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Attorneys for Plaintiff,
CORNERSTONE FIRST MORTGAGE, LLC,
formerly known as Cornerstone First Mortgage, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CORNERSTONE FIRST MORTGAGE, LLC, a Delaware limited liability company, formerly known as Cornerstone First Mortgage Inc., Plaintiff, vs. ERTC FUNDING, LLC, a New Jersey limited liability company; AMERICAN ARBITRATION ASSOCIATION, INC., a New York corporation; and DOES 1-50, inclusive, Defendants.	Case No.: '25CV1422 LL MMP **COMPLAINT FOR DECLARTORY RELIEF**

Plaintiff, CORNERSTONE FIRST MORTGAGE, LLC, formerly known as Cornerstone First Mortgage, Inc., a converted entity ("Cornerstone"), alleges as follows:

/ / / /

1. Cornerstone is a limited liability company duly formed and currently existing under the laws of Delaware. Cornerstone formerly did business as Cornerstone First Mortgage, Inc., a Delaware corporation, before converting out into a Delaware limited liability company. At all times relevant herein, Cornerstone's primary place of business was located within San Diego County within the State of California.

2. Defendant ERTC Funding LLC ("ERTC") is a limited liability company that claims to be a limited liability company formed under the laws of the State of New Jersey, where it asserts citizenship. This Court has jurisdiction over ERTC because the controversy in question arises from ERTC's attempt to enforce a contract against a California company, Cornerstone, that disputes it ever signed the contract in question and a petition to compel arbitration thereunder would be required to be filed in the Southern District Court of California, where Cornerstone maintains its primary place of business, in order to enforce that asserted obligation.

3. American Arbitration Association, Inc. ("AAA") is a corporation formed under the laws of the State of New York, where it maintains its citizenship and primary place of business at 120 Broadway, 21st Floor, New York, New York, 10271.

4. Cornerstone is ignorant of the true names and capacities of defendants DOES 1 through 50, inclusive, and by reason thereof sues said Defendants by their fictitious names. Cornerstone will obtain leave of court, if necessary, to amend this complaint to allege the true names and capacities of these fictitiously-named Defendants when their identities are fully and finally ascertained.

SUBJECT MATTER JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over the claims in this action pursuant to 28 U.S.C. § 1332(a) because the action involves a controversy involving citizens of different states and the amount in controversy exceeds $75,000. Venue is proper in this Court because a petition to compel arbitration

would be required to be filed in whichever court would have jurisdiction in an action involving that dispute, and that would be the District Court in which Cornerstone maintains its primary place of business. (See Code of Civil Procedure section 1292; 28 U.S.C. § 1391(b).) Furthermore, under the Federal Arbitration Act ("FAA"), venue on a motion to compel arbitration would be proper in "*any* United States District court which, save for [the alleged arbitration] agreement, would have *jurisdiction* under title 28" of the United States Code. (9 U.S.C. § 4.)

6. Here, ERTC has asserted, in a proceeding initiated before AAA, that Cornerstone is obligated to arbitrate an alleged contract before the AAA despite the fact Cornerstone contends it never signed the contract in question, and that is alleged "signature" was forged. Although well-settled California law makes clear the issue of arbitrability under a forged contract is to be decided by the court and not the arbitrator, AAA has announced its "conclusion" that it has jurisdiction to arbitrate the dispute and that Cornerstone is required to arbitrate before it, even though Cornerstone contests that a valid contract to arbitrate exists. As such, this Court has venue over the dispute, which arises from ERTC's assertion that Cornerstone is required to arbitrate before AAA, and to pay exorbitant fees to AAA, under an agreement that Cornerstone asserts it never signed, and on which its signature was forged, with ERTC's knowledge, a fact about which Cornerstone has made both ERTC and AAA aware many, many times.

