

**PURCHASE AND SALE AGREEMENT**

**By and Between**

**SAN PABLO LOCAL SUCCESSOR AGENCY**

**and**

**SAN PABLO ECONOMIC DEVELOPMENT CORPORATION**

## **PURCHASE AND SALE AGREEMENT**

THIS PURCHASE AND SALE AGREEMENT (the “Agreement”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018 (the “Effective Date”), by and between the SAN PABLO LOCAL SUCCESSOR AGENCY (herein the “LSA”), and the SAN PABLO ECONOMIC DEVELOPMENT CORPORATION (herein the “EDC”).

### **ARTICLE 1. INTRODUCTION**

#### **1.1     Purpose of this Agreement**

The purpose of this Agreement is to provide for the sale and development of certain real property (the “Site”) located within the City.

#### **1.2     The Site**

The Site, consisting of approximately 36,787 square feet of land area, is shown on the Map of the Site (Attachment No. 1), and is more particularly described in the Legal Description of the Site (Attachment No. 2). The Site is to be acquired by the EDC from the LSA pursuant to this Agreement.

#### **1.3     Parties to this Agreement**

##### **1.3.1   The LSA**

The LSA is a public body, corporate and politic, and is the successor agency to the former Redevelopment Agency of the City of San Pablo pursuant to Part 1.85 of Division 24 of the California Health and Safety Code (the “Dissolution Act”). The office of the LSA is located at 13831 San Pablo Avenue, San Pablo, California 94806. “LSA,” as used in this Agreement, includes any assignee of or successor to its rights, powers and responsibilities.

##### **1.3.2   The EDC**

The EDC is a California nonprofit public benefit corporation. The office of the EDC is 13830 San Pablo Avenue, Suite D, San Pablo, California 94806. Wherever the term “EDC” is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

No voluntary or involuntary successor in interest of the EDC shall acquire any rights or powers under this Agreement except as expressly set forth herein.

The EDC shall not assign all or any part of this Agreement without the prior written approval of the LSA. Any such assignment by the EDC in violation of this Agreement shall be void.

## **ARTICLE 2. DISPOSITION OF THE SITE**

### **2.1     Purchase and Sale**

In accordance with and subject to all the terms, covenants and conditions of this Agreement, the LSA agrees to sell, and the EDC agrees to purchase, the Site for the sum of ONE MILLION SEVENTY-FIVE THOUSAND DOLLARS (\$1,750,000) (the "Purchase Price").

The Purchase Price shall be payable as follows:

a.       Cash or certified check in the amount of FOUR HUNDRED THOUSAND DOLLARS (\$400,000); and

b.       A promissory note (the "Note") executed by the EDC in favor of the LSA in substantially the form attached hereto as Attachment No. 3 and incorporated herein by this reference, in the principal amount of ONE MILLION THREE HUNDRED FIFTY THOUSAND DOLLARS (\$1,350,000). The obligation evidenced by the Note shall bear simple interest at the rate of 4% per annum. The EDC shall make annual interest-only payments, and the entire principal balance shall be due and payable no later than twelve (12) years from the date of the Note. The Note shall be secured by a first lien on the Site under a deed of trust (the "Deed of Trust") executed by the EDC in favor of the LSA in substantially the form attached hereto as Attachment No. 4 and incorporated herein by this reference.

### **2.2     Escrow**

Within five (5) days after the execution of this Agreement by the LSA, the LSA shall open an escrow ("Escrow") with \_\_\_\_\_ Title Company, as escrow agent (the "Escrow Agent"). This Agreement, together with any supplemental escrow instructions provided by the parties and consistent herewith, shall constitute the joint escrow instructions of the LSA and the EDC, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of escrow. The LSA and the EDC shall provide such additional escrow instructions as shall be necessary and consistent with this Agreement. The Escrow Agent hereby is empowered to act under this Agreement, and, upon indicating its acceptance of the provisions of this Section 2.2 in writing, delivered to the LSA and to the EDC within five (5) days after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder.

The EDC shall deposit with the Escrow Agent the Purchase Price for the Site (cash or certified check and the Note) in accordance with the provisions of Section 2.11 of this Agreement.

The EDC shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified the EDC of the amount of such fees, charges and costs, but not earlier than ten (10) days prior to the scheduled date for the close of escrow:

a.       The premium for the title insurance policy or special endorsements to be paid by the EDC as set forth in Section 2.11 of this Agreement;

The LSA shall timely and properly execute, acknowledge and deliver a deed conveying to the EDC title to the Site in accordance with the requirements of Section 2.9 of this Agreement, together with estoppel certificates certifying that the EDC has completed all acts necessary to entitle the EDC to such conveyance, if such be the fact.

The LSA shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified the LSA of the amount of such fees, charges and costs, but not earlier than ten (10) days prior to the scheduled date for the close of escrow:

- a. Costs necessary to place the title to the Site in the condition for conveyance required by the provisions of this Agreement;
- b. The escrow fee;
- c. Recording fees;
- d. Notary fees; and
- e. Any State, County or City documentary transfer tax.

Upon delivery of the deed to the Escrow Agent by the LSA pursuant to Section 2.10 of this Agreement, the Escrow Agent shall record such deed following the parties' satisfaction of all of the Conditions to Closing set forth in Section 2.3 of this Agreement and when title can be vested in the EDC in accordance with the terms and provisions of this Agreement. The Escrow Agent shall buy, affix and cancel any transfer stamps required by law and pay any transfer tax required by law. Any insurance policies governing the Site are not to be transferred.

The Escrow Agent is authorized to:

- a. Pay and charge the LSA and the EDC, respectively, for any fees, charges and costs payable under this Section 2.2 of this Agreement. Before such payments are made, the Escrow Agent shall notify the LSA and the EDC of the fees, charges and costs necessary to clear title and close the escrow;
- b. Disburse funds and deliver documents to the parties entitled thereto when the conditions of this escrow have been fulfilled by the LSA and the EDC; and
- c. Record any instruments delivered through this escrow, if necessary or proper, to vest title in the EDC and to secure the payment of the Purchase Price to the LSA in accordance with the terms and provisions of this Agreement.

All funds received in this escrow shall be deposited by the Escrow Agent with other escrow funds of the Escrow Agent in a general escrow account or accounts with any state or national bank doing business in the State of California. Such funds may be transferred to any other such general escrow account or accounts. All disbursements shall be made by check of the Escrow Agent. All adjustments shall be made on the basis of a 30-day month.

If this escrow is not in condition to close before the time for conveyance established in Section 2.8 of this Agreement, any party who then shall have fully performed the acts to be performed before the conveyance may, in writing, terminate this Agreement in the manner set forth in Section 2.15.1 or 2.15.2 hereof, as the case may be, and demand the return of its money, papers or documents. Thereupon all obligations and liabilities of the parties under this Agreement shall cease and terminate in the manner set forth in Section 2.15.1 or 2.15.2 hereof, as the case may be. If neither the LSA nor the EDC shall have fully performed the acts to be performed before the time for conveyance established in Section 2.8, no termination or demand for return shall be recognized until ten (10) days after the Escrow Agent shall have mailed copies of such demand to the other party or parties at the address of its or their principal place or places of business. If any objections

are raised within the 10-day period, the Escrow Agent is authorized to hold all money, papers and documents with respect to the Site until instructed in writing by the LSA and the EDC or upon failure thereof by a court of competent jurisdiction. If no such demands are made, the escrow shall be closed as soon as possible. Nothing in this Section 2.2 shall be construed to impair or affect the rights or obligations of the LSA or the EDC to specific performance.

