

3280688  
BK 7572 PG 2622

Parcel No. 04-144-0007

WHEN RECORDED, MAIL TO:  
Mountain West Small Business Finance  
2595 East 3300 South  
Salt Lake City, Utah 84109

E 3280688 B 7572 P 2622-2633  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
8/11/2020 2:37:00 PM  
FEE \$40.00 Pgs: 12  
DEP eCASH REC'D FOR BACKMAN TITLE SERVICE

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**For recorder's use only**

## **SBA THIRD PARTY LENDER AGREEMENT**

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LOAN NUMBER: 34562372-02  
LOAN NAME: PROVIDENTIAL BBA OPERATING, LP



## THIRD PARTY LENDER AGREEMENT

THIS THIRD PARTY LENDER AGREEMENT ("Agreement") is dated this 3rd day of August, 2020, by and between ZIONS BANCORPORATION, N.A. dba ZIONS FIRST NATIONAL BANK ("Third Party Lender") whose address is 2302 Washington Blvd., Ogden, UT 84401, and MOUNTAIN WEST SMALL BUSINESS FINANCE, ("CDC") whose address is 2595 East 3300 South, Salt Lake City, UT 84109.

### 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 #: 34562372-02  
SBA Loan Name: PROVIDENTIAL BBA OPERATING, LP  
Borrower: PROVIDENTIAL BBA PROPERTY, LLC  
Operating Company (if any): PROVIDENTIAL BBA OPERATING, LP  
Third Party Loan Amount: \$ 6,387,806.00  
Term of Third Party Loan: 25 years  
If Real Property – Project Property Address:  
Street address: 401 South 400 East & 485 East 500 South  
City, State, Zip code: Bountiful, UT 84010  
Attach Legal description as an exhibit.  
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. Attach a detailed description as an exhibit.

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 or 25 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.

c. 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.

e. 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.

*Paragraph 12 is optional and should be marked if CDC uses Third Party Lender to perform Customer Identification.*

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.

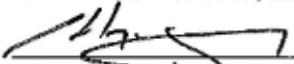
18. Validity of Provisions. In the event that any provision of this Agreement is deemed invalid by a court of competent jurisdiction, all other provisions of this Agreement shall remain valid and enforceable.

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:**

ZIONS BANCORPORATION, N.A. dba ZIONS FIRST NATIONAL BANK

By:   
Print Name: Chad Sprunt  
Title: VP


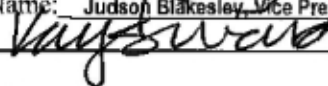
**CERTIFIED DEVELOPMENT COMPANY (CDC):**

MOUNTAIN WEST SMALL BUSINESS FINANCE

By:   
Print Name: Judson Blakesley, Vice President  
Title: VP

**ASSIGNMENT TO SBA**

CDC assigns this Third Party Lender Agreement to SBA.

By:  Date: August 3, 2020  
Typed Name: Judson Blakesley, Vice President, authorized officer of CDC.  
Attest: 

[NOTE: This document or a memorandum of same must be recorded in the appropriate forum for lien filing, if allowed under state law. It is CDC Counsel's responsibility to add any language or acknowledgments required by state law for recording]





Order No.: 6-089289

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**PARCEL 1:**

Beginning on the East line of a street at a point 100.96 feet East and South 0 deg. 07' West 82 feet from the Northwest corner of Section 29, Township 2 North, Range 1 East, Salt Lake Meridian, in the City of Bountiful and running thence South 0 deg. 07' West 251.86 feet along the East line of said street to a point 150 North of the North line of another street; thence East 150.0 feet; thence South 0 deg. 07' West 150.0 feet to the North line of said street; thence South 108.92 feet along the North line of said street; thence North 0 deg. 07' East 236.5 feet; thence South 26.08 feet; thence North 0 deg. 07' East 165.72 feet; thence South 89 deg. 38'33" West 50 feet; thence North 0 deg. 11'23" West 82.00 feet to the North line of said Section 29; thence South 39.90 feet; thence South 0 deg. 07' West 82 feet; thence West 180 feet to the point of beginning.

Less any portion within 400 East Street and 500 South Street.

Also beginning at a point which is East 479.73 feet from the Northwest corner of Section 29, Township 2 North, Range 1 East, Salt Lake Meridian, and running thence North 20 deg. 19'46" West 23.83 feet; thence North 89 deg. 45' West 50.13 feet; thence South 10 deg. 35' West 24.69 feet, more or less, to the North line of said Section 29; thence East 62.97 feet to the point of beginning.

**PARCEL 2:**

Beginning on the East line of a 4 rod street (400 East Street), at a point 100.96 feet East and South 0 deg. 04' West 333.86 feet from the Northwest corner of Section 29, Township 2 North, Range 1 East, Salt Lake Base and Meridian, and running thence South 0 deg. 04' West 150.00 feet along the East line of said street to the North line of a 4 rod street (500 South Street); thence South 150.00 feet along said North line; thence North 0 deg. 04' East 150.00 feet; thence West 150.00 feet to the point of beginning.

Less any portion within 400 East Street and 500 South Street.

PARCEL 3:

Beginning on the East line of 400 East Street, 1.66 chains East from the Northwest corner of Section 29, Township 2 North, Range 1 East, Salt Lake Base and Meridian, and running thence East 180 feet; thence South 82 feet, more or less, to the North boundary of the tract of the Grantee (South Davis Community Hospital, Inc.); thence West 180 feet; thence North 82 feet, more or less, to place of beginning.

Less any portion within 400 East Street.