NATURE OF THE DISPUTE

7. This action arises from a contingent fee contract[1] that ERTC alleges Cornerstone signed, purportedly engaging ERTC to perform "consulting services" associated with Cornerstone's right to recover employee retention tax credits following the Covid-19 pandemic and various emergency laws enacted as a result

[1] Separately, Cornerstone is informed the IRS has issued a circular advising that "contingent" fee ERTC contracts such as Exhibit "A" are illegal. Cornerstone asserts that issue, too, must be resolved by a court, and not an arbitrator.

of the pandemic. Attached hereto as Exhibit "A" is a true and correct copy of the "contract" ERTC contends Cornerstone signed. Pursuant to Exhibit "A," Cornerstone is informed and believes that ERTC contends it is entitled to be paid more than $300,000 as a "contingent fee" given Cornerstone's receipt of employee retention tax credits received by it as a result of forms processed on its behalf not by ERTC, but by Cornerstone's own payroll company.

8. Cornerstone, by and through its principal, Sean Cahan, did not sign Exhibit "A." Instead, his signature was forged by an as-yet unknown employee of ERTC. Moreover, ERTC forged Mr. Cahan's signature only after informing Mr. Cahan that ERTC could not process the employee retention tax credits to which Cornerstone was entitled because Cornerstone was already represented, at all relevant times, by a professional employer organization ("PEO"), and that its PEO was the only entity that could pursue the tax credits involved on behalf of Cornerstone. In fact, it was Cornerstone's PEO, using the forms prepared by its PEO and the calculations performed by that PEO (not ERTC), that it processed to recover the retained employee tax credits from which ERTC now seeks to recover a "contingent fee" against, despite the fact it admitted to Cornerstone that ERTC could not pursue the credits on its behalf given Cornerstone had already engaged a PEO, who performed those services for it as part of its existing role as Cornerstone's PEO.

9. Despite Cornerstone's assertion that it did not sign Exhibit "A," ERTC initiated an arbitration proceeding before AAA. In response to that proceeding, Cornerstone informed both ERTC and AAA that its signature on Exhibit "A" was forged, and that Cornerstone disputed any obligation to arbitrate before AAA. In addition, Cornerstone repeatedly informed AAA and ERTC that, under California and federal law, the issue of arbitrability is an issue to be decided by the courts, not the arbitrator where, as here, the party resisting arbitration asserts that the agreement to arbitrate was itself forged, since there exists no assent to

arbitrate under a forged contract. (See, e.g., *Bruni v. Didion* (2008) 160 Cal.App.4th 1272 and *Sargon Enterprises, Inc. v. Browne George Ross LLP* (2017) 15 Cal.App.5th 749.)

10. Despite Cornerstone's assertion it never signed Exhibit "A," and that it never agreed to submit any dispute under Exhibit "A" to arbitration before AAA or anyone else, AAA has advised Cornerstone it has "considered and rejected" Cornerstone's assertions, and has concluded, in the absence of any evidence or any jurisdiction for so holding, that AAA has jurisdiction over Cornerstone despite the fact Cornerstone never agreed to submit to its jurisdiction. Further, AAA has proceeded to appoint an arbitrator (a retired judge in Texas) who has informed Cornerstone that in order to dispute AAA's jurisdiction, it is incumbent upon ***Cornerstone*** to first obtain an appropriate court order preventing the arbitration proceeding before AAA from going forward, despite Cornerstone's assertion AAA has no jurisdiction over it.

11. Cornerstone disputes the foregoing assertion, and contends that absent an order compelling Cornerstone to arbitrate ERTC's claims, it has no obligation to do so and that AAA has no jurisdiction over it, but given AAA's assertions and that of the arbitrator, Cornerstone risks a judgment of "default award" if it refuses to participate in the arbitration proceeding initiated by ERTC and AAA over Cornerstone's objections. Issuance of such a "default award" would then subject Cornerstone to further court proceedings in any future petition to confirm AAA's award as a judgment, at which Cornerstone stands to be irreparably prejudiced by an award entered without its participation given it was not obligated to participate.

12. By virtue of the foregoing, there presently exists a ripe, justiciable controversy between the parties that requires resolution by this Court, in order to preserve and protect Cornerstone's constitutional right to a trial by jury on the bogus claims ERTC seeks to pursue before an arbitrator and arbitration service before whom Cornerstone never consented to appear, and to whose jurisdiction

Cornerstone never agreed to submit. To the contrary, ERTC forged Cornerstone's signature to an illegal contingent fee contract for services ERTC is not properly licensed to perform.

