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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**FORM 8-K**

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**CURRENT REPORT**

**PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): May 4, 2020

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**Live Ventures Incorporated**

(Exact Name of Registrant as Specified in Charter)

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**Nevada**  
(State or Other Jurisdiction  
of Incorporation)

**001-33937**  
(Commission  
File Number)

**85-0206668**  
(IRS Employer  
Identification No.)

**325 E. Warm Springs Road, Suite 102**  
**Las Vegas, NV 89119**  
(Address of Principal Executive Offices and Zip Code)

**Registrant's telephone number, including area code: 702-997-5968**  
(Former Name or Former Address, if Changed Since Last Report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Securities registered pursuant to Section 12(b) of the Act:**

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$0.001 par value per share	LIVE	The NASDAQ Stock Market LLC (The NASDAQ Capital Market)

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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**Item 1.01. Entry into a Material Definitive Agreement.**

On May 4, 2020, Marquis Industries, Inc. (“Marquis”), a subsidiary of Live Ventures Incorporated (the “Company”), entered into a promissory note (the “Promissory Note”) with Bank of America, N.A. that provides for a loan in the amount of \$4,767,887 (the “PPP Loan”) pursuant to the Paycheck Protection Program under the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”). The PPP Loan matures two years from the funding date of the PPP Loan and bears interest at a rate of 1.0% per annum. Monthly amortized principal and interest payments are deferred for six months after the date of disbursement. The Promissory Note contains events of default and other provisions customary for a loan of this type. The Paycheck Protection Program provides that the use of PPP Loan amount shall be limited to certain qualifying expenses and may be partially or wholly forgiven in accordance with the requirements set forth in the CARES Act. The Company intends to apply for forgiveness of a portion of the loan in accordance with the terms of the CARES Act to the extent applicable. No assurance is provided that forgiveness for all or any portion of the PPP Loan will be obtained. On May 5, 2020, Marquis received the funds from the PPP Loan.

The foregoing description of the Promissory Note is not complete and is qualified in its entirety by reference to the full text of the Promissory Note, a copy of which is filed herewith as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

On May 4, 2020, in connection with the PPP Loan, Marquis Affiliated Holdings, LLC, a subsidiary of the Company and Marquis entered into a Ninth Amendment to Loan and Security Agreement with BofA (the “Ninth Amendment”). The Ninth Amendment amends, modifies, restates or supplements the Loan and Security Agreement, dated as of July 6, 2015, as amended from time to time, among MAH, Marquis and BofA (the “Senior Credit Facility”) to, among other things, permit the incurrence of the PPP Loan.

The foregoing descriptions of the PPP Loan, the Ninth Amendment, and the transactions contemplated thereby are summaries and do not purport to be complete and are qualified in their entirety by reference to the full texts of the Promissory Note and the Ninth Amendment, copies of which are attached hereto as Exhibits 10.1 and 10.2, respectively, and are incorporated herein by reference.

**Item 2.03. Creation of a Direct Financial Obligations or an Obligation Under an Off-Balance Sheet Arrangement of a Registrant.**

The information set forth in Item 1.01 above is incorporated by reference into this Item 2.03.

**Item 9.01. Financial Statements and Exhibits**

**(d) Exhibits.**

The following exhibits are attached hereto:

<b>Exhibit Number</b>	<b>Description</b>
10.1	<a href="#"><u>Promissory Note between Marquis Industries, Inc. and Bank of America, N.A.</u></a>
10.2	<a href="#"><u>Ninth Amendment to Loan and Security Agreement dated May 4, 2020 among Marquis Affiliated Holdings LLC, Marquis Industries, Inc. and Bank of America, N.A.</u></a>

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, we have duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

LIVE VENTURES INCORPORATED

By: /s/ Jon Isaac  
Name: Jon Isaac  
Title: Chief Executive Officer

Dated: May 8, 2020



## Promissory Note

Date	Loan Amount	Interest Rate after Deferment Period	Deferment Period
May 01, 2020	\$4,767,887.00	1.00% fixed per annum	6 months

