

FIRST AMENDMENT TO LOAN AGREEMENT

THIS FIRST AMENDMENT TO THE LOAN AGREEMENT (“Amendment”), dated as of this _____ day of _____, 2022, 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”); **WATER WARRIORS, INC.** a Kentucky corporation, whose principal address is 110 W. Vine Street, Suite 410, Lexington, KY 40507 (“Borrower” or “Company”); and **JOHN GRADEK**, whose mailing address is 1029 Turkey Foot Road, Lexington, KY 40502 (“Guarantor”).

WITNESSETH:

WHEREAS, LFUCG, the Borrower, and the Guarantor (collectively, “the Parties”) entered into a certain Loan Agreement dated January 14, 2021, and related documents (“Agreement”), which are attached and incorporated herein as **Exhibit A**.

WHEREAS, the Borrower wishes to create fewer full-time jobs at a higher wage than the Agreement currently, and the LFUCG is amenable to amend the Agreement, as the amendment will result in no change to the anticipated occupational license fees calculated to be obtained by the LFUCG due to the creation of the new full-time jobs.

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 2.5 of the Agreement shall be amended to read as follows:

2.5 Prepayment. The Borrower shall have the right at any time and without penalty to prepay the Note in whole or in part. Prepayments shall be applied first to accrued but unpaid interest, and then to installments of principal of the Loan in reverse order of their maturity. Prepayments shall not relieve the Borrower from the duty to make consecutive payments in the amount provided in accordance with Section 2.4, but shall operate to discharge the Borrower’s obligation at an earlier date.

Prepayment shall not relieve the Borrower from any Jobs and Wage Requirement provided herein. Rather, the Jobs and Wage Requirement provided herein shall continue after the loan has been repaid, until the Company has maintained said jobs for a period of ten (10) years. If the Company fails to abide by this requirement after fully repaying the loan proceeds, LFUCG may require the Company to pay a monthly 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:

$$\frac{\$39.00 - \text{Actual Average Hourly Wage}}{\$39.00} \times \$151.98$$

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 Loan Agreement.

3. Section 2.3 of the Agreement shall be amended to read as follows:

2.3 Disbursement. Disbursements of proceeds of the Loan shall be made by LFUCG to the Borrower in five (5) draws. The first draw shall be one hundred thousand dollars and zero cents (\$100,000.00) upon activation of the incentive, hiring of the first employee, and the establishment of a new commercial or industrial Project Site. The Parties understand and agree that this draw has already occurred. The four (4) subsequent draws of thirty-seven five hundred dollars and zero cents (\$37,500.00) each shall be made upon notification to LFUCG of the hiring of each employee as provided in the job creation schedule described in Section 3.9. Provided, however, that no more than one draw may be made in any thirty (30) day period. Notwithstanding the preceding, no disbursements shall be made unless (i) this Agreement and all attachments hereto have been properly executed by the appropriate parties and returned to LFUCG (ii) all parties have satisfied the conditions precedent to the Loan set forth in Article 7 of this Agreement and in each of the other Loan Documents, and (iii) LFUCG has received properly completed and executed copies of Exhibits A and D not less than ten (10) days prior to the date requested for the disbursement, to which shall be attached any supporting documentation requested by LFUCG.

4. 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 four (4) new Full Time Jobs, as defined Section 1 of this Agreement, which shall have a mean hourly wage of at least \$39.00, earned from work performed within Lexington-Fayette County, exclusive of all benefits and other forms of compensation, including without limitation bonuses and

commissions, by no later than five (5) years following the date of this Loan Agreement pursuant to the following job creation schedule:

By December 31, 2022: Increase the wage for one employee from \$22 per hour to \$44 per hour, exclusive of all benefits and other forms of compensation, including without limitation bonuses and commissions.

By December 31, 2023: Hire one (1) new employee with a wage of at least \$44 per hour, exclusive of all benefits and other forms of compensation, including without limitation bonuses and commissions.

By December 31, 2024: Hire one (1) new employee with a wage of at least \$24 per hour, exclusive of all benefits and other forms of compensation, including without limitation bonuses and commissions.

By December 31, 2025: Hire one (1) new employee with a wage of at least \$44 per hour, exclusive of all benefits and other forms of compensation, including without limitation bonuses and commissions.

Company 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 occurs later.

Should the Company fail to create at least four (4) Full Time Jobs within five (5) years of the date of the Loan Agreement, pursuant to the job creation schedule outlined above, or allow any required full-time job to lapse for a period of more than fifteen (15) consecutive business days following one year of the date of the Loan 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:

$$\text{Step One: } \frac{\$39.00 - \text{Actual Average Hourly Wage}}{\$39.00} \times \frac{\text{Outstanding Principal}}{\text{Years Remaining}} = \text{Repayment Penalty}$$

$$\text{Step Two: } \text{Repayment Penalty}/12 = \text{Monthly Repayment Penalty}$$

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 Loan 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) 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.

5. The Parties understand that LFUCG is unwilling to amend the subject loan unless the undersigned Guarantor 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, Guarantor does hereby reaffirm and acknowledge such Guarantor's continuing obligations under the Guaranty Agreement originally executed on or about January 14, 2021, pursuant to which such 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 January 14, 2021, and amendments thereto, whether for principal, interest, fees, expenses or otherwise, and (ii) that Loan Agreement dated January 14, 2021, 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 Guarantor acknowledges and agrees that nothing contained in the First Amendment to the Loan Agreement shall release, discharge, modify, change or affect the original liability of the Guarantor under the Guaranty Agreement. The Guaranty shall continue in full force and effect until the Obligations have been satisfied in full.

