
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): April 29, 2020

VENUS CONCEPT INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-38238
(Commission
File Number)

06-1681204
(IRS Employer
Identification Number)

**235 Yorkland Blvd, Suite 900
Toronto, Ontario M2J 4Y8**
(Address of principal executive offices, including Zip Code)

Registrant's telephone number, including area code (877) 848-8430
(Former name or former address, if changed since last report)

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:

- 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:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.0001 par value per share	VERO	The Nasdaq Global 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.

Item 1.01 Entry into a Material Definitive Agreement.

On April 29, 2020, Venus Concept Inc., a Delaware corporation (the “Company”), entered into an amendment to its credit agreement dated as of October 11, 2016 (as amended, restated, supplemented or otherwise modified from time to time, the “Madryn Credit Agreement”), by and among Venus Concept Canada Corp., an Ontario corporation, Venus USA (collectively, the “Borrowers”), the Company, as a Guarantor, Venus Concept Ltd., an Israeli corporation, as a Guarantor, the other Guarantors from time to time party thereto, the lenders from time to time party thereto (the “Lenders”), and Madryn Health Partners, LP, as Administrative Agent (“Madryn”). The Twelfth Amendment to Credit Agreement dated April 29, 2020, by and among the Company, the Borrowers, the Lenders and Madryn (the “Amendment”), amends the Madryn Credit Agreement to, (i) require that interest payments for the period beginning January 1, 2020 and ending on, and including, April 29, 2020 (the “PIK Period”), be paid-in-kind, (ii) increase the interest rate from 9.00% per annum to 12.00% per annum during the PIK Period and (iii) require the Company to provide certain additional financial and other reporting information to the Lenders.

The description of the Amendment is qualified in its entirety by the terms of the Amendment. A copy of the Amendment is attached hereto as exhibit 10.1.

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

The Company and one of its subsidiaries received funding in connection with “Small Business Loans” under the federal Paycheck Protection Program provided in Section 7(a) of the Small Business Act of 1953, as amended by the Coronavirus Aid, Relief, and Economic Security Act, as amended from time to time (the “PPP”). Pursuant to the terms of the U.S. Small Business Administration Note dated as of April 21, 2020, by the Company and in favor of City National Bank of Florida, a national banking association (“CNB”), the Company borrowed \$1,665,000 original principal amount, which was funded on April 29, 2020 (the “Venus Concept PPP Loan”). The Venus Concept PPP Loan bears interest at 1% per annum and matures in two years from the date of disbursement of funds under the loan. Interest and principal payments under the Venus Concept PPP Loan will be deferred for a period of six months. Under certain circumstances, all or a portion of the Venus Concept PPP Loan may be forgiven, however, there can be no assurance that any portion of the Venus Concept PPP Loan will be forgiven and that the Company would not be required to repay the Venus Concept PPP Loan in full.

The Venus Concept PPP Loan contain certain covenants which, among other things, restrict the Company’s use of the proceeds of the PPP Loan to the payment of payroll costs, interest on mortgage obligations, rent obligations and utility expenses, require compliance with all other loans or other agreements with any creditor of the Company, to the extent that a default under any loan or other agreement would materially affect the Company’s ability to repay its PPP Loan and limit the Company’s ability to make certain changes to its ownership structure.

Venus Concept USA Inc., a Delaware corporation (“Venus USA”), a wholly-owned subsidiary of the Company, also entered into a U.S. Small Business Administration Note dated as of April 15, 2020 in favor of CNB pursuant to which Venus USA borrowed \$2,383,125 original principal amount, which was funded on April 20, 2020 (the “Venus USA PPP Loan” and together with the Venus Concept PPP Loan, individually each a “PPP Loan” and collectively, the “PPP Loans”). The terms of the Venus USA PPP Loan are substantially similar to the terms of the Venus Concept PPP Loan.

If the Company and/or Venus USA defaults on their respective PPP Loan (i) events of default will occur under the Madryn Credit Agreement and that certain Second Amended and Restated Loan Agreement dated March 20, 2020, by and among the Company, the Borrowers and City National Bank of Florida and (ii) the Company and/or Venus USA may be required to immediately repay their respective PPP Loan.

The description of the Venus Concept PPP Loan is qualified in its entirety by the terms of the Venus Concept PPP Loan. A copy of the Venus Concept PPP Note is attached hereto as exhibit 10.2.