PARCEL 4:

Beginning at a point on the East line of a street, said point being 1.58 chains East of the Southwest corner of Section 20, Township 2 North, Range 1 East, Salt Lake Base and Meridian, and running thence East 2 chains; thence North 1.125 chains; thence West 2 chains; thence South 1.125 chains to the point of beginning.

Less any portion within 400 East Street.

PARCEL 5:

Beginning at a point in the center of Highway No. 2, Davis County Road Survey 3.8 rods East and 4.5 rods North from the Southwest corner of Section 20, Township 2 North, Range 1 East, Salt Lake Meridian, United States Survey, and running thence North along the center of said Highway 103 feet; thence East 165 feet; thence South 98 feet; thence West 165 feet to the point of beginning.

Less any portion within 400 East Street.

PARCEL 6:

Beginning at a point 227.70 feet East and 4.50 rods North from the Southwest corner of Section 20, Township 2 North, Range 1 East, Salt Lake Meridian, United States Survey, and running thence North 98 feet; thence East 71.8 feet; thence South 170 feet to the quarter section line; thence West 71.8 feet; thence North 74 feet to the point of beginning.

PARCEL 7:

Beginning on the North line of Section 29 and a Westerly deed segment of the hospital corporation at a point North 89 deg. 38'33" East 302.48 feet along the section line from the Northwest corner of Section 29, Township 2 North, Range 1 East, Salt Lake Base and Meridian, Bountiful, Utah, and running thence North 0 deg. 12'10" West 170.00 feet; thence North 89 deg. 38'33" East 2.28 feet to a point in a Southerly fence line in connection with the Barton Creek Drainage Channel, and a point on a 75 foot radius curve to the right (radius bears South 17 deg. 17'50" West); thence Southeasterly along said curve and fence line 29.06 feet (central angle = 22 deg. 12'08" and next point is non-tangent); thence South 52 deg. 36' East 8.87 feet to a point on a 98 foot radius curve to the right (radius bears South 38 deg. 01'40" West); thence Southeasterly along said curve for an arc distance of 19.70 feet (central angle = 11 deg. 31'08" and next point is non-tangent); thence South 42 deg. 54'13" East 19.87 feet; thence South 53 deg. 31'02" East 8.44 feet; thence South 49 deg. 42' East 17.47 feet; thence South 54 deg. 33'48" East 17.75 feet; thence South 52 deg. 06'24" East 56.36 feet; thence North 41 deg. 21'30" East 5.05 feet; thence South 55 deg. 44'56" East 15.77 feet to a point on a 66.6 foot radius curve to the right (radius bears South 31 deg 34'13" West); thence Southeasterly along said curve for an arc distance of 37.51 feet (central angle = 32 deg. 15'54" and next point is non-tangent); thence South 20 deg. 19'46" East 4.44 feet; thence North 89 deg. 40'49" West 51.47 feet; thence South 10 deg. 15'50" West 24.69 feet to said section line; thence South 89 deg. 38'33" West 127.82 feet along the section line to the point of beginning.

PARCEL 8:

Beginning on the North line of 500 South Street at a point 368.92 feet East of the East line of 400 East Street, which point is 469.88 feet East and 483.86 feet South 0 deg. 07' West of the relocated monument at the Northwest corner of Section 29, Township 2 North, Range 1 East, Salt Lake Meridian, in the City of Bountiful, and running thence North 0 deg. 07' East 236.5 feet; thence East 84.50 feet parallel to the North line of said 500 South Street; thence South 0 deg. 07' West 236.5 feet to the North line of said street; thence West 84.50 feet along the North line of said street to the point of beginning.

PARCEL 9:

Beginning at a point on the North boundary of 500 South Street (a 66-foot wide right of way) which point is North 89 deg. 38'33" East 67.96 feet along the section line and South 0 deg. 11'23" East 516.71 feet along the centerline of 400 East Street (a 66 foot wide right of way) to an existing brass monument and North 89 deg. 44'04" East 486.42 feet along the centerline of said 500 South Street and North 0 deg. 11'23" West 33.0 feet from the relocated Northwest corner of Section 29, Township 2 North, Range 1 East, Salt Lake Base and Meridian, and running thence South 89 deg. 44'04" West 194.50 feet along the North boundary of said 500 South Street; thence North 0 deg. 11'23" West 236.50 feet; thence North 89 deg. 44'04" East 26.08 feet; thence North 0 deg. 11'23" West 165.72 feet; thence South 89 deg. 38'33" West 50.00 feet; thence North 0 deg. 11'23" West 82.00 feet; thence North 89 deg. 38'33" East 158.87 feet along said Section line; thence along the Westerly fence line of Barton Creek (a concrete-lined drainage canal) in the following four courses: South 14 deg. 30'00" East 78.47 feet; South 6 deg. 15'00" East 28.99 feet; 82.07 feet along the arc of a 330.00 foot radius curve to the left through a central angle of 14 deg. 15'00" (radius bears North 83 deg. 45'00" East from the beginning of the curve); South 20 deg. 30'00" East 53.05 feet; thence South 0 deg. 11'23" East 249.99 feet to the point of beginning.

Less and excepting:

Beginning on the North line of 500 South Street at a point 368.92 feet East of the East line of 400 East Street, which point is 469.88 feet East and 483.86 feet South 0 deg. 07' West of the relocated monument at the Northwest corner of Section 29, Township 2 North, Range 1 East, Salt Lake Meridian, in the City of Bountiful, and running thence North 0 deg. 07' East 236.5 feet; thence East 84.50 feet parallel to the North line of said 500 South Street; thence South 0 deg. 07' West 236.5 feet to the North line of said street; thence West 84.50 feet along the North line of said street to the point of beginning.

PARCEL NO. 04-144-0007 (All Parcels)

Parcel No.: **04-144-0007**