

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Application of:

Avatar Airlines Incorporated

For a Certificate of Public
Convenience and Necessity under
Section 49 U.S.C. §41102 to
engage in interstate scheduled
air transportation

Docket DOT-OST-2019-0164

**PETITION FOR RECONSIDERATION
OF 4/28/2020 ORDER DISMISSING APPLICATION**

DATED: May 8, 2020

Communications with respect to this document should be sent to:



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Pursuant to departmental regulations 14 CFR § 302.14 and 14 CFR § 385.30, Avatar Airlines, Inc. (“Avatar”) files the within Petition for Reconsideration (“Petition”) of that certain Department of Transportation (“DOT” or “Department”) Order Dismissing Application, issued and served on April 28, 2020 (the “Order”), and respectfully sets forth the following:

I. PRELIMINARY STATEMENT

1. Avatar filed its Application For a Certificate of Public Convenience and Necessity to engage in interstate scheduled air transportation on November 19, 2019 (the “Application”) [\[DOT-OST-2019-0164-0001\]](#).
2. On April 28, 2020, the Department issued its Order dismissing Avatar’s Application [\[DOT-OST-2019-0164-0006\]](#), which provided for a ten (10) day period in which to file the within Petition.

3. Although Avatar's instant Petition was filed on May 8, 2020, due to technical difficulties with sporadic internet service at undersigned counsel's home (*counsel is self-quarantined*) counsel was unable to docket the Petition on www.regulation.gov, by 5:00 pm EST. Avatar asks that to the extent necessary, the nominal delay in docketing the Petition be disregarded, and that the Petition be deemed timely filed on May 8, 2020. No interested party is prejudiced by the nominal delay. Notwithstanding, Avatar intends to file a separate motion to extend time (*nunc pro tunc*) pursuant to 14 C.F.R. § 302.14(a)(2). Accordingly, Avatar respectfully requests that the Department reconsider its dismissal for the reasons set forth below, and upon such reconsideration, withdraw or rescind the Order enabling Avatar to continue to zealously prosecute its Application.

II. MATTERS ERRONEOUSLY DECIDED

4. 14 CFR § 302.14(b) sets forth in pertinent part:

A petition for reconsideration, rehearing, or reargument shall state, briefly and specifically, the matters of record alleged to have been erroneously decided, the ground relied upon, and the relief sought.

A. Factual Error: Department *Misread* the Effective Dates of Applicant's PPM

5. The most pertinent part of the Department's Order sets forth as follows:

Our review of the application revealed deficiencies in each area of fitness, **most notably** the lack of evidence that Avatar has sufficient capital to support its proposed operations, making the Department unable to issue a favorable fitness finding in this proceeding ¹ [footnote 1 omitted]. Avatar's application did not include evidence of any existing funding available to the company **or evidence that the company raised capital from a \$300 million private placement, which reportedly concluded on January 16, 2020.**

[all emph. added]

6. Although the Order makes passing reference to unspecified “deficiencies in each area of fitness,” it appears that the dismissal was focused on Avatar’s “lack of evidence of any existing funding,” particularly from its \$300 million private placement offering (the “Offering”) which the Department inadvertently concluded had expired on January 16, 2020.
7. In fact, a review of Avatar’s Offering - included as “Exhibit 1” to Avatar’s Application – indicates on its cover page that the effective *date* of the Offering (*not its expiration*) is January 16, 2020. The “Notice to Offerees” (3rd page of Exhibit “1”) discloses in prominent typeface that “The Offering will terminate on **JULY 15, 2020**” and that “**the termination date may be extended** by Avatar Airlines in its sole and absolute discretion without further notice to offerees or purchasers.” [all emphasis in original].
8. Additional references to the January 16, 2020 effective date of the Offering appear in the Application’s Table of Exhibits (internal page iv of the Application) and in the Application’s “Information Supplied Pursuant to ... 14 C.F.R. §204.3 subheading (n)(2) (internal page 31 of the Application).
9. Since the Department erroneously believed that Avatar’s Offering had terminated January 16, 2020, and the Department was not made aware of any change in Avatar’s financial condition by the date the Department *believed* the Offering had expired, it is understandable how the Department could reach the conclusion that it did. The extraordinary working environment challenges, pressures and circumstances that most of us are currently working under due to COVID-19,

certainly would not have helped. No one, no single tribunal, would have been immune from making an honest mistake.