This Promissory Note (“Note”) sets forth and confirms the terms and conditions of a term loan to Marquis Industries Inc (whether one or more than one, “Borrower”) from Bank of America, NA, a national banking association having an address of P.O. Box 15220, Wilmington, DE 19886-5220 (together with its agents, affiliates, successors and assigns, the “Bank”) for the Loan Amount and at the Interest Rate stated above (the “Loan”). The Loan is made pursuant to the Paycheck Protection Program under the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”). The funding of the Loan is conditioned upon approval of Borrower’s application for the Loan and Bank’s receiving confirmation from the SBA that Bank may proceed with the Loan. The date on which the funding of the Loan takes place is referred to as the “Funding Date”. If the Funding Date is later than the date of this Note, the Deferment Period commences on the Funding Date and ends six months from the Funding Date. After sixty (60) days from the date the Loan is funded, but not more than ninety (90) days from the date the Loan is funded, Borrower shall apply to Bank for loan forgiveness. If the SBA confirms full and complete forgiveness of the unpaid balance of the Loan, and reimburses Bank for the total outstanding balance, principal and interest, Borrower’s obligations under the Loan will be deemed fully satisfied and paid in full. If the SBA does not confirm forgiveness of the Loan, or only partly confirms forgiveness of the Loan, or Borrower fails to apply for loan forgiveness, Borrower will be obligated to repay to the Bank the total outstanding balance remaining due under the Loan, including principal and interest (the “Loan Balance”), and in such case, Bank will establish the terms for repayment of the Loan Balance in a separate letter to be provided to Borrower, which letter will set forth the Loan Balance, the amount of each monthly payment, the interest rate (not in excess of a fixed rate of one per cent (1.00%) per annum), the term of the Loan, and the maturity date of two (2) years from the funding date of the Loan. No principal or interest payments will be due prior to the end of the Deferment Period. Borrower promises, covenants and agrees with Bank to repay the Loan in accordance with the terms for repayment as set forth in that letter (the “Repayment Letter”). Payments greater than the monthly payment or additional payments may be made at any time without a prepayment penalty but shall not relieve Borrower of its obligations to pay the next succeeding monthly payment.

In consideration of the Loan received by Borrower from Bank, Borrower agrees as follows:

1. **DEPOSIT ACCOUNT/USE OF LOAN PROCEEDS:** Borrower is required to maintain a deposit account with Bank of America, N.A. (the “Deposit Account”) until the Loan is either forgiven in full or the Loan is fully paid by Borrower. Borrower acknowledges and agrees that the proceeds of the Loan shall be deposited by Bank into the Deposit Account. The Loan proceeds are to not be used by Borrower for any illegal purpose and Borrower represents to the Bank that it will derive material benefit, directly and indirectly, from the making of the Loan.
2. **DIRECT DEBIT.** If the Loan is not forgiven and a Loan Balance remains, Borrower agrees that on the due date of any amount due as set forth in the Repayment Letter, Bank will debit the amount due from the Deposit Account established by Borrower in connection with this Loan. Should there be insufficient funds in the Deposit Account to pay all such sums when due, the full amount of such deficiency be shall be immediately due and payable by Borrower.
3. **INTEREST RATE:** Bank shall charge interest on the unpaid principal balance of the Loan at the interest rate set forth above under “Interest Rate” from the date the Loan was funded until the Loan is paid in full.
4. **REPRESENTATIONS, WARRANTIES AND COVENANTS.** (i) Borrower represents and warrants to Bank, and covenants and agrees with Bank, that: (i) Borrower has read the statements included in the Application, including the Statements Required by Law and Executive Orders, and Borrower understands them. (ii) Borrower was and remains eligible to receive a loan under the rules in effect at the time Borrower submitted to Bank its Paycheck Protection Program Application Form (the “Application”) that have been issued by the SBA implementing the Paycheck Protection Program under Division A, Title I of the CARES Act (the “Paycheck Protection Program Rule”). (iii) Borrower (a) is an independent contractor, eligible self-employed individual, or sole proprietor or (b) employs no more than the greater of 500 employees or, if applicable, the size standard in number of employees established by the SBA in 13 C.F.R. 121.201 for Borrower’s industry. (iv) Borrower will comply whenever applicable, with the civil rights and other limitations in the Application. (v) All proceeds of the Loan will be used only for business-related purposes as specified in the Application and consistent with the Paycheck Protection Program Rule. (vi) To the extent feasible, Borrower will purchase only American-made equipment and products. (vii) Borrower is not engaged in any activity that is illegal under federal, state or local law. (viii) Borrower certifies that any loan received by Borrower under Section 7(b)(2) of the Small Business Act between January 31, 2020 and April 3, 2020 that will remain outstanding after funding of this Loan was for a purpose other than paying payroll costs and other allowable uses loans under the Paycheck Protection Program Rule. (ix) Borrower was in operation on February 15, 2020 and had employees for whom Borrower paid salaries and payroll taxes or paid independent contractors (as reported on Form(s) 1099-MISC). (x) The current economic uncertainty makes the request for the Loan necessary to support the ongoing operations of Borrower. (xi) All proceeds of the Loan will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule and Borrower acknowledges that if the funds are knowingly used for unauthorized purposes, the federal government may hold Borrower and/or Borrower’s authorized representative legally liable, such as for charges of fraud. (xii) Borrower has provided Bank true, correct and complete information demonstrating that Borrower had employees for whom Borrower paid salaries and payroll taxes on or around February 15, 2020. (xiii) Borrower has provided to Bank all documentation available to Borrower on a reasonable basis verifying the dollar amounts of average monthly payroll costs for the calendar year 2019, which documentation shall include, as applicable, copies of payroll processor records, payroll tax filings and/or Form 1099-MISC. (xiv) Borrower will promptly provide to Bank (a) any additional documentation that Bank requests in order to verify payroll costs and (b) documentation verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight week period following the Loan. (xv) Borrower acknowledges that (a) loan forgiveness will be provided by the SBA for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, and not more than 25% of the Forgivable Amount may be for non-payroll costs (xvi)

