

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the United States Small Business Administration (“SBA”) (collectively the “United States”), Christopher Construction Co., Inc. (“CCC”), Dennis Christopher, and Pat L. Christopher (“Relator”), by and through their authorized representatives. The United States, CCC, Dennis Christopher, and Relator are collectively referred to as “the Parties.”

### RECITALS

A. CCC is a New Jersey corporation with its principal place of business in New Jersey. CCC is engaged in the business of constructing fuel pumps, storage links, and other equipment for gas stations. CCC is owned in equal parts by Dennis Christopher, Robert Christopher, and Pat L. Christopher.

B. On June 19, 2020, the Relator filed a *qui tam* action in the United States District Court for the District of New Jersey captioned *United States ex rel. Pat L. Christopher v. Christopher Construction Company, Inc., et al.*, Civil Action No. 20-7500, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). The Relator alleged, among other things, that CCC and Dennis Christopher submitted or caused the submission of false claims for payment in connection with the federal Paycheck Protection Program (“PPP”), which was established pursuant to the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act.

C. The CARES Act, which was enacted in March 2020, was designed to provide emergency financial assistance to millions of Americans suffering economic effects caused by the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of forgivable loans to small businesses for job retention and certain other expenses, through the PPP. To obtain a PPP loan, a qualifying business must submit a PPP loan application, which is signed by an authorized representative of the business. The loan application requires the business—through its authorized representative—to acknowledge the program rules and make certain affirmative certifications to be eligible to obtain the PPP loan. A PPP loan application must be processed by a participating lender. If a loan application is approved, the participating lender funds the loan using its own money, which is 100% guaranteed by the SBA.

D. The United States contends that, on or about April 27, 2020, CCC, by and through Dennis Christopher, submitted an application for a PPP loan. In that application, CCC, by and through Dennis Christopher, falsely stated that no individual who owned at least 20% of CCC was subject to an indictment, criminal information, arraignment, or other criminal charges. In fact, however, at the time of the application, CCC and Dennis Christopher knew that Relator owned more than 20% of CCC and had been indicted on or about on or about August 28, 2019, in New Jersey State Superior Court on criminal charges related to theft, embezzlement, and tax fraud. In addition, the United States contends that, as a result of this false statement, CCC and Dennis Christopher knowingly caused the lender who

disbursed the PPP loan to submit a false claim for payment to the SBA, specifically, as a result of the lender's claim for payment, the SBA paid to the lender \$12,775 in loan processing fees. The United States also contends that the false statement from CCC and Dennis Christopher was material to the lender's decision to approve the loan and disburse \$255,507 in PPP funds to CCC on or about May 12, 2020. The conduct described in this paragraph is referred to below as the "Covered Conduct."

E. The United States contends that it has certain civil claims against CCC and Dennis Christopher for violating the False Claims Act, 31 U.S.C. §§ 3729-3733 ("FCA") arising from the Covered Conduct.

F. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Agreement (which is addressed by a separate agreement) and to Relator's reasonable expenses, attorneys' fees and costs.

G. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

### **TERMS AND CONDITIONS**

1. CCC and Dennis Christopher admit, acknowledge, and accept responsibility for the following facts and conduct:
  - a. On or about April 27, 2020, on behalf of CCC, Dennis Christopher applied for a PPP loan by submitting a PPP Borrower Application Form (SBA Form 2483) (the "Application")

to a financial institution based in San Francisco, California. Among other things, the Application required CCC to disclose whether CCC or any individual owning 20% or more of CCC's equity was subject to an indictment, criminal information, arraignment, or other criminal charges (the "Criminal Disclosure"). The Application further informed CCC that if it made a Criminal Disclosure, the lender would not approve the loan. In addition, in order for the SBA to guaranty the PPP loan, the lender relied on the information that CCC provided to certify to the SBA that CCC did not make a Criminal Disclosure.

- b. In response to the Application's question regarding a Criminal Disclosure, Dennis Christopher falsely answered that CCC did not have any Criminal Disclosure (the "False Statement"). At the time he submitted the Application, however, Dennis Christopher knew that Relator, who at the time owned more than 20% of CCC, was indicted on or about August 28, 2019, in New Jersey State Superior Court on criminal charges for felony theft, embezzlement, and tax fraud.
- c. The False Statement regarding the Criminal Disclosure caused the lender to approve the loan and disburse approximately \$255,507 in PPP funds to CCC on or about May 12, 2020 (the "CCC Loan"). In addition, the SBA guaranteed the CCC Loan in

reliance on the lender's certification that CCC did not have a Criminal Disclosure.