10. However, now that Applicant's instant Petition has made the Department aware of the *actual* operative dates of Applicant's Offering, it becomes evident that at the time the Department rendered its April 28, 2020 Order, Avatar *still* had approximately 2 ½ months left to complete its Offering as filed with the Department.
11. Avatar submits that this fact *alone*, is worthy of the Department's due consideration that its Order of Dismissal was in fact premature and should be withdrawn or rescinded on such basis.

B. Department Deviated from Ordinary Criteria to Render Its Order

12. The Air Carrier Fitness Division, Office of the Secretary, U.S. Department of Transportation, in its September 2012 information packet (*How To Become a Certified Air Carrier*), [\[view here\]](#) at Page 5, states:

(Processing the Application)

... before filing an application, an applicant should have ... 3) obtained the funding needed to meet the Department's financial fitness criteria, **or, at a minimum, developed a reasonable and verifiable plan for so doing.**

[emph. added]

Page 8 therein ("Evidence Requirements/Fitness Test") describes the Department's 3-part test to determine the fitness of an applicant. As respecting an applicant's financial plans, it states:

[The Department] reviews the applicant's operating and financial plans to see whether the applicant has a reasonable understanding of the

costs of starting its operations and *either has on hand, or has a specific and verifiable plan for raising, the necessary capital to commence operations.* Before being granted effective air carrier authority, the applicant must submit third-party verification that it has acquired the necessary capital to conduct its operations.

[emph. added]

13. 14 C.F.R. §204.3 which succinctly sets out the filing requirements for applicants, sets forth at subdivision (n)(2) therein:

(n) A description of the applicant's fleet of aircraft, including:

(1) The number of each type of aircraft owned, leased and to be purchased or leased;

(2) Applicant's *plans, including financing plans, for the purchase or lease of additional aircraft;*...

[emph. added]

14. What each of these rules/regulations makes clear is that *initially*, all that is required at the early stages of the application is a viable plan for raising the necessary capital to become operational. The capital *itself* will ultimately be required before the Department will grant effective air carrier authority, but the Department would not have been able to grant Avatar that authority today, *even* if Avatar had \$300 million in its coffers from its ongoing Offering.
15. The Application is not decided in a vacuum. Aside from having to meet the Department's own stringent requirements, an Applicant must also progress through five rigorous and lengthy phases of the Federal Aviation Administration ("FAA") to obtain an FAA Part 121 Certification (14 F.C.R. Part 121). The relationship between these regulatory bodies is bilateral. Upon information and belief, the Department will not issue its Certificate of Public Convenience and Necessity

unless it is evident that an Applicant has been or is nearly Part 121-certified, and vice versa.

16. Avatar has been diligently prosecuting its application to obtain its Part 121 Air Carrier Certification. Avatar's human resources department has mobilized a team of well-seasoned, operational expertise that includes management personnel specifically required for operations conducted under Part 121. Avatar's FAA department is deep in the process of developing its required flight manuals for FAA certification. [A summary of that extensive work-in-progress can be viewed [here](#)].
17. Avatar is in "Phase 1" ("Preapplication") with the FAA, trying to coordinate its initial, in-person "In-Brief" meeting with select FAA personnel, however, according to David B. Lusk, FAA Safety Analysis and Promotion Division, Assistant Manager (Certification and Evaluation Program Office), the FAA's ability to conduct this meeting has been hampered due to COVID-19. David Lusk's team is awaiting approval from the FAA permitting that meeting to take place. It is an unavoidable bottleneck that certainly does not undermine Avatar's intent and ability to zealously prosecute that application for certification. April 2020 communications between David Lusk and Avatar's Director of Operations, Ken Hawkins, discussed the coordination of that meeting, the current obstacles in so doing, Avatar's *ready, willing and ableness* to meet whenever David Lusk's team is able to do so, as well as some additional meaningful developments relevant to Avatar's operations.
18. The practical reality is that the ordinary and extraordinary conditions to move Avatar through the various phases of the FAA, create a reasonable projection that