During the period beginning on February 15, 2020 and ending on December 31, 2020, Borrower has not and will not receive any other loan under the Paycheck Protection Program. (xvii) Borrower certifies that the information provided in the Application and the information that Borrower provided in all supporting documents and forms is true and accurate in all material respects. Borrower acknowledges that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a Federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000. (xviii) Borrower understands, acknowledges and agrees that Bank can share any tax information received from Borrower or any Owner with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews. (xix) Neither Borrower nor any Owner, is presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy. (xx) Neither Borrower, nor any Owner, nor any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government. (xxi) Neither Borrower, nor any Owner, is an owner of any other business or has common management with any other business, except as disclosed to the Bank in connection with the Borrower's Application. (xxii) Borrower did not receive an SBA Economic Injury Disaster Loan between January 31, 2020 and April 3, 2020, except as disclosed to the Bank in connection with the Borrower's Application. (xxiii) Neither Borrower (if an individual), nor any individual owning 20% or more of the equity of Borrower (each, an "Owner"), is subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, on probation or parole. (xxiv) Neither Borrower (if an individual), nor any Owner, has within the last 5 years been convicted; pleaded guilty; pleaded nolo contendere; been placed on pretrial diversion; or been placed on any form of parole or probation (including probation before judgment) for any felony. (xxv) The United States is the principal place of residence for all employees of Borrower included in Borrower's payroll calculation included in the Application. (xxvi) The Borrower correctly indicated on its Application whether it is a franchise that is listed in the SBA's franchise directory. (xxvii) If Borrower is claiming an exemption from all SBA affiliation rules applicable to Paycheck Protection Program loan eligibility under the religious exemption to the affiliation rules, Borrower has made a reasonable, good faith determination that it qualifies for such religious exemption under 13 C.F.R. 121.103(b)(10), which provides that "[t]he relationship of a faith-based organization to another organization is not considered an affiliation with the other organization...if the relationship is based on a religious teaching or belief or otherwise constitutes a part of the exercise of religion." (2) At all times during the term of the Loan, Borrower represents and warrants to the Bank, that (i) if Borrower is anything other than a natural person, it is duly formed and existing under the laws of the state or other jurisdiction where organized; (ii) this Note, and any instrument or agreement required under this Note, are within Borrower's powers, have been duly authorized, and do not conflict with any of its organizational papers; (iii) the information included in the Beneficial Ownership Certification most recently provided to the Bank, if applicable, is true and correct in all respects; and (iv) in each state in which Borrower does business, it is properly licensed, in good standing, and, where required, in compliance with fictitious name (e.g. trade name or d/b/a) statutes. **IF THE FUNDING DATE IS AFTER THE DATE OF THIS NOTE, BORROWER AGREES THAT BORROWER SHALL BE DEEMED TO HAVE REPEATED AND REISSUED, IMMEDIATELY PRIOR TO THE FUNDING ON THE FUNDING DATE, THE REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS SET FORTH ABOVE IN THIS PARAGRAPH**