Any amendment of these escrow instructions shall be in writing and signed by the LSA and the EDC. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

All communications from the Escrow Agent to the LSA or the EDC shall be directed to the addresses and in the manner established in Section 5.1 of this Agreement for notices, demands and communications between the LSA and the EDC.

The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Sections 2.2 to 2.12, both inclusive, of this Agreement.

Neither the LSA nor the EDC shall be liable for any real estate commissions or brokerage fees which may arise herefrom. The LSA and the EDC each represent that they have not engaged any broker, agent or finder in connection with this transaction.

## 2.3 Conditions to Closing

Title to the Site shall be conveyed to the EDC subject to the following:

2.3.1 LSA's Conditions of Closing. The LSA's obligation to proceed with the conveyance of the Site is subject to the fulfillment (or waiver in writing by the LSA) of each and all of the conditions precedent set forth in this Section 2.3.1 ("LSA's Conditions Precedent"), which are solely for the benefit of the LSA, and which shall be fulfilled or waived by the time periods provided for herein:

- a. No Default. At the time of close of escrow, the EDC shall not be in default of any of its obligations under this Agreement and all representations and warranties of the EDC contained herein shall be true and correct in all material respects.
- b. Execution of Documents. The EDC shall have executed any other documents required hereunder, including the Note and Deed of Trust, and shall have delivered such documents into escrow.
- c. Payment of Closing Costs. The EDC shall have paid all required closing costs to the Escrow Agent in accordance with Section 2.2 hereof.

2.3.2 EDC's Conditions of Closing. The EDC's obligation to proceed with the purchase of the Site is subject to the fulfillment (or waiver in writing by the EDC) of each and all of the conditions precedent set forth in this Section 2.3.2 ("EDC's Conditions Precedent"), which are solely for the benefit of the EDC, and which shall be fulfilled or waived by the time periods provided for herein:

- a. No Default. At the time of close of escrow, the LSA shall not be in default of any of its obligations under this Agreement and all representations and warranties of the LSA contained herein shall be true and correct in all material respects.

- b. Execution of Documents. The LSA shall have executed the deed for the Site and any other documents required hereunder and shall have delivered such documents into escrow.
- c. Payment of Closing Costs. The LSA shall have paid all required closing costs to the Escrow Agent in accordance with Section 2.2 hereof.
- d. Property Repairs. The LSA shall have completed the repairs to the buildings on the Site described in Section 2.11.2 or shall have assigned funds from the existing property management fund maintained by New Way Property Management to the EDC for that purpose.

#### 2.4 Condition of Title

Promptly following the opening of escrow, the LSA shall obtain a preliminary title report for the Site and deliver a copy thereof to the EDC. The Site is occupied by four tenants and is subject to the interests of said tenants under their respective leases (the "Leases"). The Leases shall be assigned by the LSA to the EDC and are identified as follows:

- a. Lease with Pizza Hut, dated \_\_\_\_\_;
- b. Lease with 7-11, dated \_\_\_\_\_;
- c. Lease with Modern Nails, dated \_\_\_\_\_;
- d. Lease with Ed Hernandez Karate Studio, dated \_\_\_\_\_.

The LSA shall convey to the EDC fee simple title to the Site subject to (1) the existing Leases; (2) the Deed of Trust securing payment of the Purchase Price, (3) easements of record, and (4) such other matters identified in the preliminary title report and approved by the EDC in writing.

#### 2.5 Conveyance of Title and Delivery of Possession

Provided that the EDC is not in default under this Agreement and all conditions precedent to such conveyance have occurred, and subject to any mutually agreed upon extensions of time, conveyance to the EDC of title to the Site shall be completed within thirty (30) days from the opening of escrow. The LSA and the EDC agree to perform all acts necessary to conveyance of title in sufficient time for title to be conveyed in accordance with the foregoing provisions.

Possession shall be delivered to the EDC concurrently with the conveyance of title. The EDC shall accept title and possession on or before the said date.

#### 2.6 Form of Deed

The LSA shall convey to the EDC title to the Site in the condition provided in Section 2.4 of this Agreement by grant deed in substantially the form set forth in Attachment No. 5.

#### 2.7 Time for and Place of Delivery of Deed

Subject to any mutually agreed upon extensions of time, the LSA shall deposit the grant deed for the Site with the Escrow Agent on or before the date established for the conveyance of the Site in Section 2.5 hereof.

## 2.8 Payment of the Purchase Price and Recordation of Grant Deed and Deed of Trust

The EDC shall deposit the executed Note and Deed of Trust for the Site and sums required hereunder with the Escrow Agent prior to the date for conveyance thereof, provided that the Escrow Agent shall have notified the EDC in writing that the grant deed for the Site, properly executed and acknowledged by the LSA, has been delivered to the Escrow Agent and that title is in condition to be conveyed in conformity with the provisions of Section 2.4 of this Agreement. Upon the close of escrow, the Escrow Agent shall file the grant deed and the Deed of Trust for recordation among the land records in the Office of the County Recorder of Contra Costa County, shall deliver the executed Note to the LSA, and shall deliver to the EDC a title insurance policy insuring title in conformity with Section 2.9 of this Agreement.

## 2.9 Title Insurance

Concurrently with recordation of the grant deed for the Site, \_\_\_\_\_ Title Company ("Title Company"), shall provide and deliver to the EDC a title insurance policy issued by the Title Company insuring that the title is vested in the EDC in the condition required by Section 2.4 of this Agreement. The Title Company shall provide the LSA with copies of the title insurance policy.

The EDC shall pay for all premiums for title insurance coverage or special endorsements.

## 2.10 Taxes and Assessments

Ad valorem taxes and assessments, if any, on the Site, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period commencing prior to conveyance of title shall be borne by the LSA. All ad valorem taxes and assessments levied or imposed for any period commencing after closing of the escrow shall be paid by the EDC.

## 2.11 Condition of the Site; Repairs

2.11.1 "As Is". The LSA shall provide the EDC with all information of which it has actual knowledge concerning the physical condition of the Site, including, without limitation, information about any Hazardous Materials, as defined below. Except as to the repairs described in Section \_\_\_\_ below, the EDC acknowledges and agrees that it is acquiring the Site "as is," in its current physical condition, with no warranties, express or implied, as to the physical condition thereof, the presence or absence of any latent or patent condition thereon or therein, including without limitation, any Hazardous Materials thereon or therein, and any other matters affecting the Site. As used in this Agreement, the term "Hazardous Materials" means any substance, material or waste which is (1) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of California law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (7) defined as a "hazardous substance" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903); (8) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. (42

U.S.C. Section 9601); or (9) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.

2.11.2 Repairs. The buildings on the Site are in need of certain repairs, which shall be completed by the LSA prior to the close of escrow. The repairs include the following: (a) roof replacement at an estimated cost of \$45,000; (b) parking lot resurfacing and sealcoat/stripping at an estimated cost of \$40,000; (c) replacement of HVAC at an estimated cost of \$50,000; and (d) exterior painting at an estimated cost of \$15,000. At the option of the EDC, the LSA shall assign existing property management funds maintained by New Way Property Management for the Site to the EDC and the EDC shall undertake and complete the repairs. The assignment of funds, if elected by the EDC, shall be in the amounts estimated to complete the repairs plus a contingency of 15%.