Avatar would not likely be flight-certified until some point in the 1st or 2nd quarter of 2021. Given these reasonable projections, given these ordinary and extraordinary conditions that Avatar (*and apparently everyone else*) currently faces with respect to COVID-19, the summary dismissal of Avatar’s Application for want of “sufficient capital to support its proposed operations” at this early stage, is as extraordinary as it is draconian. As set forth above, there does not appear to be a rule, a practice or a precedent for imposing such an unduly harsh requirement on an applicant.¹

C. Department Deviated from Ordinary Practices to Render Its Order

19. The Air Carrier Fitness Division, Office of the Secretary, U.S. Department of Transportation, in its September 2012 information packet (*How To Become a Certified Air Carrier*,) [[view here](#)] at Page 8, states:

(Staff Review)

Upon receipt of an application... The application will then be forwarded to the Air Carrier Fitness Division where it will be assigned to a staff analyst for review and processing...

If some additional or clarifying information is required, the staff analyst will so advise the applicant, usually by letter, and provide it with an opportunity, usually 30 days, to submit any required material.

[emph. added]

¹ Footnote 1 to the Department’s Order stated: “**Typically**, the Department requires only that applicants show that they have access to sufficient financial resources to commence operations without posing an undue risk to consumers or their funds. However, during Avatar’s previous application proceeding, the Department advised the company, in Dismissal Order 2017-9-12, that should Avatar choose to refile its application, it must first complete its financing plans.” [emph. added]

[emph. added]

20. In fact, in one prior application of Avatar [[Docket DOT-OST-2008-0029](#)], the Department in its September 14, 2017 Order of Dismissal stated:

Between 2008 to 2014, **the Department sent Avatar several letters requesting additional information** and Avatar filed several partial responses to the Department's requests, the last of which was dated March 7, 2014.

[emph. added]

21. Unfortunately, no such letters were forthcoming with respect to Avatar's current Application. Had Avatar received such a letter (*perhaps with respect to the status of its Offering*) it could have resolved the Department's error concerning the Offering's effective date and expiration date.
22. "Where there are substantial questions about whether an air carrier is fit to operate, the Department may issue a show-cause order proposing to deny the application. If an application raises substantive questions of fact, is controversial, or presents complex issues that cannot be resolved on the written record, the Department may direct that the matter be considered in an oral evidentiary hearing before an Administrative Law Judge," *How To Become a Certified Air Carrier*, The Air Carrier Fitness Division, Office of the Secretary, U.S. Department of Transportation, September 2012 information packet [[view here](#)] at Page 6, note 8.
23. Had Avatar received such an *Order to Show Cause* proposing to deny the application, it would have provided Avatar with insight and an opportunity to cure any perceived deficiencies by the Department.
24. From the Order:

While we are willing to work with applicants in the certification process, and where warranted, allow additional time to file information, it is administratively inefficient to allow deficient applications to remain pending...

[emph. added]

In view of the summary dismissal, the misunderstanding as to Avatar's Offering dates, the extraordinary circumstances the country (and world) now find themselves in, Avatar respectfully requests that the Department withdraw and rescind its Order and "work with" Avatar as the Order suggests it ordinarily would do.

D. Avatar's Business Plan and Offering is Flexible

25. To be clear, while Avatar's Offering seeks a gross capital raise of \$300 million, which would enable Avatar to execute a "best-case scenario" of acquiring - *for cash* - approximately 14 used Boeing 747s over the course of its first year, establishing its own corporate headquarters, and having enough reserves in its coffers to cover all other anticipated expenses to become comfortably operational, Avatar's business plan and Offering, by design, are flexible and scalable. The Offering, [Application Exhibit 1, internal page 2 "Availability of the 747"]:

Over the last decade airlines have continued to downsize their aircraft eliminating the large wide body for less expensive smaller narrow body aircraft...