5. **EVENTS OF DEFAULT:** If the Loan is not forgiven and a Loan Balance remains, then from the date the Repayment Letter is sent to Borrower until the Loan Balance is fully paid, the occurrence and continuation of any of the following events shall constitute a default hereunder: (i) insolvency, bankruptcy, dissolution, issuance of an attachment or garnishment against Borrower; (ii) failure to make any payment when due under the Loan or any or all other loans made by Bank to Borrower, and such failure continues for ten (10) days after it first became due; (iii) failure to provide current financial information promptly upon request by Bank; (iv) the making of any false or materially misleading statement on any application or any financial statement for the Loan or for any or all other loans made by Bank to Borrower; (v) Bank in good faith believes the prospect of payment under the Loan or any or all other loans made by Bank to Borrower is impaired; (vi) Borrower under or in connection with the Loan or any or all other loans made by Bank to Borrower fails to timely and properly observe, keep or perform any term, covenant, agreement, or condition therein; (vii) default shall be made with respect to any other indebtedness for borrowed money of Borrower, if the default is a failure to pay at maturity or if the effect of such default is to accelerate the maturity of such indebtedness for borrowed money or to permit the holder or obligee thereof or other party thereto to cause any such indebtedness for borrowed money to become due prior to its stated maturity; (viii) the Bank in its sole discretion determines in good faith that an event has occurred that materially and adversely affects Borrower; (ix) any change shall occur in the ownership of the Borrower; (x) permanent cessation of Borrower's business operations; (xi) Borrower, if an individual, dies, or becomes disabled, and such disability prevents the Borrower from continuing to operate its business; (xii) Bank receives notification or is otherwise made aware that Borrower, or any affiliate of Borrower, is listed as or appears on any lists of known or suspected terrorists or terrorist organizations provided to Bank by the U.S. government under the USA Patriot Act of 2001; and (xiii) Borrower fails to maintain the Deposit Account with the Bank.
6. **REMEDIES:** If the Loan is not forgiven and a Loan Balance remains, then from the date the Repayment Letter is sent to Borrower, upon the occurrence of a default, all or any portion of the entire amount owing on the Loan, and any and all other loans made by Bank to Borrower, shall, at Bank's option, become immediately due and payable without demand or notice. Upon a default, Bank may exercise any other right or remedy available to it at law or in equity. All persons included in the term "Borrower" are jointly and severally liable for repayment, regardless of to whom any advance of credit was made. Borrower shall pay any costs Bank may incur including without limitation reasonable attorney's fees and court costs should the Loan and/or any and all other loans made by Bank to Borrower be referred to an attorney for collection to the extent permitted under applicable state law. **EACH PERSON INCLUDED IN THE TERM BORROWER WAIVES ALL SURETYSHIP AND OTHER SIMILAR DEFENSES TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW.**
7. **CREDIT INVESTIGATION:** If the Loan is not forgiven and a Loan Balance remains, then from the date the Repayment Letter is sent to Borrower until the Loan Balance is fully paid, Borrower authorizes Bank and any of its affiliates at any time to make whatever credit investigation Bank deems is proper to evaluate Borrower's credit, financial standing and employment and Borrower authorizes Bank to exchange Borrower's credit experience with credit bureaus and other creditors Bank reasonably believes are doing business with Borrower. Borrower also agrees to furnish Bank with any financial statements Bank may request at any time and in such detail as Bank may require.
8. **NOTICES:** Borrower's request for Loan forgiveness, and the documentation that must accompany that request, shall be submitted to Bank by transmitting the communication to the electronic address, website, or other electronic transmission portal provided by Bank to Borrower. Otherwise, all notices required under this Note shall be personally delivered or sent by first class mail, postage prepaid, or by overnight courier, to