## 2.12 Remedies and Rights of Termination Prior to Conveyance of the Site

### 2.12.1 Termination by the EDC

In the event that prior to conveyance of title to the Site to the EDC:

- a. The LSA does not tender conveyance of the Site or possession thereof in the manner and condition and by the date provided in this Agreement, and any such failure is not cured within thirty (30) days after written demand by the EDC; or
- b. All of the EDC's Conditions Precedent set forth in Section 2.3.2 hereof have not been satisfied;

then this Agreement may, at the option of the EDC, be terminated by written notice thereof to the LSA. Upon such termination, neither the LSA nor the EDC shall have any further rights against or liability to the other under this Agreement, and any monies deposited into escrow as payment of the Purchase Price shall be returned to the EDC.

### 2.12.2 Termination by the LSA

In the event that prior to conveyance of title to the Site to the EDC:

- a. The EDC transfers or assigns or attempts to transfer or assign this Agreement or any rights herein or in the Site in violation of this Agreement; or
- b. All of the LSA's Conditions Precedent set forth in Section 2.3.1 hereof have not been satisfied; or
- c. The EDC does not accept the title to the Site under tender of conveyance by the LSA pursuant to this Agreement; or
- d. The EDC is in breach or default with respect to any other obligation of the EDC under this Agreement; and
- f. If any default or failure referred to in subdivision b., c. or d. of this Section shall not be cured within thirty (30) days after the date of written demand by the LSA;



then this Agreement, may, at the option of the LSA, be terminated by the LSA by written notice thereof to the EDC. Upon such termination, neither the LSA nor the EDC shall have any further rights against or liability to the other under this Agreement, and any monies deposited into escrow as payment of the Purchase Price shall be returned to the EDC.

### 2.13 Subordination

The Deed of Trust may be subordinated to the lien of a deed of trust securing construction or permanent financing for the development of the Site (in each case, a “Senior Loan”), but only on condition that all of the following conditions are satisfied:

a. All of the proceeds of the Senior Loan, less any transaction costs, must be used to provide construction and/or permanent financing for the development of the Site.

b. The EDC shall demonstrate to the LSA’s reasonable satisfaction that the Note will be adequately secured.

c. The subordination agreement must be structured to minimize the risk that the Deed of Trust would be extinguished as a result of a foreclosure by the Senior Lender. To satisfy this requirement, the subordination agreement must provide the LSA with adequate rights to cure any defaults by the EDC, including: (1) providing the LSA or its successor in interest with copies of any notices of default at the same time and in the same manner as the same are provided to the EDC; and (2) providing the LSA or its successor in interest the right to cure any default by the EDC within ninety (90) days after a notice of default. The LSA or its successor in interest shall be entitled to reimbursement from the EDC of all direct but reasonable costs and expenses incurred by the LSA in curing a default of the EDC.

d. The subordination described in this section shall be effective only during the original term of the Senior Loan and any extension of its term approved in writing by the LSA.

e. No subordination may limit the effect of the Deed of Trust before a foreclosure, nor require consent of the holder of the Senior Loan to the exercise of any remedies by the LSA contained in the Note or Deed of Trust.

f. Upon a determination by legal counsel for the LSA that the conditions in this section have been satisfied, the Executive Director of the LSA or his/her designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval.

## **ARTICLE 3 USE OF THE SITE**

### 3.1 Obligation to Refrain From Discrimination

The EDC covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the EDC itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land.

### 3.2 Form of Nondiscrimination and Nonsegregation Clauses

The EDC shall refrain from restricting the rental, sale or lease of the Site on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

b. In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

“That there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein leased.”

c. In contracts: “There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.”

## **ARTICLE 4. GENERAL PROVISIONS**

### 4.1 Notices, Demands and Communications Between the Parties

Formal notices, demands and communications between the LSA and the EDC shall be in writing and sent to the following addresses by one or more of the following methods:

a. Addresses/Fax Numbers

LSA: San Pablo LSA  
13831 San Pablo Avenue  
San Pablo, CA 94806  
Attention: Executive Director  
Telephone: (510) 215-3016  
Fax Number: (510) 620-0204

EDC: San Pablo EDC  
13830 San Pablo Avenue, Suite D  
San Pablo, CA 94806  
Telephone: \_\_\_\_\_  
Fax Number: \_\_\_\_\_

b. Methods

(1) Certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid, in the United States mail; or

(2) A nationally recognized overnight courier, by priority overnight service, in which case notice shall be deemed delivered one (1) business day after deposit with that courier; or

(3) Hand delivery with signed receipt for delivery from a person at the place of business of the receiving party and authorized to accept delivery for the receiving party, in which case notice shall be deemed delivered upon receipt; or

(4) Telecopy or facsimile transmission, if a copy of the notice is also sent the same day by United States certified mail, in which case notice shall be deemed delivered one (1) business day after the telecopy or facsimile transmission, provided that a transmission report is automatically generated reflecting the accurate transmission of the notice to the receiving party at the fax number specified in paragraph a. above.

4.2 Conflicts of Interest

No member, official or employee of the LSA shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

The EDC warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

4.3 Nonliability of LSA Officials and Employees

No member, official or employee of the LSA shall be personally liable to EDC in the event of any default or breach by the LSA or for any amount which may become due or on any obligations under the terms of this Agreement.

4.4 Extension of Times of Performance

Times of performance under this Agreement may be extended in writing by the LSA and the EDC.

4.5 Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

**ARTICLE 5.  
ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS**

This Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This Agreement comprises pages 1 through 12, inclusive, and Attachment Nos. 1 through 5, attached hereto and incorporated herein by reference, all of which constitute the entire understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the LSA and the EDC, and all amendments hereto must be in writing and signed by the appropriate authorities of the LSA and the EDC.

**IN WITNESS WHEREOF**, the LSA and the EDC have executed this Agreement as of the effective date of this Agreement set forth in the introductory paragraph on page 1 of this Agreement.

[Signatures on next page.]

SAN PABLO LOCAL SUCCESSOR AGENCY

By \_\_\_\_\_  
Executive Director

“LSA”

SAN PABLO ECONOMIC DEVELOPMENT  
CORPORATION

By \_\_\_\_\_  
Executive Director

“EDC”

## ACKNOWLEDGMENTS

ATTACHMENT NO. 1

MAP OF THE SITE

[TO BE INSERTED]

ATTACHMENT NO. 2  
LEGAL DESCRIPTION OF THE SITE

[TO BE INSERTED]



ATTACHMENT NO. 3

FORM OF PURCHASE MONEY PROMISSORY NOTE  
(Secured by a First Deed of Trust)

Principal Amount: \_\_\_\_\_, 2018  
\$1,350,000.00 San Pablo, California

**FOR VALUE RECEIVED**, the SAN PABLO ECONOMIC DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation ("EDC"), promises to pay to the SAN PABLO LOCAL SUCCESSOR AGENCY ("LSA"), at 13831 San Pablo Avenue, San Pablo, California, or such other place as the LSA may from time to time designate in writing, the principal sum of **ONE MILLION THREE HUNDRED FIFTY THOUSAND DOLLARS** (\$1,350,000.00), together with interest on the unpaid principal balance from the date hereof until paid with interest at the rate set forth below, until fully paid, in lawful money of the United States of America.

1. This Purchase Money Promissory Note (the "Note") is made and delivered pursuant to and in implementation of that certain Purchase and Sale Agreement entered into between the EDC and the LSA, dated \_\_\_\_\_, 2018 (the "PSA"), which provides for the sale of certain real property (the "Site") by the LSA to the EDC. The LSA has conveyed the Site to the EDC by Grant Deed of even date herewith (the "Grant Deed").