FIRST CAUSE OF ACTION

For Declaratory Relief

(Against ERTC and AAA)

13. Plaintiff realleges and incorporates by reference each and every allegations set forth above in Paragraphs 1 through 12.

14. As set forth above, an actual controversy has arisen and there now exists a ripe, justiciable controversy between Cornerstone, on the one hand, and ERTC and AAA, on the other hand, concerning Cornerstone's asserted obligation to arbitrate ERTC's claims before AAA. That dispute centers on the assertion by ERTC and AAA that Cornerstone is not only obligated submit to an arbitration proceeding before AAA and a retired judge, sitting in Texas, over a dispute arising from a contract Cornerstone contends it never signed, but to pay AAA exorbitant fees for the privilege of doing so; all over Cornerstone's objections.

15. But for declaratory relief by this Court, preventing Cornerstone from having to submit to arbitration of a proceeding it never agreed to arbitrate under a contract it never signed, Cornerstone stands to be irreparably prejudiced by having to later fight entry of a judgment on an arbitration award entered in its absence, since Cornerstone contends it has no obligation to arbitrate under a "contract" on which its signature was forged.

16. Cornerstone has no other means of preventing the irreparable prejudice that it stands to incur as a result of the ripe, justiciable controversy set forth below.

17. By virtue of the foregoing, a judicial determination is necessary and appropriate at this time under the circumstances in order that the parties may ascertain their rights and duties as aforementioned. Said controversy is incapable

of resolution without judicial adjudication given ERTC and AAA have failed and refused to follow California and federal law by having a court resolve the issue of the assertedly forged nature of Exhibit "A" attached hereto. Accordingly, Cornerstone has no plain, speedy, and adequate remedy at law, and thus requests a declaratory judgment, adjudging that Cornerstone has no obligation to arbitrate before AAA, and that ERTC is required to litigate any issues involving Exhibit "A" before this District Court, subject to Cornerstone's right to a jury trial given Cornerstone never validly waived its right to such a proceeding.

PRAYER FOR RELIEF

WHEREFORE, Cornerstone prays for relief as follows:

1. For a judgment that Cornerstone has no obligation to arbitrate ERTC's claims before AAA, absent a determination, first, by this Court that Cornerstone validly agreed to arbitrate any disputes between it and ERTC before AAA, and/or that Cornerstone's signature on Exhibit "A" was not forged, as Cornerstone contends;
2. For preliminary injunctive relief pending issuance of the judgment prayed for above, including such orders as may be required to enjoin and stay AAA and/or ERTC from proceeding with an arbitration proceeding in Cornerstone's absence before there has been any judicial determination concerning Cornerstone's asserted obligation to arbitrate ERTC's claims before AAA, or any other arbitration service;
3. For costs incurred herein; and
4. For such other and further relief as this Court deems just and proper.

Dated: June 4, 2025

VIVOLI SACCUZZO, LLP

By: */s/ Michael W. Vivoli*
MICHAEL W. VIVOLI
Attorneys for Plaintiff,
CORNERSTONE FIRST MORTGAGE, LLC, f/k/a Cornerstone First Mortgage, Inc.

JS 44 (Rev. 03/24)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Cornerstone First Mortgage, LLC

(b) County of Residence of First Listed Plaintiff San Diego, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Michael W. Vivoli, Esq. (619) 744-9992
VIVOLI SACCUZZO, LLP
3104 Fourth Ave., San Diego, CA 92103

DEFENDANTS

ERTC Funding, LLC, et al.

County of Residence of First Listed Defendant Ocean County, NJ
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

'25CV1422 LL MMP

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☒ 2	☒ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☒ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. Secion 1332(a)

Brief description of cause:
1) for Declaratory Relief

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $ Declaratory Relief

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE June 4, 2025

SIGNATURE OF ATTORNEY OF RECORD /s/ Michael W. Vivoli

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Exhibit “A”

(ERTC Consulting Services Agreement)

ERTC Consulting Services Agreement

This ERTC Consulting Services Agreement (the "Agreement") is made by and between ERTCFunding LLC, with an address at 1815 Lakewood Rd, Toms River, NJ 08755 ("Consultant") and Cornerstone First Mortgage with an address at 2655 Camino Del Rio N #450, 92108 ("Client"). Consultant and Client may be referred to herein each individually as a "Party" and collectively as the "Parties."

