELL DITCH; THENCE SOUTH 14 DEGREES 15 MINUTES 23 SECONDS EAST ALONG THE CENTERLINE OF SAID DITCH A DISTANCE OF 525.16 FEET; THENCE NORTH 84 DEGREES 53 MINUTES 10 SECONDS WEST A DISTANCE OF 371 FEET MORE OR LESS TO THE POINT OF BEGINNING,

EXCEPTING THEREFROM THAT PORTION CONVEYED TO LAKE COUNTY, INDIANA BY DEED NO. 2010 066521 AND DESCRIBED AS FOLLOWS: A PART OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 33 NORTH, RANGE 9 WEST OF THE SECOND PRINCIPAL MERIDIAN IN CEDAR CREEK TOWNSHIP, LAKE COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS; COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION; THENCE ALONG THE WEST LINE OF SAID QUARTER SECTION SOUTH 00 DEGREES 36 MINUTES 10 SECONDS EAST 1867.31 FEET TO THE NORTHWEST CORNER OF LAND DESCRIBED IN DEED NO. 97026667; THENCE SOUTH 89 DEGREES 21 MINUTES 00 SECONDS EAST 20.00 FEET ALONG THE NORTH LINE OF SAID LAND TO THE EAST BOUNDARY LINE OF MORSE STREET AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING SOUTH 89 DEGREES 21 MINUTES 00 SECONDS EAST 89.01 FEET ALONG SAID NORTH LINE TO A POINT; THENCE SOUTH 84 DEGREES 26 MINUTES 57 SECONDS WEST 46.15 FEET TO A POINT; THENCE SOUTH 44 DEGREES 38 MINUTES 09 SECONDS WEST 49.86 FEET TO A POINT; THENCE SOUTH 08 DEGREES 02 MINUTES 41 SECONDS WEST 50.59 FEET TO THE EAST BOUNDARY LINE OF SAID MORSE STREET; THENCE ALONG SAID BOUNDARY LINE NORTH 00 DEGREES 36 MINUTES 10 SECONDS WEST 91.05 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

PART OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 23 TOWNSHIP 33 NORTH, RANGE 9 WEST OF THE SECOND PRINCIPAL MERIDIAN IN THE TOWN OF LOWELL, LAKE COUNTY INDIANA, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE WEST LINE OF SAID NORTHEAST 1/4 AND 581.17 FEET NORTH OF THE SOUTHWEST CORNER THEREOF; THENCE NORTH 00 DEGREES 01 MINUTES 50 SECONDS EAST, ALONG THE WEST LINE OF SAID NORTHEAST 1/4 A DISTANCE OF 114.81 FEET; THENCE SOUTH 88 DEGREES 43 MINUTES EAST, PARALLEL TO THE SOUTH LINE OF SAID NORTHEAST 1/4 A DISTANCE OF 265.62 FEET TO THE CENTER LINE OF A PUBLIC DRAIN OR DITCH KNOWN AND COMMONLY CALLED THE MCCONNELL DITCH; THENCE SOUTH 14 DEGREES 15 MINUTES 23 SECONDS EAST ALONG THE CENTER LINE OF SAID DITCH, A DISTANCE OF 113.84 FEET; THENCE NORTH 89 DEGREES 42 MINUTES 44 SECONDS WEST A DISTANCE OF 293.65 FEET, MORE OR LESS TO THE POINT OF BEGINNING, ALL IN LAKE COUNTY, INDIANA.

Property address: 17645 Morse Street, Lowell, IN 46356
Tax Number: 45-19-23-253-001.000-008

Property address: 17645 Morse Avenue, Lowell, IN 46356
Tax Number: 45-19-23-253-002.000-008