Item 9.01 Financial Statements and Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
10.1	<u>Twelfth Amendment to Credit Agreement dated April 29, 2020, by and among the Company, certain of the Company's direct and indirect subsidiaries, the Lenders and Madryn.</u>
10.2	<u>SBA Payroll Protection Program Note dated April 21, 2020, by Venus Concept Inc. and in favor of City National Bank of Florida.</u>

SIGNATURES

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

VENUS CONCEPT INC.

By: /s/ Domenic Della Penna

Domenic Della Penna
Chief Financial Officer

Date: April 30, 2020

TWELFTH AMENDMENT TO CREDIT AGREEMENT

THIS TWELFTH AMENDMENT TO CREDIT AGREEMENT (this “Agreement”) dated as of April 29, 2020 (the “Twelfth Amendment Effective Date”) is entered into among VENUS CONCEPT CANADA CORP., an Ontario corporation (“Venus Canada”), VENUS CONCEPT USA INC., a Delaware corporation (“Venus USA” and together with Venus Canada, each a “Borrower” and collectively, the “Borrowers”), VENUS CONCEPT LTD., an Israeli corporation (the “Parent”), VENUS CONCEPT INC., a Delaware corporation (the “Super Parent”), the Lenders party hereto and MADRYN HEALTH PARTNERS, LP, a Delaware limited partnership, as Administrative Agent. All capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in the Credit Agreement (as defined below).

RECITALS

WHEREAS, the Borrowers, the Parent, the Super Parent, the other Guarantors, the Lenders and the Administrative Agent are parties to that certain Credit Agreement dated as of October 11, 2016 (as amended by that certain First Amendment to Credit Agreement and Investment Documents dated as of May 25, 2017, that certain Second Amendment to Credit Agreement and Consent Agreement dated as of February 15, 2018, that certain Third Amendment to Credit Agreement and Waiver dated as of August 14, 2018, that certain Fourth Amendment to Credit Agreement dated as of January 11, 2019, that certain Fifth Amendment to Credit Agreement dated as of March 15, 2019, that certain Sixth Amendment to Credit Agreement and Consent dated as of April 25, 2019, that certain Seventh Amendment to Credit Agreement, Consent and Waiver dated as of June 25, 2019, that certain Omnibus Amendment and Waiver dated as of July 26, 2019, that certain Ninth Amendment to Credit Agreement dated as of August 14, 2019, that certain Tenth Amendment to Credit Agreement, Consent and Joinder Agreement dated as of November 7, 2019, that certain Eleventh Amendment to Credit Agreement and Consent Agreement dated as of March 20, 2020 and as further amended or modified from time to time, the “Credit Agreement”);

WHEREAS, the Loan Parties have requested that the Credit Agreement be amended to provide for certain modifications to the terms of the Credit Agreement; and

WHEREAS, the Lenders are willing to amend the Credit Agreement subject to the terms and conditions hereof;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Amendments. Effective as of the Twelfth Amendment Effective Date, the Credit Agreement shall be amended as follows:

(a) Section 1.01 of the Credit Agreement is hereby amended by adding the following defined terms thereto in appropriate alphabetical order to read as follows:

“Paid-in-Kind Interest” has the meaning set forth in Section 2.06(c)(i).

“PIK Period” has the meaning set forth in Section 2.06(c)(i).

“Twelfth Amendment Effective Date” means April 29, 2020.

(b) Section 1.01 of the Credit Agreement is hereby amended by amending and restating the definition of “Interest Payment Date” appearing therein in its entirety to read as follows:

“ Interest Payment Date ” means (a) the last day of each March, June, September and December; provided, that, if any such last day is not a Business Day, the applicable “Interest Payment Date” shall be the first Business Day immediately preceding such last day of such month; provided, further, that, the first “Interest Payment Date” shall be December 30, 2016, (b) the Third Amendment Effective Date, (c) the Twelfth Amendment Effective Date and (d) each Maturity Date.

(c) Section 2.06 of the Credit Agreement is hereby amended and restated in its entirety to read as follows:

2.06 Interest.

(a) Pre-Default Rate. Subject to the provisions of subsection (b) below, each Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date thereof, at a rate per annum equal (i) to nine percent (9.00%) per annum at all times other than during the PIK Period and (ii) twelve percent (12.00%) per annum during the PIK Period (collectively, the “ Interest Rate ”).