2. Payment of this Note is secured by a deed of trust (the "Deed of Trust") from the EDC to the LSA upon the Site, dated of even date herewith.

3. This Note shall bear interest at an annual rate of 4%.

4. This Note shall be due and payable in full no later than twelve (12) years from the date first written above. Annual interest-only payments shall be made during the term of the Note. The loan repayment schedule is attached hereto as Exhibit A and incorporated herein by this reference.

5. The EDC shall have the right to prepay this Note at any time, in whole or in part, without penalty.

6. The occurrence of any of the following shall constitute an event of default under this Note: (a) the EDC fails to pay any amount due hereunder within ten (10) days of its due date; or (b) any default by the EDC under the Deed of Trust.

Upon the occurrence of any event of default, or at any time thereafter, at the option of the LSA hereof, the entire unpaid principal and interest owing on this Note shall become immediately due and payable. This option may be exercised at any time following any such event, and the LSA's failure to exercise such option shall not constitute a waiver of such option with respect to any subsequent event. The LSA's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

7. At all times when the EDC is in default hereunder by reason of the EDC's failure to pay amounts due under this Note, interest shall accrue on the sums as to which the EDC is in default at the highest rate then allowed by law.

8. The EDC agrees to pay immediately upon demand all costs and expenses of the LSA including reasonable attorneys' fees, (a) if after default this Note be placed in the hands of an attorney or attorneys for collection, (b) if after a default hereunder or under the Deed of Trust the LSA finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against the EDC, any guarantor or any other party liable therefor or to the protection of its rights under this Note and the Deed of Trust, or (c) if the LSA seeks to have the Site abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of this Note or prohibiting the enforcement of the Deed of Trust or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court.

9. This Note shall be binding upon the EDC, its successors and assigns.

10. Time is of the essence with respect to every provision hereof. This Note shall be construed in accordance with and be governed by the laws of the State of California.

11. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

**SAN PABLO ECONOMIC DEVELOPMENT  
CORPORATION, a California nonprofit public  
benefit corporation**

By \_\_\_\_\_

**“EDC”**

EXHIBIT A  
LOAN REPAYMENT SCHEDULE

[To be inserted.]

ATTACHMENT NO. 4

FORM OF PURCHASE MONEY DEED OF TRUST

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

San Pablo LSA  
13831 San Pablo Avenue  
San Pablo, CA 94806  
ATTN: City Manager

No fee for recording pursuant to  
Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEED OF TRUST AND SECURITY AGREEMENT**  
**(Securing Purchase Money Promissory Note)**

THIS DEED OF TRUST is being executed this \_\_\_\_ day of \_\_\_\_\_, 2018, by the SAN PABLO ECONOMIC DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation (herein the "Trustor"), to \_\_\_\_\_ TITLE COMPANY (the "Trustee"), in favor of the SAN PABLO LOCAL SUCCESSOR AGENCY (the "Beneficiary"). Trustor is the fee owner of the real property (the "property"), described in the attached Attachment No. 1 which is incorporated into this Deed of Trust by reference.

FOR GOOD AND VALUABLE CONSIDERATION, Trustor hereby irrevocably grants, conveys, transfers and assigns to the Trustee, its successors and assigns, in trust, with power of sale and right of entry and possession as provided below, all of its present and future estate, right, title and interest in and to the following described property (the "Mortgaged Property" or the "Premises"):

(A) All of Trustor's estate, right, title and interest in and to the property, and all minerals, oil, gas and other hydrocarbon substances on the property, as well as all development rights, air rights, water, water rights, and water stock relating to the property;

(B) All present and future structures, buildings, improvements, appurtenances and fixtures of any kind on the property, including but not limited to all apparatus, equipment and appliances used in connection with the operation or occupancy of the property, such as fire sprinklers and alarm systems, heating and air-conditioning systems and facilities used to provide any utility services, refrigeration, ventilation, laundry, drying, dishwashing, garbage disposal, stoves, recreation or other services on the property, and all window coverings, drapes and rods, carpeting and floor coverings, it being intended and agreed that all such items will be conclusively considered to be a part of the real property conveyed by this Deed of Trust, whether or not attached or affixed to the property (the "Improvements");

(C) All appurtenances of the property and all rights of the Trustor in and to any streets, roads or public places, easements or rights-of-way, relating to the property;

(D) All of the rents, royalties, profits and income of the property, and all rights of Trustor under all present and future leases affecting the property, including but not limited to any security deposits;

(E) All proceeds and claims arising on account of any damage to or taking of the property or any Improvements thereon or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the property or any Improvements;

(F) All goods located on the property and used in the operation or occupancy of the property or in any construction on the property but which are not effectively made real property under Clause (B) above, including but not limited to all appliances, furniture and furnishings, building service equipment, and building materials, supplies and equipment;

(G) All general intangibles relating to the development or use of the property, including but not limited to all governmental permits relating to construction on the property, all names under or by which the property or any Improvements on the property may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks and goodwill in any way relating to the property; and

(H) All water stock relating to the property, all shares of stock or other evidence of ownership of any part of the property that is owned by the Trustor in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the property.

This instrument secures:

(1) The payment and performance of the Trustor's indebtedness and obligations under the promissory note of even date herewith in the principal amount of \$1,350,000.00 (the "Note") executed by the Trustor, as "EDC," in favor of the Beneficiary, as "LSA," including all extensions, renewals, modifications, amendments and replacements of the Note;

(2) The payment and performance of the Trustor's obligations under this Deed of Trust;

(3) The payment of all sums advanced or paid out by the Beneficiary or the Trustee under or pursuant to any provision of this Deed of Trust, together with interest thereon as provided herein;

(4) The payment of the principal and interest on all other future loans or advances made by the Beneficiary to the Trustor (or any successor in interest to the Trustor as the owner of all or any part of the Mortgaged Property) when the promissory note evidencing the loan or advance specifically states that it is secured by this Deed of Trust ("Future Advances"), including all extensions, renewals, modifications, amendments and replacements of any Future Advances;

(5) The payment and performance of each and every obligation, covenant, and agreement of Trustor contained under all other present and future agreements executed by Trustor in favor of Beneficiary and relating to the Note executed between Trustor and Beneficiary (as such documents may be amended, modified or supplemented from time to time, the "Related Documents").

## ARTICLE I COVENANTS OF TRUSTOR

To protect the security of this Deed of Trust, the Trustor agrees as follows:

1.01 Performance. Trustor will pay and perform all indebtedness and obligations that are secured by this Deed of Trust in accordance with their terms. All sums payable by Trustor hereunder shall be paid without notice, demand, counterclaim, offset, deduction, or defense.

1.02 Insurance. Trustor will maintain in force on the Mortgaged Property (a) hazard insurance against loss or damage to the Improvements and personal property by fire and any of the risks covered by "fire and extended coverage" insurance, (b) commercial general liability insurance, (c) such other insurance, and in such amounts, as may from time to time be reasonably required by Beneficiary against the same or other hazards, including without limitation flood insurance and earthquake insurance, and (d) any other insurance required by law. The insurance policies must be satisfactory to the Beneficiary as to amount, form, deductibles and insurer, and must cover all risks Beneficiary requires. With respect to public liability insurance, Beneficiary and the City of Folsom shall be named as additional insureds, and as to Beneficiary such insurance shall be primary and noncontributing in the event of loss with any other insurance Beneficiary may carry. The hazard insurance policy must contain a standard mortgagee clause satisfactory to the Beneficiary making all losses payable to the Beneficiary. All such insurance policies may only be cancelled or modified upon not less than thirty (30) days prior written notice to the Beneficiary. Certificates of all such insurance satisfactory to the Beneficiary and at the request of Beneficiary, such insurance policies, together with receipts for the payment of premiums, are to be delivered to and held by the Beneficiary. Certificates of all renewal and replacement policies must be delivered to the Beneficiary at least fifteen (15) days before expiration of the old policies. Approval, disapproval or acceptance of any insurance by the Beneficiary will not be a representation of the solvency of any insurer, the sufficiency of any amount of insurance or the form or legal sufficiency of any insurance contracts, and Trustor hereby expressly assumes full responsibility for and liability, if any, with respect thereto.