the addresses on the signature page of this Note, or sent by facsimile to the fax number(s) listed on the signature page, or to such other addresses as the Bank and the Borrower may specify from time to time in writing (any such notice a "Written Notice"). Written Notices shall be effective (i) if mailed, upon the earlier of receipt or five (5) days after deposit in the U.S. mail, first class, postage prepaid, (ii) if telecopied, when transmitted, or (iii) if hand-delivered, by courier or otherwise (including telegram, lettergram or mailgram), when delivered. In lieu of a Written Notice, notices and/or communications from the Bank to the Borrower may, to the extent permitted by law, be delivered electronically (i) by transmitting the communication to the electronic address provided by the Borrower or to such other electronic address as the Borrower may specify from time to time in writing, or (ii) by posting the communication on a website and sending the Borrower a notice to the Borrower's postal address or electronic address telling the Borrower that the communication has been posted, its location, and providing instructions on how to view it (any such notice, an "Electronic Notice"). Electronic Notices shall be effective when presented to the Borrower, or is sent to the Borrower's electronic address or is posted to the Bank's website. To retain a copy for your records, please download and print or save a copy to your device.

9. **CHOICE OF LAW; JURISDICTION; VENUE.** (1) At all times that Bank is the holder of this Note, except to the extent that any law of the United States may apply, this Note shall be governed and interpreted according to the internal laws of the state of Borrower's principal place of business (the "Governing Law State"), without regard to any choice of law, rules or principles to the contrary. However, the charging and calculating of interest on the obligations under this Note shall be governed by, construed and enforced in accordance with the laws of the state of North Carolina and applicable federal law. Nothing in this paragraph shall be construed to limit or otherwise affect any rights or remedies of Bank under federal law. Borrower and Bank agree and consent to be subject to the personal jurisdiction of any state or federal court located in the Governing Law State so that trial shall only be conducted by a court in that state. (2) Notwithstanding the foregoing, when SBA is the holder, this Note will be interpreted and enforced under federal law, including SBA regulations. Lender or SBA may use state or local procedures for filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using such procedures, SBA does not waive any federal immunity from state or local control, penalty, tax, or liability. As to this Note, Borrower may not claim or assert against SBA any local or state law to deny any obligation, defeat any claim of SBA, or preempt federal law.
10. **MISCELLANEOUS.** The Loan may be sold or assigned by Bank without notice to Borrower. Borrower may not assign the Loan or its rights hereunder to anyone without Bank's prior written consent. If any provision of this Note is contrary to applicable law or is found unenforceable, such provision shall be severed from this Note without invalidating the other provisions thereof. Bank may delay enforcing any of its rights under this Note without losing them, and no failure or delay on the part of Bank in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or future exercise thereof or the exercise of any other right, power or privilege. Bank, by its acceptance hereof, and the making of the Loan and Borrower understand and agree that this Note constitutes the complete understanding between them. This Note shall be binding upon Borrower, and its successors and assigns, and inure to the benefit of Bank and its successors and assigns.
11. **BORROWING AUTHORIZED.** The signer for Borrower represents, covenants and warrants to Bank that he or she is certified to borrow for the Borrower and is signing this Note as the duly authorized sole proprietor, owner, sole shareholder, officer, member, managing member, partner, trustee, principal, agent or representative of Borrower, and further acknowledges and confirms to Bank that by said signature he or she has read and understands all of the terms and provisions contained in this Note and agrees and consents to be bound by them. This Note and any instrument or agreement required herein, are within the Borrower's powers, have been duly authorized, and do not conflict with any of its organizational papers. The individuals signing this Agreement on behalf of each Borrower are authorized to sign such documents on behalf of such entities. For purposes of this Note only, the Bank may rely upon and accept the authority of only one signer on behalf of the Borrower, and for this Note, this resolution supersedes and replaces any prior and existing contrary resolution provided by Borrower to Bank.
12. **ELECTRONIC COMMUNICATIONS AND SIGNATURES.** This Note and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Note (each a "Communication"), including Communications required to be in writing, may, if agreed by the Bank, be in the form of an Electronic Record and may be executed using Electronic Signatures, including, without limitation, facsimile and/or .pdf. The Borrower agrees that any Electronic Signature (including, without limitation, facsimile or .pdf) on or associated with any Communication shall be valid and binding on the Borrower to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered to the Bank. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Bank of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Bank may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("Electronic Copy"), which shall be deemed created in the ordinary course of the Bank's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Bank is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Bank pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Bank has agreed to accept such Electronic Signature, the Bank shall be entitled to rely on any such Electronic Signature without further verification and (b) upon the request of the Bank any Electronic Signature shall be promptly followed by a manually executed, original counterpart. For purposes hereof, "Electronic Record" and "Electronic Signature" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.
13. **CONVERSION TO PAPER ORIGINAL.** At the Bank's discretion the authoritative electronic copy of this Note ("Authoritative Copy") may be converted to paper and marked as the original by the Bank (the "Paper Original"). Unless and until the Bank creates a Paper Original, the Authoritative Copy of this Agreement: (1) shall at all times reside in a document management system designated by the Bank for the storage of authoritative copies of electronic records, and (2) is held in the ordinary course of business. In the event the Authoritative Copy is converted to a Paper Original, the parties hereto acknowledge and agree that: (1) the electronic signing of this Agreement also constitutes issuance and delivery of the Paper Original, (2) the electronic signature(s) associated with this Agreement, when affixed to the Paper Original, constitutes legally valid and binding signatures on the Paper Original, and (3) the Borrower's obligations will be evidenced by the Paper Original after such conversion.