- d. As a result of the False Statement, CCC caused the lender to submit a false claim to the SBA for approximately \$12,775 in loan processing fees, which the SBA paid to the lender.
- e. On or about July 21, 2021, CCC returned the full balance of the CCC Loan to the lender. Prior to repaying the loan, CCC did not seek or obtain loan forgiveness from the SBA in connection with the CCC Loan. Accordingly, the SBA did not make any payments, aside from the loan processing fee, to the lender in connection with the CCC Loan.

2. CCC and Dennis Christopher together shall pay to the United States a sum of fifty-three thousand, three hundred and twenty-five dollars (\$53,325) (the "Settlement Amount"), of which \$12,775 constitutes restitution. CCC and Dennis Christopher shall contribute equally toward the Settlement Amount (*i.e.*, each party paying \$26,662.50), and are jointly and severally liable for payment in full of the Settlement Amount. The Settlement Amount shall be paid by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of New Jersey no later than 30 days after the Effective Date of this Agreement.

3. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair,

adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). In connection with this Agreement and this Civil Action, Relator and his heirs, successors, attorneys, agents, and assigns agree that neither this Agreement, any intervention by the United States in the Civil Action in order to dismiss the Civil Action, nor any dismissal of the Civil Action, shall waive or otherwise affect the ability of the United States to contend that provisions in the False Claims Act, including 31 U.S.C. §§ 3730(d)(3) and 3730(e), bar Relator from sharing in the proceeds of this Agreement. Moreover, the United States and Relator and his heirs, successors, attorneys, agents, and assigns agree that they each retain all of their rights pursuant to the False Claims Act on the issue of the share percentage, if any, that Relator should receive of any proceeds of the settlement of his/her claim(s). The Relator's claim to a share of the proceeds of the settlement pursuant to 31 U.S.C. § 3730(d) is addressed by separate agreement.

4. No later than 30 days after the Effective Date of this Agreement, CCC and Dennis Christopher shall pay \$35,479.75 to Relator's counsel in full satisfaction of any claim Relator may have for attorneys' fees and costs, as contemplated by 31 U.S.C. § 3730(d), in connection with the Civil Action, pursuant to written instructions provided by Relator's counsel to CCC and Dennis Christopher.

5. Subject to the exceptions in Paragraph 7 (concerning reserved claims) below and Paragraph 12(a-c) (concerning default); and upon the United States' receipt of the Settlement Amount, the United States releases CCC and Dennis Christopher from any civil or administrative monetary claim the United States has

for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C § 3801-3812; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

6. Subject to the exceptions in Paragraph 7 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases CCC and Dennis Christopher from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct, as well as claims seeking to recover their reasonable expenses and attorneys' fees and costs, under the False Claims Act, 31 U.S.C. §§ 3729-3733.

7. Notwithstanding the release given in Paragraphs 5 and 6 of this Agreement, above, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

- e. Any liability based upon obligations created by this Agreement;  
and
- f. Any liability of individuals except Dennis Christopher.

8. CCC and Dennis Christopher waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

9. CCC and Dennis Christopher fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that CCC and/or Dennis Christopher have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

10. CCC and Dennis Christopher fully and finally release the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that CCC and Dennis Christopher have asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct and the Relator's investigation and prosecution thereof.



11. CCC and Dennis Christopher agree to the following:
- a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of the CCC and/or Dennis Christopher and CCC's present or former officers, directors, employees, shareholders, and agents in connection with:
    - i. the matters covered by this Agreement;
    - ii. the United States' civil investigation of the matters covered by this Agreement;
    - iii. CCC and/or Dennis Christopher's investigation, defense, and corrective actions undertaken in response to the United States' civil investigation in connection with the matters covered by this Agreement (including attorneys' fees);
    - iv. the negotiation and performance of this Agreement; and
    - v. the payment CCC and Dennis Christopher make to the United States pursuant to this Agreement,are unallowable costs for government contracting purposes (hereinafter referred to as "Unallowable Costs").
  - b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by CCC and Dennis

Christopher, and they shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

- c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, CCC and Dennis Christopher shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by CCC and/or Dennis Christopher or any of CCC's subsidiaries or affiliates from the United States. CCC and Dennis Christopher agree that the United States, at a minimum, shall be entitled to recoup from CCC and Dennis Christopher any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine e CCC's and Dennis Christopher's books and records and to disagree with any calculations submitted by CCC and/or Dennis Christopher or any of CCC's subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by CCC and/or Dennis Christopher, or the effect of any such Unallowable Costs on the amount of such payments.