1.03 Proceeds. All insurance proceeds on the Mortgaged Property, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking of all or any part of the Mortgaged Property or for any damage or injury to it or for any loss or diminution in value of the Mortgaged Property, are hereby assigned to and shall be paid to the Beneficiary. Trustor, upon obtaining knowledge of the institution of any such proceedings or of any damage to the Mortgaged Property, will immediately notify the Beneficiary in writing. The Beneficiary may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries and may make any compromise or settlement thereof and may join with Trustor in adjusting any loss covered by insurance. The Beneficiary will apply any sums received by it under this paragraph first to the payment of all of its costs and expenses (including but not limited to legal fees and disbursements) incurred in obtaining those sums, and then, in its absolute discretion (subject to the following paragraph) and without regard to the adequacy of its security, to the payment of the indebtedness and obligations secured by this Deed of Trust or to Trustor for restoration or repair of the Mortgaged Property. Any application of such amounts or any portion thereof to the indebtedness secured hereby shall not be construed to cure or waive any default or notice of default hereunder or invalidate any act done pursuant to any such notice or default.

In the event Trustor is not in default hereunder and the following conditions are satisfied, Beneficiary shall make such remaining proceeds available to Trustor to restore the Mortgaged Property: (i) the Beneficiary shall be furnished with an estimate for its approval of the cost of restoration or repair accompanied by an architect's certification as to such costs and appropriate final plans and specifications for reconstruction of the improvements for approval by the

Beneficiary; (ii) the improvements so restored or repaired shall be of substantially the same character and value as the improvements prior to damage or destruction and proper for the purposes for which they were originally erected; (iii) Trustor shall proceed forthwith with the completion of construction of the improvements, including the necessary work of restoration, in accordance with plans, specifications and drawings submitted to and approved by the Beneficiary; (iv) any monies which the Beneficiary makes available for restoration shall be disbursed in accordance with standard construction lending practice or in any other manner approved by the Beneficiary; (v) Trustor shall furnish the beneficiary with evidence satisfactory to the Beneficiary that all improvements so restored and/or repaired and their contemplated use fully comply with all zoning, environmental and building laws, ordinances and regulations, and with all other applicable federal, state and municipal laws and requirements; and (vi) if the estimated costs of reconstruction shall exceed the proceeds available, Trustor shall furnish a satisfactory bond of completion or such cash deposits or other evidence satisfactory to the Beneficiary of Trustor's ability to meet such excess costs.

1.04 Payment of Taxes and Claims. Trustor agrees to pay when due all taxes and assessments which are or may become a lien on the Mortgaged Property and any bonds, fees, liens, charges, fines, impositions and other items which are attributable to or which are assessed against the Mortgaged Property or its rents, royalties, profits and income ("Taxes"). Trustor also agrees to pay when due all lawful claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered for the Mortgaged Property ("Claims").

Trustor, at its expense, may contest, by appropriate proceedings conducted in good faith and with due diligence, the amount or validity, in whole or in part, of any Taxes or Claims, provided (i) Trustor shall have notified Beneficiary prior to the commencement of such proceedings, (ii) in the case of any unpaid Taxes or Claims, such proceedings shall suspend the collection thereof from Trustor, Beneficiary and the Mortgaged Property, and shall not constitute a presently enforceable lien against the Mortgaged Property during the pendency of such contest, (iii) neither the Mortgaged Property nor any part thereof nor any interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost, (iv) such proceedings shall not have an adverse effect on the lien or security interest created hereby or upon the enforcement of any provisions of the Note, this Deed of Trust or the Related Documents, and (v) if Beneficiary shall so require, Trustor shall have deposited with Beneficiary such security reasonably necessary for payment of the contested Taxes or Claims, with interest and penalties and Beneficiary's expenses.

1.05 Security Agreement. This Deed of Trust constitutes a security agreement with respect to all personal property and fixtures in which the Beneficiary is granted a security interest hereunder, and the Beneficiary shall have all of the rights and remedies of a secured party under the California Uniform Commercial Code as well as all other rights and remedies available at law or in equity. Trustor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor, to execute, deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as the Beneficiary may request or require in order to impose, perfect or continue the perfection of, the lien or security interest created hereby. Upon the occurrence of any default hereunder, the Beneficiary shall have the right to cause any of the Mortgaged Property which is personal property and subject to the security interest of the Beneficiary hereunder to be sold at any one or more public or private sales in any manner permitted by applicable law, and the Beneficiary shall further have all other rights and remedies, whether at law, in equity, or by statute, as are available to secured creditors under applicable law. Any such disposition may be conducted by an employee or agent of the Beneficiary or the Trustee. Any person, including both the Trustor and the Beneficiary, shall be eligible to purchase any part or all of such property at any such disposition.

Expenses of retaking, holding, preparing for sale, selling or the like shall be borne by Trustor and shall include the Beneficiary's and the Trustee's attorneys' fees and legal expenses. Trustor, upon demand of the Beneficiary, shall assemble the personal property and make it available to the Beneficiary at the property, a place which is hereby deemed to be reasonably convenient to the Beneficiary. The Beneficiary shall give Trustor at least five (5) days prior written notice of the time and place of any public sale or other disposition of such property or of the time of or after which any private sale or any other intended disposition is to be made, and if such notice is sent to Trustor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Trustor.

Trustor hereby warrants, represents and covenants as follows:

(a) Trustor is, and as to portions of the personal property to be acquired after the date hereof will be, the sole owner of the personal property (except that Trustor may lease personal property which is immaterial in value and merely incidental to the operation of the Mortgaged Property), free from any senior adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever. Trustor will notify Beneficiary of, and will defend the personal property against, all claims and demands of all persons at any time claiming the same or any interest therein.

(b) Trustor will not lease, sell, convey or in any manner transfer the personal property, without the prior written consent of Beneficiary, except for transfers as described in clause (d) below.

(c) The personal property is not used or bought for personal, family or household purposes.

(d) The personal property will be kept on or at the property and Trustor will not remove the personal property from the property without the prior written consent of Beneficiary, except such portions or items of personal property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Trustor with new items of equal or greater quality and value.

(e) Trustor maintains a place of business in the State of California and Trustor will immediately notify Beneficiary in writing of any change in its place of business.