14. **BORROWER ATTESTATION.** Borrower attests and certifies to Bank that it has not provided false or misleading information or statements to the Bank in its application for the Loan, and that the certifications, representations, warranties, and covenants made to the Bank in this Note and elsewhere relating to the Loan are true, accurate, and correct. Borrower further attests and certifies to Bank that it is has read, understands, and acknowledges that the Loan is being made under the CARES Act, and any use of the proceeds of the Loan other than as permitted by the CARES Act, or any false or misleading information or statements provided to the Bank in its application for the Loan or in this Note may subject the Borrower to criminal and civil liability under applicable state and federal laws and regulations, including but not limited to, the False Claims Act, 31 U.S.C. Section 3729, et. seq. Borrower further acknowledges and understands that this Note is not valid and effective until and unless Borrower's application for the Loan is approved and Bank's receiving confirmation from the SBA that Bank may proceed with the Loan.

**IN WITNESS WHEREOF,** I, the authorized representative of the Borrower, hereto have caused this Promissory Note to be duly executed as of the date set forth below.

**BORROWER:** Marquis Industries Inc

/s/ Weston Godfrey

Signature of Authorized Representative of Borrower

Weston Godfrey

Print Name

Authorized Representative

Chief Executive Officer

Title

**STREET ADDRESS: 2743 Hwy 76**

**CITY/STATE/ZIP CODE: Chatsworth, GA, 30705-6372**

**NINTH AMENDMENT TO LOAN AND SECURITY AGREEMENT**

THIS NINTH AMENDMENT TO LOAN AND SECURITY AGREEMENT (this "Amendment") is made and entered into this 4th day of May, 2020, by and among **MARQUIS AFFILIATED HOLDINGS LLC**, a Delaware limited liability company ("Holdings"), **MARQUIS INDUSTRIES, INC.**, a Georgia corporation, and successor by merger with A-O Industries, LLC, a Georgia limited liability company, Astro Carpet Mills, LLC, a Georgia limited liability company, Constellation Industries, LLC, a Georgia limited liability company, S F Commercial Properties, LLC, a Georgia limited liability company, and Lonesome Oak Trading Co., Inc., a Georgia corporation ("Marquis"), together with Holdings, collectively, the "Borrowers" and each, individually, a "Borrower") and **BANK OF AMERICA, N.A.**, a national banking association (together with its successors and assigns, "Lender").

**Recitals:**

Lender and Borrowers are parties to a certain Loan and Security Agreement dated as of July 6, 2015 (as at any time amended, restated, supplemented or otherwise modified, the "Loan Agreement") pursuant to which Lender has made loans and other financial accommodations to Borrowers.

The parties desire to amend the Loan Agreement as hereinafter set forth.

NOW, THEREFORE, for TEN DOLLARS (\$10.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby severally acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

**1. Definitions.** Capitalized terms used in this Amendment, unless otherwise defined herein, shall have the meaning ascribed to such terms in the Loan Agreement.