12. In the event that CCC and Dennis Christopher fail to make the payment required by Paragraph 2:

- a. CCC and Dennis Christopher shall be in Default of their payment obligations. In that event, the United States will provide a written Notice of Default, and CCC and Dennis Christopher shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due under the payment schedule and paying any additional interest accruing under the Settlement Agreement up to the date of payment. Notice of Default will be delivered to CCC and Dennis Christopher, or to such other representative as CCC and Dennis Christopher shall designate in advance in writing. If CCC and Dennis Christopher fail to cure the Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the United States to a modified payment schedule (“Uncured Default”), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance).

- b. In the event of an Uncured Default, CCC and Dennis Christopher agree that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Agreement and bring any civil and/or administrative claim, action, or proceeding against CCC and Dennis Christopher for the claims that would otherwise be covered by the releases provided in Paragraph 6 above, with any recovery reduced by the amount of any payments previously made by CCC and Dennis Christopher to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action; (iii) offset the remaining unpaid balance from any amounts due and owing to CCC and Dennis Christopher and/or affiliated companies by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. In addition, in the event of an Uncured Default, CCC and Dennis Christopher agree that the United States may take action to collect by filing the consent judgment in Attachment A.
- c. The United States shall be entitled to any other rights granted by law or in equity by reason of Uncured Default, including referral of this matter for private collection. In the event the

United States pursues a collection action, CCC and Dennis Christopher agree immediately to pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States opts to rescind this Agreement pursuant to this paragraph, CCC and Dennis Christopher waive and agree not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (i) filed by the United States against CCC and Dennis Christopher within 120 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Agreement. CCC and Dennis Christopher agree not to contest any offset, recoupment, and/or collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

13. This Agreement is intended to be for the benefit of the Parties only.

The Parties do not release any claims against any other person or entity.

14. Upon receipt of the payments described in Paragraphs 2, 3, and 4, above, the Relator and the United States shall promptly sign and file in the Civil Action a Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1)(A). Such dismissal shall be: (a) with prejudice to the Relator as to all claims against all named defendants in the Civil Action; (b) with prejudice to the United States as to the Covered Conduct; and (c) without prejudice to the United States as to all other claims or allegations in the Civil Action.

15. Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

16. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

17. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the District of New Jersey. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

18. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

19. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

20. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

21. This Agreement is binding on CCC's and Dennis Christopher's successors, transferees, heirs, and assigns.

22. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

23. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

*[remainder of page intentionally blank]*

**THE UNITED STATES OF AMERICA**

Dated: 12/22/2021

By:



\_\_\_\_\_  
DAVID V. SIMUNOVICH  
Assistant United States Attorney  
United States Attorney's Office  
District of New Jersey

APPROVED:

*Bernard J. Cooney*  
BERNARD J. COONEY

Chief, Government Fraud Unit  
United States Attorney's Office  
District of New Jersey



**CHRISTOPHER CONSTRUCTION COMPANY, INC.**  
**& DENNIS CHRISTOPHER**


Dated: 12/21/21

*Dennis Christopher for  
Christopher Construction Company, Inc.*  
Christopher Construction Company, Inc.  
By: Dennis Christopher  
Vice President & Corporate Secretary

Dated: 12/21/21

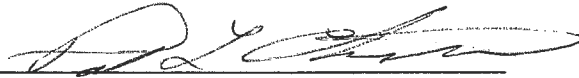
*Dennis Christopher*  
\_\_\_\_\_  
Dennis Christopher

Dated: 12/21/21

  
\_\_\_\_\_  
Louis M. Barbone, Esq.  
Jacobs & Barbone, P.A.  
1125 Pacific Ave  
Atlantic City, NJ 08401  
*Counsel for the Christopher Construction Co., Inc.  
and Dennis Christopher*

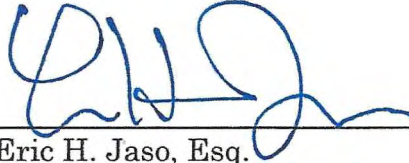
RELATOR PAT L. CHRISTOPHER

Dated: 12-21-21



Pat L. Christopher  
*Relator*

Dated: 12.21.21



Eric H. Jaso, Esq.  
Spiro Harrison LLP  
830 Morris Turnpike, Second Floor  
Short Hills, NJ 07078  
*Counsel for Relator*