We believe this has created a buyer's market with over 60 aircraft currently in desert storage and we estimate our cost to purchase them including refurbishing will be from \$15-25 mm per aircraft ...

We intend to purchase them for cash or equity swap.

[emph. added]

26. No one could have imagined that since the filing of Avatar's Application, COVID-19 would spread across the world, destroying lives, families and businesses, including the temporary decimation of travel and hospitality industries. The sad

irony never wished for, is that it has created an enormous economic opportunity for Avatar.

27. This Department can certainly take Administrative Notice that in the wake of the coronavirus, the current *lack* of demand for flights has only heightened the plight for airlines that operate large wide-body aircraft. There are *more* of these aircraft parked now, than ever before, desperate for buyers as a viable alternative to being scrapped for metal. Those prices of \$15-25 mm per aircraft projected by Avatar have plummeted as well, according to Avatar's Fleet Manager. Avatar is exploring opportunities of swapping aircraft for equity on much more attractive terms than originally thought.
28. Yet, on the opposite side of the spectrum – Avatar's business and financial plans provide for a "worst-case scenario" - a humble beginning to its operations, if Avatar's pending Offering were to experience only modest success. The Offering [Application Exhibit "1" internal page 25]:

Although Avatar seeks to raise \$300,000,000 in order to commence flight operations, Avatar could, for example, commence flight operations by leasing aircraft instead of purchasing aircraft, and could scale back its 3-year projection for aircraft acquisitions and flight routes within such time.

29. At the very extreme end, Avatar believes a modest leasing operation with just four used 747s could be initiated for \$7.5 million. Though such a modest operation would slow Avatar's planned-for fleet expansion, territorial growth and revenue, Avatar is confident that its "proof of concept" would still captivate the public, lead to an increase in demand for Avatar flights and destinations and ultimately the development of a larger scale operation as more ambitiously envisioned. The

current public clamoring for ultra-low-cost comfortable flights, seemingly prefers a “sooner” rather than “later” approach.

E. **Avatar’s Meaningful Pipeline Points in Direction of Executing its Financial Plan**

Extraordinary times. Extraordinary measures.

30. Although Avatar has received an enormous amount of investor inquiries from potentially qualified and accredited investors, with least one or two that have agreed to invest but have not yet committed, there is an understandable sentiment from these individuals of wanting to take a “wait and see approach” with respect to the industry fallout from the havoc being wreaked by COVID-19.

Blue Clover Financial

31. Despite these valid concerns, in diligent prosecution of its Application, Avatar negotiated an executed Term Sheet for a \$20 million line of credit from Blue Clover Financial. Copy of the March 26, 2020 Term Sheet is annexed hereto as **Appendix “A.”**
32. Although the Term Sheet is just the beginning step to its \$20 million credit line, Blue Clover’s vote of confidence - even in this early stage - speaks volumes to the legitimacy, value and need for Avatar’s operation, and the kind of lucrative value it might stand to bring to equity and debt holders.

Durkee Investments, Inc. /DI Fund 1, LP and/or affiliates

33. Avatar has also been cultivating a relationship with Durkee Investments, Inc. and/or its affiliate/subsidiary, DI Fund I, LP, which has already agreed in principle to

taking an equity position of \$3-5 million from Avatar's current Offering. The transaction is developing.

34. The Department was not apprised of these developments, simply because Avatar would much rather *under-promise and over-deliver* than the converse. These are prospective transactions that obviously cannot be reflected on Avatar's balance sheet *until the checks have cleared*, so to speak, which presumably is the Department's primary concern. Yet, Avatar is constrained to mention these impending transactions now, given the current state of the dismissal of its Application.
35. Avatar believes that these developments are strong indicia that Avatar will succeed and complete its financial plan within a reasonable period, even under current extraordinary circumstances. It is this "reasonable period" in which to do so, that forms the gravamen of this Petition for Review.

