

## FIRST AMENDMENT TO LOAN AGREEMENT

**THIS FIRST AMENDMENT TO THE LOAN AGREEMENT** ("Amendment"), dated as of this \_\_\_\_\_ day of \_\_\_\_\_, 2023, is made by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government created pursuant to KRS Chapter 67A, whose principal address is 200 East Main Street, Lexington, Kentucky 40507 ("LFUCG"); **LEGIT APPS, LLC** a Kentucky corporation, whose principal address is 628 Winchester Road, 3<sup>rd</sup> Floor, Lexington, KY 40505 ("Borrower" or "Company"); **ZACH WHELCHER**, whose mailing address is 215 Norway Street, Lexington, KY 40502; **BROCK KLEIN**, 3411 Briarcliff Circle, Lexington, KY 40502; and **BRENT HOLUTA**, 117 Owlsley Avenue, Lexington, KY 40502 (collectively "Guarantors").

### WITNESSETH:

**WHEREAS**, LFUCG, the Borrower, and the Guarantors (collectively, "the Parties") entered into a certain Loan Agreement dated March 19, 2018, and related documents ("Agreement"), which are attached and incorporated herein as **Exhibit A**.

**WHEREAS**, the Borrower wishes to accelerate payment on the Loan and remove all jobs and wage requirements provided in the Agreement during this accelerated repayment schedule.

**WHEREAS**, in accordance with Section 8.8 of the Agreement, LFUCG, Borrower, and Guarantor desire to memorialize an amendment to the Agreement.

**NOW, THEREFORE**, the Parties agree to the following:

1. All terms used and not otherwise defined in this Amendment shall have the respective meanings ascribed to them in the Agreement.
2. Section 2.4 of the Agreement shall be amended to read as follows:

2.4 Installments of Principal and Interest. The Loan shall be repaid in thirty-nine (39) consecutive quarterly installments of principal and interest on the first day of each quarter and one (1) final quarterly payment for the balance of the principal and accrued interest. The first payment shall be due beginning three (3) months from the date of the initial disbursement of funds to Borrower.

The Parties understand that, as of the date of this Amendment, the Borrower owes \$67,391.43 in principal, interest, and late fees. Notwithstanding the above repayment schedule, the Parties agree that this remaining amount shall be repaid in eight (8) quarterly installments on the fifteenth (15<sup>th</sup>) day of the first month of each quarter. The first payment shall be due immediately upon execution of the First Amendment.

In the event of default, the balance due on the Note, together with all interest, penalties, fees, or charges due and owing hereunder, shall be due and payable within

ten (10) days of LFUCG providing Borrower with a written notice of demand of the balance owing.

3. Section 3.9 of the Agreement shall be amended to read as follows:

3.9 Jobs and Wage Requirements. The Company shall create at least ten (10) new full time jobs, as defined Section One of this Agreement, which shall have a mean hourly wage of at least \$29.50, exclusive of all benefits and other forms of compensation, including without limitation bonuses and commissions, by no later than one year following the date of this Incentive Agreement, and further agrees to maintain said jobs for a period of ten (10) years or until the entirety of the loan proceeds have been repaid, whichever shall come later, as further provided in Exhibit B and certified in the Compliance Form, attached as Exhibit D, Schedule 1.

Should the Company fail to create at least ten (10) full-time jobs within one year of the date of the Incentive Agreement or allow any required full-time job to lapse or fall below the average hourly wage requirement for a period of more than fifteen (15) consecutive business days at any point following one year from the date of the Incentive Agreement, LFUCG may elect either of the following remedies, which shall be in addition to any other remedies or damages LFUCG may be entitled to under law or equity:

(a) Repayment Penalty. LFUCG may require the Company to pay a monthly repayment penalty, which shall be calculated individually for each job that has not been created or maintained, or which has failed to satisfy the wage requirement provided herein, as follows:

**Step One:**      
$$\frac{\$29.50 - \text{Actual Average Hourly Wage}}{\$29.50} \times \frac{\text{Outstanding Principal}}{\text{Years Remaining}} = \text{Repayment Penalty}$$

**Step Two:**      **Repayment Penalty/12= Monthly Repayment Penalty**

Beginning fifteen (15) days after any full-time job required hereunder has been permitted to lapse, or has fallen below the wage requirement, LFUCG may elect to levy a monthly repayment penalty for any month in which the Company has, for at least one business day, failed to satisfy the Jobs or Wage Requirements established herein. All monthly repayment penalty payments shall be made within ten (10) days of receipt of notice that a monthly repayment penalty is due. All monthly repayment penalty payments shall be credited to the Company's account and such amounts deducted from the principal and interest owed under this Incentive Agreement.