WHEREAS, Consultant provides consulting services to eligible employers who wish to claim the Employee Retention Tax Credit ("ERTC") from the U.S. Department of Treasury, and wishes to provide its consulting services to Client;

AND, WHEREAS, Client believes itself to be lawfully eligible to claim the ERTC and wishes to obtain Consultant's consulting services;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby enter into this Agreement and agree to the following terms, intending to be legally bound:

1. **Services.** Consultant will assist Client in computing the dollar amount of ERTCs that Client can legally claim for all quarters ended prior to the Effective Date hereof or prior to December 31, 2021, whichever is earlier, based on the documentary evidence provided by Client. The Parties acknowledge that the Services are performed subject to the American Institute of Certified Public Accountants (AICPA)'s Statement on Standards for Consulting Services. The consulting services provided by Consultant will include the following procedures (collectively, the "Services"):
   - Consider any other entities owned by Client for purposes of applying the aggregation rules subject to Section 52(b) of the Internal Revenue Code of 1986.
   - Determine and document Client's eligibility to claim ERTCs for all employees as a small employer based on maximum full-time employee count of 100 for 2020 and 500 for 2021 during the applicable period in 2019.
   - Determine and document for which calendar quarters, if any, Client is eligible based on a decline in Gross Receipts from the relevant comparison period.
   - Determine and document for which calendar quarters, if any, Client is eligible to claim ERTCs based on full or partial closure due to governmental orders.
   - Apply safe harbor provisions to maximize available credits and reduce the risk of an adverse determination with respect to eligible calendar quarters.
   - Compute the qualifying wages paid to each employee and during each calendar quarter for which eligibility has been determined and documented.
   - Optimize the allocation of ERTCs across eligible calendar quarters while considering:
     - Qualifying wage caps of $10,000 in 2020 (50% credit to equal $5,000 per employee) & $10,000 per calendar quarter (70% credit to equal $7,000 per employee) in 2021.
     - Allocating PPP loan forgiveness based on wages during the Covered Period.

Upon execution of this Agreement, Consultant will begin the computations for all applicable quarters up to and including the calendar quarter ended September, 2021. Upon the completion of future calendar quarters, Client may request that Consultant extend the Services to those quarters as well, which Consultant may or may not agree to in Consultant's sole discretion. In the event that credits should be adjusted in future periods based on the final approval of PPP forgiveness, upon request from Client, Consultant will provide the amended values for inclusion in Form 941-X and bill Client therefor at Consultant's then-current hourly or fixed rate. Consultant will not prepare any tax documents on behalf of Client other than Form 941 or 941-X with respect to each applicable quarter. Consultant will not submit any information to any state tax authorities and will not represent Client before any state or federal tax authorities. Client is hereby advised to consult with its tax advisors regarding any other returns or amendments that might need to be filed as a result of receiving any ERTCs.

