



W2934578

E# 2934578 PG 1 OF 10
Leann H. Kilts, WEBER COUNTY RECORDER
07-Aug-18 1052 AM FEE \$28.00 DEP TN
REC FOR: FIRST AMERICAN TITLE-NCS-SLC1
ELECTRONICALLY RECORDED

When recorded return to:
Utah Certified Development Company
5333 South Adams Ave., Suite B
Ogden, Utah 84405

File Name: The Wash Factory
Loan #: 94639250-04

FATCO NCS-851099



THIRD PARTY LENDER AGREEMENT

THIS THIRD PARTY LENDER AGREEMENT (Agreement) is dated this 6th day of August, 2018, by and between **Bank of American Fork, a Division of People's Intermountain Bank**, (Third Party Lender) whose address is 476 West Heritage Park Blvd, Layton, Utah 84041, and Utah Certified Development Company, (CDC) whose address is 5333 South Adams Ave, Suite B, Ogden, UT 84405.

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 #: 94639250-04
SBA Loan Name: The Wash Factory
Borrower: HSW Holdings 1 LLC
Operating Company (if any): JLCW, Inc., dba: The Wash Factory
Third Party Loan Amount: \$2,014,375.00
Term of Third Party Loan: 20 yrs

If Real Property -- Project Property Address

Street address: 4148 South Midland Drive, Roy, UT 84067

Attach Legal description as 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.

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 statement 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 right 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 reasonable costs of collection, maintenance, and protection of the Third Party Loan and Third Party Lender's lien,

b. No Early Call or Demand Provisions. Third Party Lender agrees that documents evidencing the Third Party Loan and the Third Party Lien do not contain any early call feature or any provisions 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 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 or 25 years). If the Third Party Lender had 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 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 proceeding against or liquidation of 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 Lien secures any amounts attributable to Default Charges, which may exist in the Third Party Loan and Third Party Lien, Third Party 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 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) purposes 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.

NA 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:

Bank of American Fork, a Division of People's Intermountain Bank

By:

Printed Name:

Title:

Dale Smith
Dale Smith
Vice President & Manager

ACKNOWLEDGEMENT

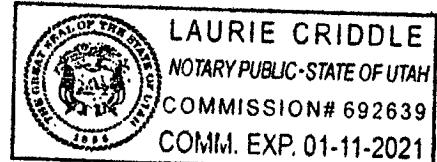
STATE OF Utah)

§

COUNTY OF Davis)

On this 6 day of August, 2018, personally appeared before me
Dale Smith, who being by me duly sworn, did say that He (fill in gender) is the
Vice President & Manager (fill in the title as stated under lender signature) of **Bank of American Fork, a Division of People's Intermountain Bank**, and that the foregoing instrument was signed in behalf of Bank of American Fork, a Division of People's Intermountain Bank with full authority.

Laurie Criddle
 NOTARY PUBLIC
 Residing at: Layton, Utah 84401



CERTIFIED DEVELOPMENT COMPANY (CDC):

Utah Certified Development Company

By:

Caryl A. Eriksson
Caryl A. Eriksson, Vice President

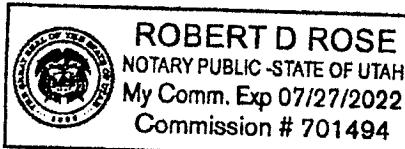
ASSIGNMENT TO SBA

Utah Certified Development Company hereby transfers, sets over and assigns unto U.S. Small Business Administration, an Agency of the United States, all of its right, title and interest in and to this Agreement.

ACKNOWLEDGEMENT

STATE OF UTAH)
§
COUNTY OF WEBER)

On this 3rd day of August, 2018, personally appeared before me, Caryl A. Eriksson, who being by me duly sworn, did say that she is the Vice President of **Utah Certified Development Company**, a Utah Corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of its Board of Directors.



Robert D. Rose
NOTARY PUBLIC
Residing at: Ogden, Utah

EXHIBIT "A"

Debtor and Trustor: **HSW Holdings 1 LLC**
 to assist, **JLCW , Inc.**
dba: The Wash Factory

**Secured Party and
 Beneficiary:** **Utah Certified Development Company and**
The U. S. Small Business Administration

Real Property Description

A PART OF THE NORTHEAST QUARTER OF SECTION 10 AND THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U. S. SURVEY: BEGINNING AT A POINT WHICH IS SOUTH 743.50 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 10 AND RUNNING THENCE SOUTH 89°55'30" EAST 91.0 FEET; THENCE SOUTH 330.00 FEET; THENCE NORTH 89°18' WEST 1331.02 FEET; THENCE NORTH 0°44'30" EAST 8.54 FEET; THENCE WEST 14.78 FEET; THENCE NORTH 115.00 FEET; THENCE NORTH 89°33' WEST 277.64 FEET TO THE EAST LINE OF MIDLAND DRIVE; THENCE NORTH 38°01' EAST 241.10 FEET ALONG SAID EAST LINE TO AN EXISTING FENCE; THENCE SOUTH 89°55'30" EAST 1383.73 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH A 16.5 FOOT RIGHT OF WAY DESCRIBED AS FOLLOWS: A 16.5 FOOT RIGHT OF WAY ACROSS A PART OF SECTION 10, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: SAID RIGHT OF WAY BEING 8.25 FEET ON EITHER SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: BEGINNING AT A POINT WHICH IS SOUTH 1072.37 FEET AND NORTH 89°18' WEST 1162.98 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 10; RUNNING THENCE NORTH 5°15' WEST 91.23 FEET, THENCE WESTERLY ALONG THE ARC OF 51.91 FOOT RADIUS CURVE TO THE LEFT 79.59 FEET, THENCE SOUTH 86°54' WEST 319.0 FEET TO THE EAST LINE OF MIDLAND DRIVE.