**2. Amendments to Loan Agreement.** The Loan Agreement is hereby amended as follows:

(a) By adding the following new definitions to Section 1.1 of the Loan Agreement in alphabetical sequence:

CARES Act: Coronavirus Aid, Relief, and Economic Security Act signed into law on March 27, 2020, as in effect on the date hereof.

PPP Funds: any funds obtained by any Borrower as loans or grants under the US Small Business Administration's Paycheck Protection Program (enacted as a part of the CARES Act).

PPP Permitted Expenses: payroll costs and other expenses for which PPP Funds are permitted to be used pursuant to the CARES Act.

(b) By (i) deleting the "and" at the end of clause (l) of Section 10.2.1 of the Loan Agreement, (ii) deleting the "." at the end of clause (m) of Section 10.2.1 of the Loan Agreement, (iii) adding "; and" to the end of clause (m) of Section 10.2.1 of the Loan Agreement, and (iv) adding the following new clause (n) to Section 10.2.1 of the Loan Agreement immediately after clause (m):



(n) Debt that constitutes PPP Funds that is not secured and does not exceed \$5,000,000 in the aggregate at any time; provided, that Borrowers shall use commercially reasonable efforts to comply with all requirements to ensure any such Debt is forgiven in accordance with the applicable program under the CARES Act.

(c) For the avoidance of doubt, the indemnity set forth in Section 12.2 of the Loan Agreement shall be deemed to indemnify and hold harmless Lender and any other Indemnitee for any Claim that may be incurred by or asserted against Lender or such other Indemnitee due to its reliance on any Communication executed using an Electronic Signature, or in the form of an Electronic Record, that Lender or such other Indemnitee reasonably believes is made by any Senior Officer.

(d) By deleting Section 12.8 of the Loan Agreement in its entirety and by substituting in lieu thereof the following:

**12.8 Counterparts; Execution.** This Agreement and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement, including any other Loan Document (each a "Communication"), including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures (including facsimile and .pdf) and shall be considered an original, and shall have the same legal effect, validity and enforceability as a paper record. This Agreement and the other Loan Documents may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same agreement. For the avoidance of doubt, the authorization under this paragraph may include use or acceptance by Lender of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. For purposes hereof, "Electronic Record" and "Electronic Signature" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

**3. Ratification and Reaffirmation.** Borrowers hereby ratify and reaffirm the Obligations, each of the Loan Documents, and all of Borrowers' covenants, duties, indebtedness and liabilities under the Loan Documents.

**4. Post-Closing Covenant.** On or before the thirtieth (30<sup>th</sup>) day after the date hereof (or such later date as Lender may agree to in writing (which, for this purpose only, may take the form of an email from Lender to Borrower) in its discretion), Borrowers shall deliver (or cause to be delivered) to Lender an original counterpart of this Amendment duly executed by Borrowers and an original Secretary's Certificate of Board of Directors Resolutions for Borrowers.

**5. Acknowledgments and Stipulations.** Each Borrower acknowledges and stipulates that each of the Loan Documents executed by such Borrower creates legal, valid and binding obligations of such Borrower that are enforceable against such Borrower in accordance with the terms thereof; all of the Obligations are owing and payable without defense, offset or counterclaim (and to the extent there exists any such defense, offset or counterclaim on the date hereof, the same is hereby knowingly and voluntarily waived by such Borrower); the security interests and liens granted by such Borrower in favor of Lender are duly perfected, first priority security interests and liens; and the unpaid principal amount of the Revolver Loans and outstanding Letters of Credit on and as of May 4, 2020, totaled \$5,641,487.94.

6. **Representations and Warranties.** Each Borrower represents and warrants to Lender, to induce Lender to enter into this Amendment, that no Default or Event of Default exists on the date hereof; the execution, delivery and performance of this Amendment have been duly authorized by all requisite company action on the part of such Borrower and this Amendment has been duly executed and delivered by such Borrower; and all of the representations and warranties made by such Borrower in the Loan Agreement are true and correct on and as of the date hereof.

7. **Reference to Loan Agreement.** Upon the effectiveness of this Amendment, each reference in the Loan Agreement to "this Agreement," "hereunder," or words of like import shall mean and be a reference to the Loan Agreement, as amended by this Amendment.