Other Significant (Confidential) Interest in Avatar's Offering

36. Unfortunately, Avatar has reason to believe that at least one other potentially large investor has shied away from taking a sizeable (*if not the entire*) Offering because of the Department's Dismissal Order. Avatar did not obtain a waiver of confidentiality with respect to that investor and is not at liberty to disclose it in this Petition. However, Avatar is working to rehabilitate that relation notwithstanding the current state of dismissal of its Application.
37. For all or the forgoing reasons, it is respectfully submitted to the Department that its Order of Dismissal was premature, that Avatar does in fact have the wherewithal

to prosecute its Application, along with the ingenuity and developing relations to complete its financial plans within a reasonable period.

38. On this basis, Avatar respectfully requests that the Department withdraw or rescind its Order of Dismissal.

III. RESULTING CONSEQUENCES OF ORDER

39. 14 CFR § 302.14(b) sets forth in pertinent part:

If the petition is based, in whole or in part, on allegations as to the consequences that would result from the final order, the basis of such allegations shall be set forth.

40. There is no denying the magnitude and importance of this Department. Because of the Department's importance, the Order of Dismissal (*even though it is without prejudice*) carries significant weight and casts a shadow on Avatar's continuing efforts to raise funds to become flight-certified.
41. *It is a self-fulfilling prophecy of sorts.* The Department lacked confidence that Avatar would succeed in its fund-raising. It dismisses Avatar's Application. The dismissal now makes it more difficult for Avatar to raise funds, since it must now explain to its potential investors what the legal significance is of a "Dismissal without Prejudice."
42. Most sophisticated investors are not lawyers, and most are not aware of the intricacies and workings of a bureaucracy as large as the Department. When one of the first five questions out of a potential investor's mouth is, "how long is it going to take you get certified?", some simply do not want to hear that a "dismissal without prejudice" means that an application can be refiled. For those kinds of

investors, all they have heard is that “the application has been dismissed” and so (*at least as to some of them*) they decide to buy real estate instead.

43. In this regard, although the Order does not result in an insurmountable barrier for Avatar, it has affected Avatar’s ability to *gain traction* with some portion of the investment community. Avatar’s SEC Reg D Rule 506(c) offering allows it to solicit high net worth accredited investors. It is a sophisticated type of “grass roots” effort to raise money and every potential investor is important, some of whom have been turned off by the Order of Dismissal.
44. To a lesser importance, the Order has not only reverberated throughout the investment community, but throughout the media and throughout the arenas of pundits that love and hate and openly mock the audaciousness of Avatar in believing that it can brazenly swim against tides and buck dominant trends of current low-cost airlines with their shrunken fleet and hidden fees. It supplies them with unfair fodder to use in the court of public opinion to sell virtual newspapers, where many in that audience are the very budget-conscious passengers most likely to benefit from seeing Avatar reach for the sky.
45. Perhaps on the most modest and cerebral level, there are approximately 27 hardworking, talented, experienced professionals that are at the *rock-core* of Avatar, some of whom have devoted years, many of whom have devoted hundreds of hours and all of whom have dedicated their valuable resources, talent, ingenuity and skills in immeasurable ways to move Avatar from the boardroom to the runway. The Order was disappointing for them. But not to the extent of shaking their resolve to continue moving Avatar forward. [A summary of their substantial

efforts and commitment to Avatar and resolve to zealously prosecute Avatar's Application can be viewed [here](#)].

IV. CONCLUSION

46. The contents of this Petition and the attached appendices are true and correct to the best of undersigned's knowledge and belief. Pursuant to Title 18 United States Code Section 1001, undersigned in his individual capacity and as the authorized representative of the Applicant, has not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the Application. Undersigned understands that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both.
47. For all of forgoing reasons, it is respectfully requested that the Department give the within Petition its due reconsideration, and upon doing so, withdraw or rescind the Order of Dismissal, enabling Avatar to continue to zealously prosecute its application, along with any such other and further relief which the Department believes would be just and proper.