(b) Default Rate. (i) Upon the occurrence and during the existence of any Event of Default, all outstanding Obligations shall thereafter bear interest at an interest rate per annum at all times equal to the Interest Rate plus four percent (4.00%) per annum (the “ Default Rate ”), to the fullest extent permitted by applicable Laws and (ii) accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable in cash on demand.

(c) Paid-In-Kind Interest.

(i) Commencing on January 1, 2020 and continuing through and including the Interest Payment Date to occur on the Twelfth Amendment Effective Date (the “ PIK Period ”), the full amount of interest accruing on the Loans (the “ Paid-in-Kind Interest ”) shall be due and payable on each such Interest Payment Date by adding such Paid-in-Kind Interest to the outstanding principal amount of the applicable Loans on such Interest Payment Date. For the avoidance of doubt, (x) it is hereby acknowledged and agreed that the outstanding principal amount of the Loans after giving effect to the Paid-in-Kind Interest added thereto on the Interest Payment Date occurring March 31, 2020 was \$64,601,810, (y) it is hereby acknowledged and agreed that the outstanding principal amount of the Loans after giving effect to the Paid-in-Kind Interest added thereto on the Interest Payment Date occurring on the Twelfth Amendment Effective Date was \$65,226,294 and (z) it is hereby acknowledged and agreed that the interest payment due and payable on the first Interest Payment Date to occur after the end of the PIK Period shall be calculated commencing with the first day following the PIK Period.

(ii) Any and all such Paid-in-Kind Interest so added to the principal amount of the Loans shall constitute and increase the principal amount of the Loans for all purposes under this Agreement, including without limitation, for purposes of calculating any prepayment premium under Section 2.03(e) and shall bear interest in accordance with this Section 2.06.

(d) Interest Generally. Interest on each Loan shall be due and payable in cash (or such other manner as is expressly specified herein with respect thereto) in arrears on each Interest Payment Date and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(d) Section 7.02 of the Credit Agreement is hereby amended by (i) deleting “; and” appearing at the end of clause (h) thereof and replacing it with “;”, (ii) deleting the “.” appearing at the end of clause (k) thereof and replacing it with “;”, (iii) renumbering clause (k) thereof as “clause (i)” thereof, and (iv) adding new clauses (j) and (k) thereto to read as follows:

(j) concurrently with delivery thereof to the Permitted Senior Revolving Credit Lender, copies of all financial information, calculations and other reporting provided to the Permitted Senior Revolving Credit Lender pursuant to the terms of the Permitted Senior Revolving Credit Documents; and

(k) promptly, and in any event within three (3) Business Days, after the same becomes available to a Responsible Officer of any Loan Party, a summary of received customer payments prepared by any Loan Party, which shall be in a form substantially consistent with past practice of the Loan Parties or otherwise reasonably acceptable to the Administrative Agent.

2. Conditions Precedent. This Agreement shall be effective upon satisfaction of the following conditions precedent:

(a) receipt by the Administrative Agent of counterparts of this Agreement duly executed by the Loan Parties, the Lenders and the Administrative Agent; and

(b) receipt by the applicable party of all accrued fees and reasonable and documented out-of-pocket expenses of the Administrative Agent and the Lenders (including, without limitation, the fees and expenses of counsel for the Administrative Agent).

3. Reaffirmation. Each of the Loan Parties acknowledges and reaffirms (a) that it is bound by all of the terms of the Investment Documents to which it is a party, (b) that it is responsible for the observance and full performance of all of the Obligations, including without limitation, the repayment of the Loans and (c) that the Credit Agreement and the other Investment Documents shall remain in full force and effect according to their terms, except as expressly modified or waived by this Agreement. Furthermore, the Loan Parties acknowledge and confirm that by entering into this Agreement, the Administrative Agent and the Lenders do not, except as expressly set forth herein, waive or release any term or condition of the Credit Agreement or any of the other Investment Documents or any of their rights or remedies under such Investment Documents or any applicable Law or any of the obligations of the Loan Parties thereunder.

4. Release. As a material part of the consideration for Administrative Agent and the Lenders entering into this Agreement (this Section 4 being the “Release Provision”):

(a) By their respective signatures below, the Loan Parties hereby agree that the Administrative Agent, the Lenders, each of their respective Affiliates and the foregoing Persons' respective officers, managers, members, directors, advisors, sub-advisors, partners, agents and employees, and their respective successors and assigns (hereinafter all of the above collectively referred to as the "Lender Group"), are irrevocably and unconditionally released, discharged and acquitted from any and all actions, causes of action, claims, demands, damages and liabilities of whatever kind or nature, in law or in equity, now known or unknown, suspected or unsuspected to the extent that any of the foregoing arises from any action or failure to act under or otherwise arising in connection with the Investment Documents on or prior to the Twelfth Amendment Effective Date.