1.06 Assignment of Rents. All of the existing and future rents, royalties, income and profits of the Mortgaged Property that arise from its use or occupancy are hereby absolutely and presently assigned to the Beneficiary. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact at the option of Beneficiary at any time and from time to time to demand, receive and enforce payment, give receipts or releases and sue in the name of Trustor or Beneficiary for all such rents, royalties, incomes and profits. However, until Trustor is in default under this Deed of Trust, Trustor will have a license to demand, receive and enforce payment, give receipts or releases and sue in the name of Trustor for all such rents, royalties, income and profits. Upon any default by Trustor, the Beneficiary may terminate Trustor's license in its discretion at any time without notice to Trustor and may thereafter collect the rents, royalties, income and profits itself or by an agent or receiver. No action taken by the Beneficiary to collect any rents, royalties, income or profits will make the Beneficiary a "mortgagee-in-possession" of the Mortgaged Property, unless the Beneficiary personally or by agent enters into actual possession of the Mortgaged Property. Possession by a court-appointed receiver will not be considered possession by the Beneficiary. All rents, royalties, income and profits collected by the Beneficiary or a receiver will be applied first to pay all expenses of collection, and then to the payment of all costs of operation and management of the Mortgaged Property, and then to the payment of the



indebtedness and obligations secured by this Deed of Trust in whatever order the Beneficiary directs in its absolute discretion and without regard to the adequacy of its security.

1.07 Acceleration. If the Mortgaged Property or any part thereof or beneficial interest therein or any interest of Trustor is sold, assigned, transferred, conveyed, encumbered or full possessory rights therein transferred, conveyed or encumbered, in either or any case without the prior written consent of Beneficiary, such event shall constitute a default under this Deed of Trust and Beneficiary, at its option, may declare the Note and all other obligations hereunder to be immediately due and payable, and Beneficiary may invoke any remedies following such acceleration as are permitted by this Deed of Trust or at law or in equity.

1.08 Maintenance.

(a) Trustor will not commit any waste on the Mortgaged Property or take any actions that might invalidate any insurance carried on the Mortgaged Property. Trustor will maintain the Mortgaged Property in good condition and repair and will complete or restore and repair promptly and in a good and workmanlike manner any building, structure, or improvement which may be constructed, damaged or destroyed thereon, whether or not insurance or other proceeds are available to cover in whole or in part the cost of any such completion, restoration or repair. No Improvements may be removed, demolished or materially altered except for purposes of replacement valued at less than ONE THOUSAND DOLLARS (\$1,000.00) without the prior written consent of the Beneficiary.

(b) Without the prior written consent of the Beneficiary, Trustor will not seek, make or consent to any change in the zoning or nature of occupancy or conditions of use of all or any part of the Mortgaged Property to the extent the same was not intended by the Beneficiary at the time this Deed of Trust was delivered.

(c) Trustor shall comply with all applicable laws, orders, ordinances, regulations, restrictions and requirements of all governmental authorities affecting the Mortgaged Property and the use thereof, including, without limitation, those relating to hazardous substances, pollution, or protection of the environment. Trustor will comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Mortgaged Property.

1.09 Records. Trustor will keep adequate books and records of account of the Mortgaged Property and its own financial affairs sufficient to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. The Beneficiary will have the right to examine, copy and audit Trustor's records and books of account at all reasonable times.

1.10 Defense. Trustor will, at its own expense, appear in and defend any action or proceeding that might affect the Beneficiary's security or the rights or powers of the Beneficiary or the Trustee or that purports to affect any of the Mortgaged Property. If Trustor fails to perform any of its covenants or agreements contained in this Deed of Trust after the expiration of any applicable cure period, or if any action or proceeding of any kind (including but not limited to any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) is commenced which might affect the Beneficiary's or the Trustee's interest in the Mortgaged Property or the Beneficiary's right to enforce its security, then the Beneficiary and/or the Trustee may, at their option, but without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereunder, make any appearances, disburse any sums and take any actions as may be deemed necessary or desirable to the Trustee or the Beneficiary to protect or enforce the security of this Deed of Trust or to remedy the failure of Trustor to perform its covenants (without, however, waiving any default of Trustor), including but not limited to disbursement of reasonable attorneys' fees, entry upon the Mortgaged Property to

make repairs or to take other action to protect the security hereof, and payment, purchase, contest or compromise of any encumbrance, charge or lien which in the judgment of the Beneficiary or the Trustee appears to be prior or superior hereto. Trustor agrees to pay all reasonable out-of-pocket expenses of the Beneficiary and the Trustee thus incurred (including but not limited to fees and disbursements of counsel). Any sums so disbursed or advanced by the Beneficiary or the Trustee will be additional indebtedness of Trustor secured by this Deed of Trust and will be payable by Trustor upon demand. Any such sums so disbursed or advanced will bear interest at ten percent (10%) per annum, provided that any such sums so disbursed or advanced by the Trustee will not bear interest in excess of the maximum rate permitted to be charged by the Trustee under applicable law. This paragraph will not be construed to require the Beneficiary or the Trustee to incur any expenses, make any appearances, or take any actions.

1.11 Financing Statement. This Deed of Trust constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the county in which the Mortgaged Property is located with respect to any and all fixtures included within the term "Mortgaged Property" as used herein and with respect to any goods or other personal property that may now be or hereafter become such fixtures.

1.12 Indemnity. In addition to any other indemnities to Beneficiary specifically provided for in this Deed of Trust, Trustor shall defend, with counsel reasonably satisfactory to Beneficiary, protect, indemnify and save harmless Beneficiary from and against any and all losses, liabilities, obligations, claims, damages, fines, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses), excepting those resulting from the gross negligence or willful misconduct of Beneficiary, imposed upon or incurred by or asserted against Beneficiary by reason of (a) Beneficiary's interest in the Mortgaged Property or receipt of any rents or other sum therefrom, including without limitation any income (excluding only federal, state, and local income tax, and California franchise tax), license, business or excess profits tax payable by Beneficiary and determined on the basis of the rents or the revenues from the Note, (b) any accident, injury to or death of a person or persons or loss of or damage to property occurring on or about or with respect to the Mortgaged Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault space (if any), streets or ways, (c) any use, non-use, misuse, possession, occupation, alteration, operation, maintenance, management or condition (including, without limitation, the location of any hazardous substance thereon) of the Mortgaged Property or any part thereof, or of the adjoining sidewalks, curbs, streets, ways, vaults and vault space (if any), (d) any failure on the part of Trustor to perform or observe any of its agreements or obligations under the Note, this Deed of Trust or the Related Documents, provided that the exclusive indemnification obligations of Trustor with respect to any Claims (as such term is defined in Section 1.13(e) below) are set forth in Section 1.13(e) hereof, (e) any failure on the part of Trustor to comply with any law, regulation, ordinance, or requirement of any governmental body applicable to the Mortgaged Property, (f) the performance of any labor or service or the furnishing of any material or other property in respect of the Mortgaged Property or any part thereof, and (g) any negligence (to the extent that proceeds from any insurance actually maintained by Beneficiary do not cover the loss caused thereby) or willful act or omission on the part of Trustor. All amounts payable to Beneficiary under this Section which are not paid within ten (10) days after written demand therefor by Beneficiary shall bear interest from the date of such demand.

1.13 Environmental Matters.

(a) As used herein, the term "Hazardous Materials" means any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as

a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (*Carpenter-Presley-Tanner Hazardous Substance Account Act*), (iii) defined as a "hazardous material," hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) polychlorinated biphenyls, (viii) defined as "hazardous" or "extremely hazardous" pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, (ix) designated as "toxic pollutants" pursuant to Section 311 of the *Clean Water Act* (33 U.S.C. §1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the *Resource Conservation and Recovery Act*, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6903) or (xi) defined as a "hazardous substance" pursuant to Section 101 of the *Comprehensive Environmental Response, Compensation, and Liability Act*, 42 U.S.C. §9601 *et seq.*

(b) Trustor shall keep and maintain the Mortgaged Property in compliance with any and all federal, state and local laws, ordinances and regulations relating to Hazardous Materials, industrial hygiene or to the environmental conditions on, under or about the Mortgaged Property, including, but not limited to, soil and ground water conditions. Trustor shall not use, generate, manufacture, release, store or dispose of, or permit to be used, generated, manufactured, released, stored or disposed of on, under, about or from the Mortgaged Property, or transport to or from or permit to be transported to or from the Mortgaged Property, any Hazardous Materials in violation of any Hazardous Materials laws. Trustor hereby agrees at all times to comply fully and in a timely manner with, and to cause all of Trustor's employees, agents, contractors and subcontractors to so comply with, all Hazardous Materials laws.