2. **Payment.**
   a. On the Effective Date of this Agreement, and prior to the Services being rendered, Client shall remit to Consultant an upfront deposit in the amount of $3,000 ("Deposit"). The Services will not begin until the Deposit has been paid. In the event that (a) Consultant declines to process Client's ERTC claim; (b) the Internal Revenue Service ("IRS") disallows Client's ERTC claim; or (c) Client's maximum ERTC claim is estimated by Consultant as less than the Deposit, then the Services can be cancelled at Client's request with no financial obligation (and the Deposit refunded). However, if any of the aforementioned conditions arise as a result of fraud, negligence, dishonesty, fault or error on the part of Client, including but not limited to cases where Client fails to disclose all relevant facts to Consultant prior to paying the Deposit, then Consultant shall be entitled to retain the Deposit in addition to any other remedies that may be available to Consultant. Other than as provided in this subsection, the Deposit shall be non-refundable.
   b. Upon the approval or funding of Client's claim by the IRS, Client shall remit to Consultant 20% of the total funded ERTC amount ("Contingency Fee"), towards which the Deposit will be credited. The Contingency Fee is due at such time as Client has experienced a cash inflow of at least the amount of the Contingency Fee, either as a refund check from the IRS or as an offset to quarterly employer taxes paid. Client expressly agrees to notify Consultant immediately, but in no event more than seven (7) days, after receiving the refund or credit related to an ERTC claim. The Contingency Fee shall be due fourteen (14) days after the date on which Client receives or realizes an ERTC benefit in at least the amount of the Contingency Fee.
   c. A Deposit or Contingency Fee not paid within 30 days of becoming due will incur an interest charge of 1.5% per month, beginning on the applicable due date.
   d. In any dispute involving monies owed to Consultant, Consultant shall be entitled to all costs of collection, including reasonable attorneys' fees and interest, at 18% per annum or the highest rate allowed by law, whichever is less.
   e. Upon execution of this Agreement, Client shall simultaneously execute an ACH Transfer Authorization Form authorizing Consultant to withdraw funds from Client's account in the event that a Deposit or Contingency Fee becomes due and authorizing Client's bank to transfer such funds to Consultant, in the amount of the applicable Deposit or Contingency Fee agreed to hereunder, without further notice to or consent from Client.
   f. Notwithstanding anything to the contrary in this Agreement, the Parties agree that Consultant has the irrevocable right to verify at any time whether a Contingency Fee has become due hereunder. Accordingly, Client expressly agrees that if Consultant requests a

screenshot, screencap, photograph and/or copy of the webpage in Client's IRS account demonstrating the status of Client's ERTC application, Client shall provide such record to Consultant within two (2) business days of the request (including date and time stamp). There shall be no limit on the number of such requests that may be made; provided, however, that Consultant may not request such records within two (2) weeks of a previously fulfilled request. Client additionally agrees to take any action reasonably required by Consultant to evidence or verify whether Client has realized or received an ERTC benefit.

g. Except as otherwise specified in section 2(a) hereof, the Parties agree that the Deposit shall serve as the minimum total fee owed to Consultant hereunder, even in the event that the total fees required to be paid by Client hereunder would otherwise be calculated to be less than the Deposit amount.

3. **Audits.** Upon the completion of the Services, Consultant will provide Client with the spreadsheets and documentation available to support Client's ERTC claims in the event of an audit by the Internal Revenue Service (IRS) relating to Form 941 or Form 941-X. In the event of such an audit, Client may request that Consultant prepare additional documentation supporting Client's ERTC claims and/or to provide Client's payroll department or payroll service with the necessary support to file its Form 941 and/or amended Form 941-X, which request may be granted or denied in Consultant's sole discretion. In no event will Consultant represent Client before the IRS or before any other governmental or non-governmental body. In the event that Consultant provides consulting support requested by Client in the course of an audit, Consultant will invoice Client for these additional services at its then-current hourly or fixed rate.

4. **Records and Access.** In order to provide the Services, Consultant will need to gather facts about Client's business operations in relation to determining Client's eligibility for the ERTC and computing the dollar amount of ERTCs that Client can legally claim for each eligible calendar quarter. This fact-gathering will include both financial data such as gross receipts per quarter as compared to 2019 and the wages of full and part time employees per quarter, as well as non-financial data. Client agrees to timely provide all documentation and data requested by Consultant. Consultant will request source documents where practical, in order to reduce the workload on Client and so that Client will not have to spend unnecessary time reproducing reports for Consultant's use. However, Consultant will not audit Client or verify the accuracy or legitimacy of any documents or data provided by Client. Consultant may require access to key individuals to further its understanding of financial and non-financial reports used to support its computations, in which case Client shall promptly make such individuals available to Consultant. Client agrees to provide all financial and non-financial data requested in a timely manner, and to provide access to key individuals as needed.