(b) Each Loan Party hereby acknowledges, represents and warrants to the Lender Group that:

(i) it has read and understands the effect of the Release Provision. Each Loan Party has had the assistance of independent counsel of its own choice, or has had the opportunity to retain such independent counsel, in reviewing, discussing, and considering all the terms of the Release Provision; and if counsel was retained, counsel for such Loan Party has read and considered the Release Provision and advised such Loan Party with respect to the same. Before execution of this Agreement, such Loan Party has had adequate opportunity to make whatever investigation or inquiry it may deem necessary or desirable in connection with the subject matter of the Release Provision.

(ii) no Loan Party is acting in reliance on any representation, understanding, or agreement not expressly set forth herein. Each Loan Party acknowledges that the Lender Group has not made any representation with respect to the Release Provision except as expressly set forth herein.

(iii) each Loan Party has executed this Agreement and the Release Provision thereof as its free and voluntary act, without any duress, coercion, or undue influence exerted by or on behalf of any person.

(iv) the Loan Parties are the sole owners of the claims released by the Release Provision, and no Loan Party has heretofore conveyed or assigned any interest in any such claim to any other Person.

(c) Each Loan Party understands that the Release Provision was a material consideration in the agreement of the Administrative Agent and the Lenders to enter into this Agreement. The Release Provision shall be in addition to any rights, privileges and immunities granted to the Administrative Agent and the Lenders under the Investment Documents.

5. Miscellaneous.

(a) This Agreement is a Loan Document.

(b) The Loan Parties hereby represent and warrant as follows:

(i) Each Loan Party has taken all necessary action to authorize the execution, delivery and performance of this Agreement.

(ii) This Agreement has been duly executed and delivered by such Loan Party and constitutes such Loan Party's legal, valid and binding obligations, enforceable in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(iii) No consent, approval, exemption, authorization or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by any Loan Party of this Agreement except as have been made or obtained.

(c) The Loan Parties represent and warrant to the Administrative Agent and the Lenders that after giving effect to this Agreement (i) the representations and warranties of the Loan Parties set forth in Article VI of the Credit Agreement and in each other Loan Document are true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or reference to Material Adverse Effect) as of the date hereof with the same effect as if made on and as of the date hereof, except to the extent such representations and warranties expressly relate solely to an earlier date in which case they shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or reference to Material Adverse Effect) as of such earlier date and (ii) no event has occurred and is continuing which constitutes a Default or an Event of Default.

(d) Each of the Loan Parties hereby affirms the Liens created and granted in the Loan Documents in favor of the Administrative Agent, for the benefit of the Secured Parties, and agrees that this Agreement does not adversely affect or impair such liens and security interests in any manner.

(e) This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.

(f) If any provision of this Agreement is held to be illegal, invalid or unenforceable, (i) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby and (ii) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(g) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

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Each of the parties hereto has caused a counterpart of this Agreement to be duly executed and delivered as of the date first above written.

BORROWERS:

VENUS CONCEPT CANADA CORP.,
an Ontario corporation

By: /s/ Domenic Serafino
Name: Domenic Serafino
Title: Chief Executive Officer

VENUS CONCEPT USA INC.,
a Delaware corporation

By: /s/ Domenic Serafino
Name: Domenic Serafino
Title: President

PARENT:

VENUS CONCEPT LTD.,
an Israeli corporation

By: /s/ Domenic Serafino
Name: Domenic Serafino
Title: Chief Executive Officer

SUPER PARENT:

VENUS CONCEPT INC.,
a Delaware corporation

By: /s/ Domenic Serafino
Name: Domenic Serafino
Title: Chief Executive Officer

VENUS CONCEPT CANADA CORP. AND VENUS CONCEPT USA INC.
TWELFTH AMENDMENT TO CREDIT AGREEMENT

ADMINISTRATIVE
AGENT:

MADRYN HEALTH PARTNERS, LP,
a Delaware limited partnership

By: MADRYN HEALTH ADVISORS, LP,
its General Partner

By: MADRYN HEALTH ADVISORS GP, LLC,
its General Partner

By: /s/ Avinash Amin

Name: Avinash Amin

Title: Member

VENUS CONCEPT CANADA CORP. AND VENUS CONCEPT USA INC.
TWELFTH AMENDMENT TO CREDIT AGREEMENT

LENDERS:

MADRYN HEALTH PARTNERS, LP,
a Delaware limited partnership

By: MADRYN HEALTH ADVISORS, LP,
its General Partner

By: MADRYN HEALTH ADVISORS GP, LLC,
its General Partner

By: /s/ Avinash Amin
Name: Avinash Amin
Title: Member

MADRYN HEALTH PARTNERS (CAYMAN MASTER), LP

By: MADRYN HEALTH ADVISORS, LP,
its General Partner

By: MADRYN HEALTH ADVISORS GP, LLC,
its General Partner

By: /s/ Avinash Amin
Name: Avinash Amin
Title: Member

VENUS CONCEPT CANADA CORP. AND VENUS CONCEPT USA INC.
TWELFTH AMENDMENT TO CREDIT AGREEMENT



U.S. Small Business Administration

NOTE

PURSUANT TO THE STATE OF FLORIDA OFFICE OF THE GOVERNOR EXECUTIVE ORDER NUMBER 20-95 (COVID-19 EMERGENCY ORDER – DOCUMENTARY STAMPS FOR SBA LOANS) ISSUED ON APRIL 6, 2020, EFFECTIVE ON APRIL 3, 2020, THE ASSESSMENT AND COLLECTION OF TAXATION IMPOSED UNDER CHAPTER 201, FLORIDA STATUTES, IS SUSPENDED FOR ALL NOTES AND OTHER WRITTEN OBLIGATIONS MADE PURSUANT TO TITLE I OF THE CARES ACT. CONSEQUENTLY, THERE ARE NO DOCUMENTARY STAMP TAXES DUE UPON THIS NOTE.

SBA Loan #	53242170-08
SBA Loan Name	Paycheck Protection Program (“PPP”)
Date	4/21/2020
Loan Amount	\$1,665,000.00
Interest Rate	One Percent (1.00%) per annum
Borrower	VENUS CONCEPT INC
Operating Company	VENUS CONCEPT INC
Lender	City National Bank of Florida, a national banking association

1. PROMISE TO PAY:

In return for the Loan, Borrower promises to pay to the order of Lender the principal amount of the Loan Amount, interest on the unpaid balance, and all other amounts required by this Note.

2. DEFINITIONS:

“**Collateral**” means any property taken as security for payment of this Note or any guarantee of this Note.

“**Guarantor**” means each person or entity that signs a guarantee of payment of this Note.

“**Loan**” means the loan evidenced by this Note.

“**Loan Documents**” means the documents related to this loan signed by Borrower, any Guarantor, or anyone who pledges collateral.

“**SBA**” means the Small Business Administration, an Agency of the United States of America.

3. PAYMENT TERMS:

Borrower must make all payments at the place Lender designates. The payment terms for this Note are:

Place for Payments : Borrower must make all payments to Lender at the office of Lender at 100 S.E. 2nd Street, 13th Floor, Miami, Florida 33131, or at such other place or in such other manner as Lender from time to time may designate in writing to Borrower.

Maturity : This Note will mature two (2) years from date of first disbursement of this loan (the “ **Maturity Date** ”).

Interest Rate : The interest rate on this Note is one percent (1.00%) per year (the “ **Interest Rate** ”).

Initial Deferment Period : No payments are due on this loan for 6 months from the date of first disbursement of this loan (the “ **Deferment Period** ”). The SBA may, at its discretion, increase the Deferment Period for an additional 6 month period, pursuant to the SBA’s authority under the CARES Act (as defined below), and any and all rules, regulations, guidance and statutes promulgated thereunder. Interest will continue to accrue during the Deferment Period.

Loan Forgiveness : Subject to compliance with all applicable provisions of the CARES Act (as defined below) and any rules, regulations, guidance and statutes promulgated thereunder, Borrower may apply to Lender for forgiveness of the amount due on this Loan in an amount equal to the sum of the following costs incurred by Borrower during the 8-week period beginning on the date of first disbursement of this loan:

- a. Payroll costs
- b. Any payment of interest on a covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation)
- c. Any payment on a covered rent obligation
- d. Any covered utility payment

The amount of loan forgiveness shall be calculated (and may be reduced) in accordance with the requirements of the Paycheck Protection Program, including the provisions of Section 1106 of the Coronavirus Aid, Relief, and Economic Security Act (as may be amended, modified or supplemented from time to time the “ **CARES Act** ”) (P.L. 116-136), and any rules, regulations, guidance and statutes promulgated thereunder. Not more than 25% of the amount forgiven can be attributable to non-payroll costs.