LESS AND EXCEPTING THE PORTION OF LAND ON THE WEST FOR THE WIDENING OF SR-108 (MIDLAND DRIVE) KNOWN AS PROJECT NO. S-0108(30)11 AS DISCLOSED IN PERSONAL REPRESENTATIVE'S DEED RECORDED APRIL 22, 2014 AS ENTRY NO. 2683470 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID ENTIRE TRACT WHICH IS 739.41 FEET (RECORD 743.50 FEET) SOUTH AND 1380.54 FEET (RECORD 1383.73 FEET) NORTH 89°55'30" WEST FROM THE NORTHEAST CORNER OF SAID SECTION 10, AND RUNNING THENCE SOUTH 89°55'30" EAST 7.48 FEET ALONG THE NORTHERLY BOUNDARY LINE OF SAID ENTIRE TRACT TO A POINT 55.00 FEET PERPENDICULARLY DISTANT SOUTHEASTERLY FROM THE RIGHT OF WAY CONTROL LINE OF SAID SR-108 (MIDLAND DRIVE) OPPOSITE APPROXIMATE ENGINEERS STATION 527+62.80; THENCE SOUTH 38°12'39" WEST 164.04 FEET TO THE POINT OF TANGENCY OF A 10,055.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHWESTERLY 77.99 FEET ALONG THE ARC OF SAID CURVE, CONCENTRIC WITH SAID RIGHT OF WAY CONTROL LINE (CHORD BEARS SOUTH 38°25'59" WEST 77.99 FEET) TO THE SOUTHERLY BOUNDARY LINE OF SAID ENTIRE TRACT; THENCE NORTH 89°33'00" WEST 6.02 FEET ALONG SAID SOUTHERLY BOUNDARY LINE TO THE EXISTING EASTERLY HIGHWAY RIGHT OF WAY LINE OF SR-108 (MIDLAND DRIVE); THENCE NORTH 38°01'00" EAST 241.10 FEET ALONG SAID EXISTING EASTERLY HIGHWAY RIGHT OF WAY LINE TO THE POINT OF BEGINNING AS SHOWN ON THE OFFICIAL MAP OF SAID PROJECT ON FILE IN THE OFFICE OF THE UTAH DEPARTMENT OF TRANSPORTATION.

(NOTE: ROTATE ABOVE BEARINGS 00°00'38" CLOCKWISE TO EQUAL HIGHWAY BEARINGS).

ALSO, LESS AND EXCEPTING THE PORTION OF LAND CONVEYED IN QUIT CLAIM DEED AS ENTRY NO. 689417 IN BOOK 1163 AT PAGE 793 OF OFFICIAL RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**PART OF THE NORTHEAST QUARTER OF SECTION 10, AND THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 5 NORTH, RANGE 2 WEST:
BEGINNING AT A POINT WHICH IS SOUTH 694.7 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 10, RUNNING THENCE EAST 91.0 FEET, THENCE SOUTH 48.8 FEET THENCE NORTH 89°55'30" WEST 1474.73 FEET ALONG AN EXISTING FENCE TO THE EAST LINE OF MIDLAND DRIVE, THENCE NORTH 38°01' EAST 59.49 FEET ALONG SAID EAST LINE, THENCE EAST 1347.09 FEET TO THE POINT OF BEGINNING.**

ALSO, LESS AND EXCEPTING THE PORTION OF LAND CONVEYED IN QUIT CLAIM DEED AS ENTRY NO. 692242 IN BOOK 1168 AT PAGE 214 OF OFFICIAL RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**PART OF THE NORTHEAST QUARTER OF SECTION 10, AND THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 5 NORTH, RANGE 2 WEST:
BEGINNING AT A POINT WHICH IS SOUTH 743.50 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 10, AND RUNNING THENCE SOUTH 89°55'30" EAST 91.0 FEET THENCE SOUTH 330.00 FEET, THENCE NORTH 89°18' WEST 974.10 FEET, THENCE NORTH 319.37 FEET TO AN EXISTING FENCE, THENCE SOUTH 89°55'30" EAST 883.03 FEET TO POINT OF BEGINNING.**

08-051-0249

The address of such property is: 4148 South Midland Drive, Roy, UT 84067

The owner of such real property is: HSW Holdings 1 LLC