5. **Limitations of Engagement.** No attestation services are being provided by Consultant, and no opinion is being expressed as to the validity or accuracy of underlying financial records, non-financial records, or evidential matter. Client agrees to provide a representation letter, signed by an authorized officer of Client under penalty of perjury, asserting the validity, completeness, and accuracy of all underlying reports and information transmitted or shared by Client, whether written or oral, that are used by Consultant in computing or determining Client's ERTC claims. Consultant's procedures are not designed to identify or detect errors or irregularities in Client's financial statements. Consultant's procedures are not designed to identify or detect deficiencies in Client's internal controls. This engagement is limited to gathering Client-provided data,

applying the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Consolidated Appropriations Act (CAA) and the Internal Revenue Code as modified by the American Rescue Plan Act of 2021 and interpreted by the Internal Revenue Service, computing the ERTC claims of Client based on the information provided, and providing Client with documentation to support Client's ERTC claims. Consultant makes no representation as to the outcome of any claim for ERTC credits. Consultant shall not assume any responsibility or have any liability for any materials or information provided or failed to be provided by Client. Client acknowledges that Consultant is not a CPA firm, does not offer tax or legal advice, and will not represent Client before any federal or state tax authorities. Any final determination of Client's ERTC eligibility rests solely with the Internal Revenue Service ("IRS"). Further, IRS guidance regarding ERTCs and associated eligibility rules are evolving and subject to change at any time.

6. **Representations and Warranties.** Each Party represents and warrants to the other that its representative whose signature is set forth at the end hereof has been duly authorized by all necessary action, and throughout the term hereof shall retain the full right, power and authority, to enter into this Agreement and to perform its obligations.
   Client represents and warrants that all materials and information provided to Consultant are accurate and complete and acknowledges that Consultant will, without independent verification, rely on them for the purpose of providing the Services. Client represents that it has the right to supply such information to Consultant and that the supply of such information by Client and its use by Consultant for the purposes of the provision of the Services will not infringe any rights held by any third party, involve the unauthorized use of confidential information belonging to a third party, or result in the breach by Client or Consultant of any law, regulation, fiduciary duty, intellectual property right, or third-party agreement.
7. **Term and Termination.** This Agreement is effective as of the date of its full execution by the Parties (the "Effective Date"). The Services shall encompass all applicable calendar quarters of 2020 and 2021, including those prior to the Effective Date. Consultant reserves the right to terminate this Agreement or the Services at any time, with or without cause. In the event that Consultant terminates without cause prior to the completion of the Services, Consultant shall refund the Deposit to Client. Upon termination, all workpapers remain property of Consultant. Consultant invests significant resources into this engagement prior to completion of the final deliverables. Therefore, if Client terminates this Agreement or the Services without cause prior to completion of the Services, Client shall pay to Consultant, in addition to the Deposit, 20% of the dollar amount of any Employee Retention Tax Credits that are ultimately claimed by Client.
8. **Data Sharing.** Client agrees that Consultant may share any of Client's documents and data, including but not limited to application information and tax returns, with Consultant's partners and affiliates at Consultant's discretion.
9. **Limitation of Liability.** Consultant is relying on financial and non-financial data provided by Client. Any erroneous computations or ERTC claims made as a result of invalid, inaccurate, non-contextualized, incomplete or fraudulent data provided by Client are not the responsibility of Consultant. Consultant applies ERTC computations based on:
   - Consultant's understanding of the CARES Act, the CAA, and the American Rescue Plan Act of 2021 as passed by Congress and signed into law by the President.
   - Review of recent authoritative guidance from the Internal Revenue Service such as FAQs and Notices 2021-20, 2021-23, and 2021-49.

- Contextual definitions supported in the tax code but not explicitly stated in current guidance as it relates to the American Rescue Plan Act of 2021.

The Internal Revenue Service is continually evolving its interpretations of provisions specified in the Cares Act, CAA, and the American Rescue Plan Act of 2021 and publishing authoritative guidance as needed. We anticipate that additional authoritative guidance may develop over time, some of which could change the computation of your legal ERTC claims. If these changes require additional amendment, Consultant will update (upon Client's request) the computation and documentation to reflect those changes and will invoice Client for such additional services at its then-current hourly or fixed rate.