8. **Breach of Amendment.** This Amendment shall be part of the Loan Agreement and a breach of any representation, warranty or covenant herein shall constitute an Event of Default.

9. **Conditions Precedent.** The effectiveness of the amendments contained in Section 2 hereof are subject to the satisfaction of each of the following conditions precedent, in form and substance satisfactory to Lender, unless satisfaction thereof is specifically waived in writing by Lender:

- (a) Lender shall have received a counterpart of this Amendment, duly executed by each Borrower;
- (b) Lender shall have received an executed secretary's certificate for each Borrower, in substantially the forms attached hereto; and
- (c) Lender shall have received such other agreements, instruments and documents as Lender may reasonably request.

10. **Expenses of Lender.** Each Borrower agrees to pay, **on demand**, all costs and expenses incurred by Lender in connection with the preparation, negotiation and execution of this Amendment and any other Loan Documents executed pursuant hereto and any and all amendments, modifications, and supplements thereto, including, without limitation, the costs and fees of Lender's legal counsel and any taxes, filing fees and other expenses associated with or incurred in connection with the execution, delivery or filing of any instrument or agreement referred to herein or contemplated hereby.

11. **Release of Claims.** To induce Lender to enter into this Amendment, each Borrower hereby **RELEASES, ACQUITS AND FOREVER DISCHARGES** Lender, and all officers, directors, agents, employees, successors and assigns of Lender, from any and all liabilities, claims, demands, actions or causes of action of any kind or nature (if there be any), whether absolute or contingent, disputed or undisputed, at law or in equity, or known or unknown, that such Borrower now has or ever had against Lender arising under or in connection with any of the Loan Documents or otherwise. Each Borrower represents and warrants to Lender that such Borrower has not transferred or assigned to any Person any claim that such Borrower ever had or claimed to have against Lender.

12. **Effectiveness; Governing Law.** This Amendment shall be effective upon acceptance by Lender in Atlanta, Georgia (notice of which acceptance is hereby waived), whereupon the same shall be governed by and construed in accordance with the internal laws of the State of Georgia.

13. **No Novation, etc.** Except as otherwise expressly provided in this Amendment, nothing herein shall be deemed to amend or modify any provision of the Loan Agreement or any of the other Loan Documents, each of which shall remain in full force and effect. This Amendment is not intended to

be, nor shall it be construed to create, a novation or accord and satisfaction, and the Loan Agreement as herein modified shall continue in full force and effect.

**14. Successors and Assigns.** This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**15. Further Assurances.** Each Borrower agrees to take such further actions as Lender shall reasonably request from time to time in connection herewith to evidence or give effect to the amendments set forth herein or any of the transactions contemplated hereby.

**16. Miscellaneous.** This Amendment expresses the entire understanding of the parties with respect to the subject matter hereof and may not be amended except in a writing signed by the parties.

**17. Waiver of Jury Trial.** **To the fullest extent permitted by Applicable Law, each party hereby waives the right to trial by jury in any action, suit, counterclaim or proceeding arising out of or related to this Amendment.**

**18. Execution.** This Amendment may be in the form of an Electronic Record and may be executed using electronic signatures (including facsimile and .pdf) and shall be considered an original, and shall have the same legal effect, validity and enforceability as a paper record. This Amendment may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Amendment. For the avoidance of doubt, the authorization under this paragraph may include use or acceptance by Lender of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed under seal and delivered by their respective duly authorized officers on the date first written above.

**BORROWERS:**

**MARQUIS AFFILIATED HOLDINGS LLC**

ATTEST:

By: /s/ Jon Isaac  
**Jon Isaac**, President and Chief Executive Officer

/s/ Tony Isaac  
**Tony Isaac**, Secretary

[COMPANY SEAL]

ATTEST:

**MARQUIS INDUSTRIES, INC.**

By: /s/ Weston A. Godfrey  
**Weston A. Godfrey, Jr.**, Chief Executive Officer

/s/ Tim Young  
**Tim Young**, Secretary

[CORPORATE SEAL]

[Signatures continued on following page.]

**LENDER:**

**BANK OF AMERICA, N.A.**

By: /s/ Michelle Terwillegger \_\_\_\_\_

Name: Michelle Terwillegger

Title: Vice President