Repayment Terms : The Interest Rate is fixed and will not be changed during the life of the loan. Interest shall be calculated at the rate of 1/365 of the annual rate of interest for each day that principal is outstanding (i.e., interest will accrue and be paid on the actual number of calendar days elapsed from the date hereof based on a 365 day year).

The outstanding principal balance of this Note, as the same may exist from time to time, shall bear interest at a fixed rate equal to the Interest Rate. Beginning on the 10th day of the first month after the expiration of the Deferment Period, the then outstanding principal balance of this Note shall be repaid in equal monthly payments of principal and interest, to be fully amortized over the remaining term of the Note, and shall be due and payable from Borrower to Lender on the same calendar day of each successive month thereafter (each of the foregoing payments shall be defined as a “ **Monthly Payment** ”), with the final Monthly Payment for any partial month being due on the Maturity Date. Lender will calculate the Monthly Payment Amount and provide written notice of the Monthly Payment amount to Borrower after the expiration of the Deferment Period. If any Monthly Payment due under this Note, or the Maturity Date, becomes due and payable on a day other than a Business Day, such payment or Maturity Date shall be extended to the next succeeding Business Day.

Lender will apply each installment payment first to pay interest accrued to the day Lender received the payment, then to bring principal current, and will apply any remaining balance to reduce principal.

Loan Prepayment: Notwithstanding any provision in this Note to the contrary, Borrower may prepay this Note at any time without penalty. Borrower may prepay 20 percent or less of the unpaid principal balance at any time without notice. If Borrower prepays more than 20 percent and the Loan has been sold on the secondary market, Borrower must: a. Give Lender written notice; b. Pay all accrued interest; and c. If the prepayment is received less than 21 days from the date Lender received the notice, pay an amount equal to 21 days interest from the date lender received the notice, less any interest accrued during the 21 days and paid under b. of this paragraph. If Borrower does not prepay within 30 days from the date Lender received the notice, Borrower must give Lender a new notice.

Non-Recourse: Lender and SBA shall have no recourse against any individual shareholder, member or partner of Borrower for non-payment of the Loan, except to the extent that such shareholder, member or partner uses the Loan proceeds for an unauthorized purpose.

4. DEFAULT:

Borrower is in default under this Note if Borrower does not make a payment when due under this Note, or if Borrower or Operating Company:

- A. Fails to do anything required by this Note and other Loan Documents;
- B. Defaults on any other loan with Lender;
- C. Does not preserve, or account to Lender's satisfaction for, any of the Collateral or its proceeds;
- D. Does not disclose, or anyone acting on their behalf does not disclose, any material fact to Lender or SBA;
- E. Makes, or anyone acting on their behalf makes, a materially false or misleading representation to Lender or SBA;
- F. Defaults on any loan or agreement with another creditor, if Lender believes the default may materially affect Borrower's ability to pay this Note;
- G. Fails to pay any taxes when due;
- H. Becomes the subject of a proceeding under any bankruptcy or insolvency law;
- I. Has a receiver or liquidator appointed for any part of their business or property;
- J. Makes an assignment for the benefit of creditors;
- K. Has any adverse change in financial condition or business operation that Lender believes may materially affect Borrower's ability to pay this Note;
- L. Reorganizes, merges, consolidates, or otherwise changes ownership or business structure without Lender's prior written consent; or
- M. Becomes the subject of a civil or criminal action that Lender believes may materially affect Borrower's ability to pay this Note.

5. LENDER 'S RIGHTS IF THERE IS A DEFAULT:

Without notice or demand and without giving up any of its rights, Lender may:

- A. Require immediate payment of all amounts owing under this Note;
- B. Collect all amounts owing from any Borrower or Guarantor;
- C. File suit and obtain judgment;
- D. Take possession of any Collateral; or
- E. Sell, lease, or otherwise dispose of, any Collateral at public or private sale, with or without advertisement.