Dated: May 8, 2020



Michael E. Zapin
EVP & Chief Legal Officer

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Term Sheet

Line of Credit
March 26, 2020

Avatar Airlines, Inc.
20283 State Road 7, Suite 400
Boca Raton, FL 33498

The following is indicative of the terms (this "*Term Sheet*") issued by Lender and supersedes any previous Term Sheet or Commitment presented to Borrower. Borrower acknowledges and agrees that this Term Sheet is not a commitment to lend, either express or implied, and does not impose any obligation on Lender to issue a commitment or to make a loan on the terms set forth herein or on any other terms. Except for the Sections of this Term Sheet entitled "Expenses", "Expense Deposit", "Commitment Fee", "Brokerage Fees", and "Exclusivity" (collectively, the "*Binding Sections*"), each of which shall survive the termination of this Term Sheet, this Term Sheet shall be non-binding upon Borrower and Lender. Any agreement by Lender to make a loan will be subject to receipt of approval from Lender's internal investment committee and Borrower's fulfillment of Lender's standard closing conditions. Except as specifically set forth herein, any reviews, decisions, approval or acceptance to be made by Lender will be made by Lender in its sole and absolute discretion.

Lender: Blue Clover Financial, LLC or one of its lending affiliates ("*Lender*")

Borrower: **Avatar Airlines, Inc.**

Guarantor/s: Borrower and any principals or Members of Borrower required by Lender pursuant to its underwriting requirements.

Loan Amount: \$20,000,000 (the "*Loan Amount*" for the Line of Credit). This is the requested funded amount. The final loan amount will be a gross up amount to prepay the fees and interest for the first year's Interest Reserve.

Loan Interest Rate: Twelve Percent (12.00%) per annum, with interest only payments paid currently on a monthly basis. Interest shall be calculated on the basis of actual days elapsed in a 360-day year.

Closing Fee: 2.00% of the Loan Amount, paid upon the closing of the Loan.

Warrants: To be negotiated prior to loan closing.

Exit Fee: None

Initial Term: Thirty Six (36) months. All outstanding principal and interest shall be due on the Maturity Date.

Initials: *11/30* *dl*



Extension Options: Borrower shall have the right to extend the Maturity Date for two additional periods of six (6) months each subject to the following: (i) for each extension, Borrower shall pay an extension fee to Lender equal to three percent (3.0%) of the Maximum Loan Amount, (ii) Borrower provides a 90 day notice, and (iii) no Event of Default shall have occurred and be continuing.

Collateral: The Loan shall be secured by a first lien position on all assets of the company including accounts receivables, property, equipment, and a pledge of all ownership interests in Borrower.

Payment Date: Payments of interest will be due on the Loan, in arrears, on the first day of each month with a 5 day grace period. If the first day is not a Business Day the payment shall be due on the preceding Business Day. A late fee of 5% of the monthly payment amount is payable not paid within 5 days of the date when due.

Interest Reserve: For the first thirty six (36) months, interest loan payments shall be pre-funded and added to the loan. Interest payments shall be paid from an escrow account established with Lender under Lender's sole dominion and control (the "*Interest Reserve*").

Anticipated Uses of Loan Proceeds: Administration, marketing, and lease acquisition fees.

Transfers: No direct or indirect interest in Borrower may be transferred, without Lender's prior written consent, which consent may be granted or withheld in Lender's sole discretion.

Subordination Financing: Subordinate financing will be prohibited without Lender's prior written consent.

Insurance: Borrower shall maintain insurance coverage satisfactory to Lender

Assumability: The Loan is not assumable.

Guaranty: Guarantors shall provide for the payment of all interest and fees on the Loan.

Environmental Indemnity: The Borrower and the Guarantor shall indemnify Lender for all costs, expenses, losses and liabilities incurred by Lender, its successors, assigns, members, agents or representatives, in connection with any hazardous substances at, on, under or affecting any Properties owned by Borrower.