(b) Default. LFUCG may elect to treat the Company's failure to create or maintain full-time jobs as required hereunder for a period of more

than fifteen (15) consecutive business days as an event of default, as defined in Section 5 of this Agreement, entitling LFUCG to those remedies provided in Section 6 of this Agreement.

As evidence of its compliance with this Agreement, the Company agrees to provide, on a confidential basis (except as to information disclosed on the public website of LFUCG as to all projects approved by LFUCG, and except as otherwise required by law and specifically excluding any personally-identifiable information), a list of the new full time positions employed at the Project Site (Exhibit D, Schedule 1) and a report of each such employee's hourly salary, exclusive of all benefits and other forms of compensation, including without limitation bonuses and commissions, upon request, and shall submit such documentation to LFUCG with or without request one year after executing the activation certificate attached hereto, and annually thereafter.

The requirements of this Section shall be suspended and no penalties shall be assessed for failing to abide by the Job and Wage Requirements contained herein while the Borrower timely repays the Loan under the revised payment plan (eight (8) remaining quarterly payments). Failure to repay timely under this revised payment plan shall result in the Job and Wage Requirements, and resulting penalties, being reinstated retroactively to the date of execution of the First Amendment. Penalties accrued pursuant to this Section during the eight (8) remaining quarterly repayments shall not be a credit to the Company's account and such amounts shall not be deducted from the principal and interest owed under this Incentive Agreement.

4. The Parties understand that LFUCG is unwilling to amend the subject loan unless the undersigned Guarantors shall continue to absolutely and unconditionally, and jointly and severally guaranty to LFUCG the payment and performance of the obligations of the Company as set forth in the Loan Agreement, as amended, and the Note, as provided in the Guaranty Agreement (Exhibit E to the Agreement). In consideration of the promises contained herein, and other good and valuable consideration, each Guarantor does hereby reaffirm and acknowledge such Guarantor's continuing obligations under the Guaranty Agreement originally executed on or about March 19, 2018, pursuant to which each Guarantor absolutely and unconditionally guaranteed to LFUCG the full and prompt payment and performance, when due, whether at stated maturity, acceleration or otherwise, of all obligations of the Borrower under: (i) that Note dated March 19, 2018, and amendments thereto, whether for principal, interest, fees, expenses or otherwise, and (ii) that Loan Agreement dated March 19, 2018, and amendments thereto, and (iii) all other Loan Documents, and amendments thereto (collectively, the "Obligations"). The Guaranty also continues to guarantee payment of all expenses incurred in enforcing the Loan Documents, including the Guaranty. The Guarantors acknowledge and agree that nothing contained in the First Amendment to the Loan Agreement shall release, discharge, modify, change or affect the original liability of the Guarantors under the Guaranty Agreement. The Guaranty shall continue in full force and effect until the Obligations have been satisfied in full.

IN WITNESS WHEREOF, the Lexington-Fayette Urban County Government, the Borrower, and the Guarantor have executed this First Amendment to the Loan Agreement as of the day, month and year first above written.

**LEGIT APPS, LLC**

Title: \_\_\_\_\_

The foregoing First Amendment to the Loan Agreement was sworn to, subscribed and acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2023 by

\_\_\_\_\_ of **Legit Apps, LLC**, for and on behalf of said company, which is registered to do business in Kentucky.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_  
Notary # \_\_\_\_\_

COMMONWEALTH OF KENTUCKY    )  
  )  
COUNTY OF \_\_\_\_\_                    )

The foregoing First Amendment to the Loan Agreement was subscribed, sworn to and acknowledged before me by Zach Whelchel, individually and as a guarantor, this the \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_  
Notary # \_\_\_\_\_

COMMONWEALTH OF KENTUCKY    )  
  )  
COUNTY OF \_\_\_\_\_                    )

The foregoing First Amendment to the Loan Agreement was subscribed, sworn to and acknowledged before me by Brock Klein, individually and as a guarantor, this the \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_  
Notary # \_\_\_\_\_

COMMONWEALTH OF KENTUCKY    )  
  )  
COUNTY OF \_\_\_\_\_                    )

The foregoing First Amendment to the Loan Agreement was subscribed, sworn to and acknowledged before me by Brent Holuta, individually and as a guarantor, this the \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Notary # \_\_\_\_\_