Trustor shall have the right to contest, at Trustor's sole cost and expense, the applicability of any Hazardous Materials laws or the grounds for any attempted enforcement of any Hazardous Materials laws provided that: (i) as a condition to any such contest, Trustor shall deliver to Beneficiary, at Trustor's sole cost and expense, such test results, consultants' reports and other information regarding the then current environmental condition of the Mortgaged Property and the effect that any additional delay that may result from any such contest would have on such environmental condition, as Beneficiary may reasonably require; (ii) Trustor shall have no right to contest if the delay that might result from any such contest would result in any material deterioration in the environmental condition of the Mortgaged Property or any portion thereof or in any material deterioration in the environmental condition of any other property; (iii) Trustor shall have no such right to contest if, as a result of such contest, any governmental agency would have the right to enforce a lien on all or any portion of the Mortgaged Property; and (iv) Trustor shall give prior written notice to Beneficiary of Trustor's intention to exercise such right of contest and, upon written request of Beneficiary, shall deliver to Beneficiary a good and sufficient bond or other security reasonably satisfactory to Beneficiary for the costs which would be incurred in complying with such Hazardous Materials laws. Should a new chemical, material or substance become prohibited by federal, state or local regulation, or become known to pose a hazard, Trustor shall take measures to comply with the law or regulation, and/or take such steps as are necessary to minimize environmental threats.

(c) Trustor shall immediately advise Beneficiary in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions relating to the Mortgaged Property instituted, completed or threatened pursuant to any environmental laws, statutes, ordinances, rules and regulations, including any Hazardous Materials laws, and of any notices received by Trustor with respect to the foregoing; (ii) Trustor's discovery of any claim made or clearly threatened in writing by any third party (other than by a governmental agency) and of any claim made or clearly threatened (whether or not in writing) by any governmental agency against Trustor or the Mortgaged Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in

clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) Trustor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property or any part thereof to be classified as "border-zone property" under the provisions of California Health and Safety Code Sections 25220, et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Mortgaged Property under any Hazardous Materials laws. Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Trustor. Trustor shall also immediately deliver to Beneficiary a copy of any notice of any violation of environmental laws, including Hazardous Materials laws, hereafter received by Trustor.

(d) Without Beneficiary's prior written consent, which shall not be unreasonably withheld or delayed, Trustor shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Mortgaged Property, nor enter into any settlement agreement, consent decree or other compromise in respect to any Hazardous Materials Claims, which remedial action, settlement, consent or compromise might, in Beneficiary's reasonable judgment, impair the value of Beneficiary's security hereunder; provided, however, that Beneficiary's prior consent shall not be necessary in the event that the presence of any Hazardous Materials on, under or about the Mortgaged Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not possible to obtain Beneficiary's consent before taking such action, provided that in such event Trustor shall notify Beneficiary as soon as practicable of any action so taken. Beneficiary agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction; (ii) Trustor establishes to the reasonable satisfaction of Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of Beneficiary's security hereunder; (iii) all federal, state and local governmental agencies having jurisdiction have approved of or required the particular remedial action; or (iv) a particular remedial action is recommended by a reputable environmental consultant selected or approved by Beneficiary in a report which is satisfactory to Beneficiary in its reasonable discretion.

(e) Trustor hereby agrees to defend (with counsel approved by Beneficiary), indemnify and hold Beneficiary harmless from and against, and shall reimburse Beneficiary for any and all Claims (as defined below). Trustor hereby expressly waives, with respect to any Claims, any immunity to which Trustor may otherwise be entitled under any industrial or workers' compensation laws. As used herein, "Claims" means any and all actual out-of-pocket cost (including, without limitation, attorneys' fees, expenses and court costs), expense or loss arising from any claim, liability, damage, injunctive relief, injury to person, property or natural resources, fine, penalty, action and cause of action incurred by or asserted against Beneficiary and arising, directly or indirectly, in whole or in part, out of the release, discharge, deposit or presence, or alleged or suspected release, discharge, deposit or presence, of any Hazardous Materials at, on, about, under, within or from the Mortgaged Property, or in or adjacent to any part of the Mortgaged Property, or in the soil, ground water or soil vapor on or under the Mortgaged Property or elsewhere in connection with the transportation of Hazardous Materials to or from the Mortgaged Property in violation of any Hazardous Materials laws, whether or not known to Trustor or Beneficiary, whether foreseeable or unforeseeable, regardless of the source of such release, discharge, deposit or presence and regardless of when such release, discharge, deposit or presence occurred or is discovered, provided however that this indemnity shall not extend to affirmative acts by Beneficiary which Trustor establishes are responsible for such release, discharge, deposit or presence, or alleged or suspected release, discharge, deposit or presence of any Hazardous Materials, or for increasing the damage resulting from actual, alleged, or suspected release, discharge, deposit or presence of any Hazardous Materials. Without limiting the generality of the

foregoing and for purposes of clarification only, Claims also include all actual out-of-pocket costs incurred by Beneficiary in connection with (i) determining whether the Mortgaged Property is in compliance or the amount of money required to remediate any environmental contamination, and causing the Mortgaged Property to be or become in compliance, with all applicable Hazardous Materials laws, (ii) any removal or remediation of any kind and disposal of any Hazardous Materials present at, on, under or within the Mortgaged Property or released from the Mortgaged Property to the extent required by applicable Hazardous Materials laws in effect at the time of such removal, remediation or disposal, and (iii) any repair of any damage to the Mortgaged Property or any other property caused by any such removal, remediation or disposal. The rights of Beneficiary hereunder shall not be limited by any investigation or the scope of any investigation undertaken by or on behalf of Beneficiary in connection with the Mortgaged Property prior to the date hereof.

## **ARTICLE II EVENTS OF DEFAULT**

2.01 Default. The Trustor will be in default under this Deed of Trust if:

(a) There shall be a failure to make the payment of any installment of principal or interest or any other sum secured hereby which continues for three (3) days after such payment is due; or

(b) There shall be a failure to comply with any term, obligation, covenant or condition contained in the Note or this Deed of Trust; or

(c) There occurs an appointment, pursuant to an order of a court of competent jurisdiction, of a trustee, receiver or liquidator of the Mortgaged Property or any part thereof, or of Trustor, or any termination or voluntary suspension of the transaction of business of Trustor, or any attachment, execution or other judicial seizure of all or any substantial portion of Trustor's assets, which appointment, attachment, execution or seizure is not discharged within forty-five (45) days; or

(d) Trustor shall file a voluntary case under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Trustor or any part of the Mortgaged Property or any substantial part of Trustor's property, or shall make any general assignment for the benefit of Trustor's creditors, or shall fail generally to pay Trustor's debts as they become due or shall take any action in furtherance of any of the foregoing; or

(e) A court having jurisdiction shall enter a decree or order for relief in respect of Trustor, or any trustee of Trustor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or Trustor or any trustee of Trustor shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Trustor or for any part of the Mortgaged Property or any substantial part of Trustor's property, or ordering the winding up or liquidation of the affairs of Trustor, and such decree or order shall not be dismissed within sixty (60) days after the entry thereof; or