ADA Indemnity: The Borrower and the Guarantor shall indemnify Lender for all costs, expenses, losses and liabilities incurred by Lender, its successors, assigns, members, agents or representatives, in connection with compliance with the Americans with Disabilities Act, if applicable.

Release Agreement: Should Lender make a repayment of any portion of the Commitment Fee, the parties agree to terminate this Agreement and Borrower shall release Lender from any further obligation, responsibility or liability of any nature whatsoever in connection with this Agreement. Additionally, both parties will release and forever discharge the other party and all of its employees, agents, successors, assigns, legal representatives, affiliates, directors and officers from any against any and all actions, claims, suites, demands, payment obligations or other obligations or liabilities of any nature whatsoever, whether known or unknown, which such party or any of its employees, agents, successors, assigns, legal representatives, affiliates, directors and officers have had, now have or may in the future have directly or indirectly arising out of (or in connection with) this Agreement, including any activities undertaken pursuant to this Agreement.

Confidentiality: The parties agree to keep the terms of this Agreement and all confidential or proprietary information of, in the case of the Lender, the Borrower, and in the case of the Borrower, Lender, and in its possession completely confidential (such information, "Confidential Information"). The parties agree that they will not disclose the contents of this Agreement, including the amounts of monetary payments, or any other Confidential Information to anyone other than their respective legal and financial advisors, pursuant to an appropriate order from a court or other entity with competent jurisdiction, or pursuant to applicable law, rule or regulation.

Sale, Assignment, or Participation; Registration: Lender will have the right to securitize, sell, assign, or participate in the Loan, in whole or in part, without the consent of the Borrower. Upon a sale or assignment of the Loan, Lender shall be released of its obligations under the loan documents. Lender reserves the right to (i) bifurcate the Loan into two or more notes, (ii) allocate principal and interest between the notes, and (iii) sell or participate some or all of the notes, at no cost or expense to Borrower. In no event shall such loan bifurcation increase the aggregate obligations of Borrower.

Lender's Rights: Lender shall have the right to routinely monitor Borrower's management regarding significant business activities of Borrower, or issues affecting the Borrower. In addition, Lender shall have the right, to examine the books and records of Borrower at any reasonable time and upon reasonable notice to Borrower, and to receive such monthly, quarterly, and annual financial reports as it shall request.



Expenses: Borrower shall pay, whether or not the Loan closes, all costs and expenses in connection with the Loan, including without limitation, the fees and disbursements of Lender's counsel, appraisal costs, the costs of engineering and environmental reports, title insurance premiums, survey charges, mortgage taxes, recording charges, due diligence fees and lockbox fees. This provision shall survive the termination, expiration or withdrawal of this Term Sheet.

Commitment Fee: A commitment fee of 0.5% (one half percent) of the Loan Amount shall be due at the time Borrower accepts Lender's commitment. This provision shall survive the termination, expiration or withdrawal of this Term Sheet. The amount of the commitment fee shall not limit Borrower's obligation to reimburse Lender for all expenses incurred in negotiating, processing and underwriting the Loan. In the event the Lender does not fund the loan or line of credit due to no fault of Borrower, then the expense deposit shall be reimbursed to Borrower.

USA PATRIOT Act: As part of our customer identification and verification procedures, Lender may ask Borrower, Managing Members and Guarantor, including any entity or person owning directly or indirectly 20% or more of any of the foregoing entities, to provide additional information as necessary to verify their identity and comply with the USA PATRIOT Act.

Miscellaneous: This Term Sheet, as well the Loan documents generally, shall be governed by the laws of the State of Florida. This Term Sheet may be signed in any number of counterparts and by facsimile or PDF signature, each of which shall be deemed to be an original, and all of which taken together shall be deemed to be a single agreement.

Commitment: THIS TERM SHEET IS NOT INTENDED TO DESCRIBE ALL OF THE TERMS AND CONDITIONS THAT WILL BE IDENTIFIED IN THE LOAN AGREEMENT.