6. LENDER 'S GENERAL POWERS:

Without notice and without Borrower's consent, Lender may:

- A. Bid on or buy the Collateral at its sale or the sale of another lienholder, at any price it chooses;
- B. Incur expenses to collect amounts due under this Note, enforce the terms of this Note or any other Loan Document, and preserve or dispose of the Collateral. Among other things, the expenses may include payments for property taxes, prior liens, insurance, appraisals, environmental remediation costs, and reasonable attorney's fees and costs. If Lender incurs such expenses, it may demand immediate repayment from Borrower or add the expenses to the principal balance;
- C. Release anyone obligated to pay this Note;
- D. Compromise, release, renew, extend or substitute any of the Collateral; and
- E. Take any action necessary to protect the Collateral or collect amounts owing on this Note.

7. WHEN FEDERAL LAW APPLIES:

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.

8. SUCCESSORS AND ASSIGNS:

Under this Note, Borrower and Operating Company include the successors of each, and Lender includes its successors and assigns.

9. GENERAL PROVISIONS:

- A. All individuals and entities signing this Note are jointly and severally liable.
- B. Borrower waives all suretyship defenses.

- C. Borrower must sign all documents necessary at any time to comply with the Loan Documents and to enable Lender to acquire, perfect, or maintain Lender's liens on Collateral.
- D. Lender may exercise any of its rights separately or together, as many times and in any order it chooses. Lender may delay or forgo enforcing any of its rights without giving up any of them.
- E. Borrower may not use an oral statement of Lender or SBA to contradict or alter the written terms of this Note.
- F. If any part of this Note is unenforceable, all other parts remain in effect.
- G. To the extent allowed by law, Borrower waives all demands and notices in connection with this Note, including presentment, demand, protest, and notice of dishonor. Borrower also waives any defenses based upon any claim that Lender did not obtain any guarantee; did not obtain, perfect, or maintain a lien upon Collateral; impaired

10. STATE SPECIFIC PROVISIONS:

- A. Business Day Definition. A “ **Business Day** ” is each day except Saturdays, Sundays, Federal Reserve Bank established holidays, or any day which by order or decree Lender is closed.
- B. Set Off Rights. Borrower consents to Lender's right of set off under Florida law.
- C. Rights and Remedies of Lender; No Waiver. Lender shall be entitled to pursue any and all rights and remedies provided by applicable law and/or under the terms of this Note, all of which shall be cumulative and may be exercised successively or concurrently. Lender's delay in exercising or failure to exercise any rights or remedies to which Lender may be entitled to pursue upon the occurrence of a Default shall not constitute a waiver of any of Lender's rights or remedies with respect to that or any subsequent default, whether of the same or a different nature, nor shall any single or partial exercise of any right or remedy by Lender preclude any other or further exercise of that or any other right or remedy. No waiver of any right or remedy by Lender shall be effective unless made in writing and signed by Lender, nor shall any waiver on one occasion apply to any future occasion, but shall be effective only with respect to the specific occasion addressed in that signed writing by Lender.
- D. Attorney Fees. If a Default occurs and this Note is placed by Lender in the hands of an attorney for collection or is collected through any legal proceeding, Borrower promises to pay Lender's costs, fees, expenses, disbursements and reasonable attorney and paralegal fees incurred in connection therewith, regardless of whether suit is filed, both before and during trial, and including but not limited to all such fees, costs and expenses incurred in any administrative, appellate, bankruptcy, collection, insolvency, or post judgment proceedings.
- E. Choice of Law and Venue. Subject to Section 7 of this Note, this Note shall be governed by the laws of the State of Florida, and the United States of America, whichever the context may require or permit. Borrower agrees that proper venue for any action that may be brought under this Note shall be in Miami-Dade County, Florida, or in the county where Borrower's principal place of business is located, at Lender's option. Should Lender institute any action under this Note, Borrower hereby submits itself to the jurisdiction of any federal or state court where Lender files such civil action. Nothing contained in this Note, however, shall be deemed to constitute, or to imply the existence of, any agreement by Lender to bring any such action only in said courts or to restrict in any way any of Lender's remedies or rights to enforce the terms of this Note as, when and where Lender shall deem appropriate, in its sole discretion.