Client agrees that Consultant shall have no liability of any nature, whether in contract or tort or otherwise, for any loss or damage incurred by Client arising directly or indirectly as a result of or in connection with the Services and/or this Agreement, except where such losses are the result of fraud or dishonesty on the part of Consultant or to the extent that such liability cannot lawfully be excluded or limited. In the event that the ERTC amount approved by the Internal Revenue Service differs from Consultant's findings, Consultant will have no liability to Client. Notwithstanding the foregoing, in the event of a liability finding against Consultant by a tribunal of competent jurisdiction due to an adverse determination by the Internal Revenue Service, the extent of Consultant's liability will be limited to any interest or penalties imposed on Client by the Internal Revenue Service. The Parties agree that in any event that Consultant is found to have liability to Client in relation to the Services or the Agreement, Client's maximum remedy at law or in equity shall be limited to twice the actual fees paid by Client to Consultant for the Services. This limitation is an essential element of the bargain agreed to by the Parties, without which Consultant would not have entered into this Agreement.

10. **Indemnification.** Client shall indemnify Consultant and hold Consultant harmless against any cost, loss, expense or liability which may be suffered or incurred by Consultant and/or by Client as a result of the performance of Consultant's obligations under this Agreement, including, without limitation, those arising from any misrepresentation, misconduct, negligence or dishonesty on the part of any third party or errors on the part of Consultant, except to the extent that the cost, loss, expense or liability is due to fraud, bad faith or dishonesty on the part of Consultant or to the extent that such liability cannot lawfully be excluded or limited.
11. **Assignment.** No Party may assign or otherwise transfer its rights, obligations, and/or duties under this Agreement without the prior written consent of the other Party, except that Consultant may assign some or all of its duties hereunder to a subsidiary, affiliate and/or subcontractor.
12. **Dispute Resolution / Arbitration.** Should any dispute between the Parties arise at any time out of any aspect of this Agreement and/or the Services provided hereunder, without limitation, the Parties will confer in good faith to promptly resolve such dispute. In the event that the Parties are unable to resolve their dispute, and should either Party desire to pursue a claim against the other Party, the Parties agree to have the dispute resolved by mandatory, final, and binding arbitration ("Arbitration"). The Arbitration shall be conducted by an arbitrator(s) provided by an impartial third-party arbitration provider, the American Arbitration Association (AAA) (the "Arbitrator"), and be subject to the Arbitrator's Rules and Procedures and Fee Schedule in effect at the time the claim is filed with the Arbitrator. The Parties agree that the Arbitration shall be held in Ocean County, New Jersey, or where otherwise prescribed by the Arbitrator. All

previously unasserted claims arising under federal, state or local statutory or common law and all disputes relating to the validity of this Agreement, as well as this Arbitration provision, shall be decided by final and binding Arbitration. **The Parties acknowledge that they are hereby waiving their respective rights to a trial by jury in the event of any dispute arising from this Agreement or the Services hereunder.** Any award of the Arbitrator shall be final and binding, and may be entered as a judgment in any court of competent jurisdiction.

13. **Governing Law.** This Agreement shall be construed in accordance with and governed for all purposes by the laws of the State of Texas, and any Arbitration award granted pursuant to section 12 hereof may be entered as a judgment in the courts of the State of Texas.
14. **Savings Clause; No Hardship.** The Parties acknowledge and agree that the provisions of this Agreement are reasonable. If any tribunal of a competent jurisdiction finds that any such provision is unenforceable but would be enforceable if some part or parts of it were deleted or modified, or if the period or area of application were reduced, then such provision shall apply automatically with such modification as is necessary to make it enforceable, and otherwise this Agreement shall continue in full force and effect. Each Party has reviewed this Agreement carefully and has had the opportunity to review this Agreement with its respective attorney(s).
15. **Entire Agreement; No Modification.** This Agreement supersedes any and all prior agreements between the Parties, whether written or oral. This Agreement may not be changed, modified, released, discharged, abandoned, or otherwise amended, in whole or in part, except by an instrument in writing signed by both Parties. Those provisions which by their nature or design are intended to survive termination of the Agreement shall so survive.

IN WITNESS WHEREOF, each of the Parties has executed this Agreement and agreed to all of its terms as of the Effective Date.

ERTCFunding LLC	Cornerstone First Mortgage
Name:_____	Name: Sean Cahan
Title:_____	Title: CEO
Signature:_____	Signature: 
Date:_____	Date: 2/15/22