Conditions to Closing and Initial Funding:

Prior to the funding of the Loan, the following conditions must be satisfactory to Lender in its sole and absolute discretion:

- (1) Satisfactory review of the organizational documents of Borrower, and any amendments to such organizational documents as may be required in connection with Lender's underwriting requirements;
- (2) Satisfactory review of the financial condition, credit history, experience and reputation of Borrower and Guarantor and each of their respective principals;



- (3) Satisfactory review of all receivables, equipment and any other assets of the Borrower;
- (4) Satisfactory review of all insurance in place by Borrower, including types of coverage, limits, deductibles and carriers acceptable to Lender;
- (5) Such other diligence investigations of the Collateral for the Loan, Borrower, and/or Guarantor as Lender may undertake in its sole discretion;
- (6) Execution and delivery of Lender's loan documents;
- (7) Delivery from Borrower's counsel of legal opinions as required by Lender;
- (8) No material adverse change in market conditions;
- (9) The absence of any event or development occurring or any information being received with respect to the Borrower, Guarantor or any of their respective principals, or managing members which could materially and adversely affect the management, the net operating income or value of the Borrower and Borrower's collateral or the loan or the ability of Borrower to make any payments that would be required under the Loan.

Brokerage Fees:

The Borrower shall hold Lender harmless from all brokerage claims, if any, which may be made in connection with this transaction, and under no circumstances shall Lender be liable in any way for any brokerage fees or commissions in connection with the Loan. Lender has not dealt with any broker in connection with the Loan. This provision shall survive the Closing, at which time Borrower shall pay all and any commission and/or compensation due its authorized broker.

Closing Fees:

The cost and expenses of said insurance, recording fees, and all other expenses regarding the loan, including attorney fees shall be borne and payable by the Borrower at closing.

Closing Documents:

As a condition to closing the Loan, legal and other documentation will be delivered in form and substance satisfactory to Lender and its counsel, incorporating substantially the terms and conditions outlined herein and such other items and documents as are customary or usual for similar transactions, including transactions that may be sold or participated to third parties or securitized. Such loan documentation may include opinions of Borrower's counsel as Lender shall reasonably require.

Exclusivity:

Prior to the earlier to occur of either (i) the termination of this Term Sheet or (ii) the Closing Date, neither Borrower or Guarantor will cause or




permit any affiliates to obtain or attempt to obtain first lien financing for the same collateral with any party other than Lender. The Borrower acknowledges that by commencing the due diligence investigation contemplated by this Term Sheet, Lender is devoting time and resources that it otherwise could be devoting to other projects. This paragraph shall survive the termination of this Term Sheet. In the event Borrower (or its affiliate) obtains first lien financing for the same collateral from another lender (unless Lender has previously terminated this Term Sheet), then Lender shall be entitled to retain the unapplied balance of the Expense Deposit as liquidated damages for the time and effort expended by Lender, it being expressly acknowledged and agreed that Lender's actual damages in such instance will be impossible to calculate.

This document is a term sheet for discussion, the loan documents will determine the final terms and conditions. If you are interested in moving forward, please sign this letter in the space provided below and return it to Lender on or before **March 31, 2020**, after which time this Term Sheet shall be of no further force and effect.

Sincerely,

BLUE CLOVER FINANCIAL LLC

By: _____


Anthony Ricciardo
Managing Member, Blue Clover Financial

ACCEPTED AND AGREED BY BORROWER:

Print: Barry Michaels as CEO

Print: Michael E. Zapien as EVP and CLO

Title: Chief Executive Officer

Title: Exec VP and Chief Legal Officer

Sign: _____



Sign: _____



Date: March 26, 2020

Date: March 26, 2020

<wiring instructions appear on the following page>



| BANK ACCOUNT | |
|-------------------|---------------------------|
| Account Name: | BLUE CLOVER FINANCIAL LLC |
| Bank Name: | CHASE BANK |
| Wiring Routing #: | 021 000 021 |
| Account Number: | ██████████ |
| Swift Code: | CHASUS33 |
| Reference: | Avatar |