- F. Notices. All notices, requests, instructions, demands, consents, authorizations or other communications hereunder between the parties will be in writing and will be deemed to have been duly delivered and received if: (1) delivered in person with return receipt requested or by courier (e.g., include but are not limited to FedEx, DHL, UPS, etc.); (2) delivered by facsimile or e-mail with acknowledgement returned promptly thereafter by facsimile or e-mail; and (3) if mailed by U.S. mail – then by certified, return receipt requested to the address set forth in this Addendum or to such other address as a party may specify in writing. Notice shall be effective upon receipt except for notice via email, which shall be effective only when the recipient, by return email or notice delivered by other method provided for in this paragraph, acknowledges having received that email (with an automatic “read receipt” or similar notice not constituting an acknowledgement of an email receipt for purposes of this paragraph).
- G. Transfer of Loan. Lender may, at any time, sell, transfer, or assign the Note, and any or all servicing rights with respect thereto, in whole but not in part, or grant participations therein. Lender may forward to each purchaser, transferee, assignee, servicer or participant all documents and information which Lender now has or may hereafter acquire relating to Borrower in connection therewith as Lender determines necessary within Lender’s discretion.
- H. Authority to Execute Loan Documents. The individual(s) executing this Note on behalf of Borrower represents to Lender that he and/or she has been duly authorized under the Borrower’s organizational documents and Florida law by either (i) the Board of Directors of the Borrower if the Borrower is a corporation; or (ii) the required Manager(s) of the Borrower if the Borrower is a “manager managed” limited liability company; or (iii) the required Managing Member(s) of the Borrower if the Borrower is a “member managed” limited liability company; or (iv) the General Partner of the Borrower if the Borrower is a general partnership; or (v) the General Partner of the Borrower if the Borrower is a limited liability limited partnership to make, execute and deliver this Note and all other Loan Documents in his and/or her capacities as set forth in their respective signature block(s) below. The undersigned represent(s) that the Borrower’s acceptance of this Loan and the execution of all the Loan Documents have all been duly authorized, and that all the Loan Documents are legally binding upon Borrower.
- I. Maintenance of Deposit Accounts. Borrower shall maintain a deposit account with Lender during the life of the Loan (the “Deposit Account”). Borrower acknowledges that the proceeds of the Loan shall be deposited by Bank into the Deposit Account.
- J. Direct Debit. If all or any part of the Loan is not forgiven, Borrower agrees that Lender may debit the Deposit Account for any Monthly Payment due hereunder if the payment is not timely made by Borrower.
- K. Miscellaneous. Time shall be of the essence with respect to the terms of this Note. Whenever used in this Note and unless the context otherwise requires, words in the singular include the plural, words in the plural include the singular, and pronouns of any gender include the other genders. Captions and paragraph headings in this Note are for convenience only and shall not affect its interpretation.

- L. **WAIVER OF TRIAL BY JURY.** BORROWER HEREBY, AND LENDER BY ITS ACCEPTANCE OF THIS NOTE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS NOTE AND ALL LOAN DOCUMENTS AND OTHER AGREEMENTS EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THE LOAN, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER PARTY, WHETHER IN CONNECTION WITH THE MAKING OF THE LOAN, COLLECTION OF THE LOAN, OR OTHERWISE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER MAKING THE LOAN EVIDENCED BY THIS NOTE.
- M. Electronic Signatures. Borrower and Lender agree to conduct any transaction, use any service, system, product, or enter into any required agreement of Lender (hereinafter each, individually or collectively, the “Electronic Transactions”) via established and commercially accepted electronic commerce applications or methods, with the parties employing appropriate security procedures with respect to the same. The parties agree that the electronic signatures appearing on any of the Electronic Transactions authorized by this Note shall have the same force in law as handwritten signatures for the purpose of validity, enforceability, and admissibility. Records of all such Electronic Transactions electronically signed relating to this Note shall be made available by the parties to one another, consistent with their respective data storage / retention policies / procedures, and, as such, are available to each other. The parties further agree that all Electronic Transactions authorized pursuant to this paragraph shall have the full force and effect of law. The parties agree that to the extent not covered by this paragraph, Florida statutes relating to Electronic Commerce (Chapter 668) or the Electronic Signatures in Global and National Commerce Act (15 USCS §§ 7001 et seq.), as may be amended from time to time or any successor legislation, shall apply to the conduct described herein.

[Signature Page Follows]

11. BORROWER'S NAME(S) AND SIGNATURES:

By signing below, each individual or entity becomes obligated under this Note as Borrower.

Executed on 4/23/2020

Borrower:

Name of Borrower: VENUS CONCEPT INC

Signature: /s/ SEAN CARR

Name of Signatory: SEAN CARR

Title of Signatory: Authorized Representative of Borrower