(f) A material breach or default of any term, covenant, condition, provision, representation or warranty occurs under any agreement which guarantees any part of the indebtedness or obligations secured by this Deed of Trust or any of the events enumerated in subparagraph (c), (d) or (e) above occurs with regard to any guarantor of any indebtedness or obligations secured by this Deed of Trust, or there occurs the revocation, limitation or termination

of the obligations of any such guarantor except in accordance with the express written terms of the instrument of guaranty; or

(g) There has occurred a default under any term, covenant, agreement, condition, provision, representation or warranty contained in any of the Related Documents or any other mortgage or deed of trust encumbering all or any portion of the Mortgaged Property, regardless of whether such mortgage or deed of trust is prior or subordinate to this Deed of Trust, or contained in any note or other instrument secured thereby, or contained in any other instrument securing such note, if such default remains uncured following any applicable notice, grace or cure period; or

(h) There has occurred a violation of any condition, covenant or restriction recorded against or affecting the property, and such violation has not been cured within any applicable cure period provided therein; or

(i) Any representation or disclosure made to the Beneficiary by Trustor or by any guarantor of any indebtedness or obligations secured by this Deed of Trust proves to be materially false or misleading on the date as of which made, whether or not that representation or disclosure appears in this Deed of Trust.

### **ARTICLE III REMEDIES**

3.01 Remedies. If the Trustor is in default, the Beneficiary may, at its option, and without notice to or demand upon the Trustor:

(a) Declare any or all indebtedness secured by this Deed of Trust to be due and payable immediately;

(b) Upon five (5) days notice to Trustor, enter onto the Mortgaged Property, in person or by agent or by court-appointed receiver, and take any and all steps which may be desirable in the Beneficiary's sole discretion to complete any unfinished construction, to manage and operate the Mortgaged Property and to do any and all other acts which the Beneficiary deems proper to protect the security hereof and, either with or without taking possession, in its own name or in the name of the Trustor, sue for or otherwise collect and receive the rents, royalties, income and profits of the Mortgaged Property, and the Beneficiary may apply any rents, royalties, income or profits collected against the indebtedness secured by this Deed of Trust without in any way curing or waiving any default of the Trustor;

(c) Bring a court action to foreclose this Deed of Trust or to enforce its provisions or any of the indebtedness or obligations secured by this Deed of Trust;

(d) Cause any or all of the Mortgaged Property to be sold under the power of sale granted by this Deed of Trust in any manner permitted by applicable law; and

(e) Exercise any other right or remedy available under the Note, this Deed of Trust or the Related Documents, or any other agreement of the Trustor, or under any guaranty of any obligations of the Trustor to the Beneficiary, or otherwise available at law or in equity.

3.02 Power of Sale. In connection with the exercise of the power of sale granted by this Deed of Trust:

(a) Beneficiary may elect to cause the Mortgaged Property or any part thereof to be sold under the power of sale herein granted in any manner permitted by applicable law. In connection with any sale or sales hereunder, Beneficiary may elect to treat any of the Mortgaged Property which consists of a right in action or which is property that can be severed from the real property covered hereby or any improvements thereon without causing structural damage thereto as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of real property. Any sale of any personal property hereunder shall be conducted in any manner permitted by Section 9604 or any other applicable section of the California Commercial Code. Where the Mortgaged Property consists of real and personal property or fixtures, whether or not such personal property is located on or within the real property, Beneficiary may elect in its discretion to exercise its rights and remedies against any or all of the real property, personal property, and fixtures in such order and manner as is now or hereafter permitted by applicable law.

(b) Without limiting the generality of the foregoing, Beneficiary may, in its sole and absolute discretion and without regard to the adequacy of its security, elect to proceed against any or all of the real property, personal property and fixtures in any manner permitted under Section 9604(a)(1) of the California Commercial Code; and if the Beneficiary elects to proceed in the manner permitted under Section 9604(a)(1)(B) of the California Commercial Code, the power of sale herein granted shall be exercisable with respect to all or any of the real property, personal property and fixtures covered hereby, as designated by Beneficiary, and the Trustee is hereby authorized and empowered to conduct any such sale of any real property, personal property and fixtures in accordance with the procedures applicable to real property.

(c) Where the Mortgaged Property consists of real property and personal property, any reinstatement of the obligation secured hereby, following default and an election by the Beneficiary to accelerate the maturity of said obligation, which is made by Trustor or any other person or entity permitted to exercise the right of reinstatement under Section 2924c of the California Civil Code or any successor statute, shall, in accordance with the terms of California Commercial Code Section 9604(a)(1)(C), not prohibit the Beneficiary from conducting a sale or other disposition of any personal property or fixtures or from otherwise proceeding against or continuing to proceed against any personal property or fixtures in any manner permitted by the California Commercial Code; nor shall any such reinstatement invalidate, rescind or otherwise affect any sale, disposition or other proceeding held, conducted or instituted with respect to any personal property or fixtures prior to such reinstatement or pending at the time of such reinstatement. Any sums paid to Beneficiary in effecting any reinstatement pursuant to Section 2924c of the California Civil Code shall be applied to the secured obligation and to the Beneficiary's and Trustee's reasonable costs and expenses in the manner required by Section 2924c.

(d) Should Beneficiary elect to sell any portion of the Mortgaged Property which is real property or which is personal property or fixtures that Beneficiary has elected under Section 9604(a)(1)(B) of the California Commercial Code to sell together with real property in accordance with the laws governing a sale of real property, Beneficiary or Trustee shall give such notice of default and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, and without the necessity of any demand on Trustor, Trustee, at the time and place specified in the notice of sale, shall sell said real property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Trustee may, and upon request of Beneficiary shall, from time to time,

postpone any sale hereunder by public announcement thereof at the time and place noticed therefor.

(e) If the Mortgaged Property consists of several lots, parcels or items of property, Beneficiary may: (i) designate the order in which such lots, parcels or items shall be offered for sale or sold; or (ii) elect to sell such lots, parcels or items through a single sale, or through two or more successive sales, or in any other manner Beneficiary deems in its best interest. Any person, including Trustor, Trustee or Beneficiary, may purchase at any sale hereunder, and Beneficiary shall have the right to purchase at any sale hereunder by crediting upon the bid price the amount of all or any part of the indebtedness hereby secured. Should Beneficiary desire that more than one sale or other disposition of the Mortgaged Property be conducted, Beneficiary may, at its option, cause the same to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Beneficiary may deem to be in its best interests, and no such sale shall terminate or otherwise affect the lien of this Deed of Trust on any part of the Mortgaged Property not sold until all indebtedness secured hereby has been fully paid. In the event Beneficiary elects to dispose of the Mortgaged Property through more than one sale, Trustor agrees to pay the costs and expenses of each such sale and of any judicial proceedings wherein the same may be made, including reasonable compensation to Trustee and Beneficiary, their agents and counsel, and to pay all expenses, liabilities and advances made or incurred by Trustee in connection with such sale or sales, together with interest on all such advances made by Trustee at the lower of the interest rate set forth in the Note or the maximum rate permitted by law to be charged by Trustee.

(f) Upon any sale hereunder, Trustee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty whatsoever, express or implied, whereupon such purchaser or purchasers shall be let into immediate possession; and the recitals in any such deed or deeds of facts, such as default, the giving of notice of default and notice of sale, and other facts affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts and any such deed or deeds shall be conclusive against all persons as to such facts recited therein.

3.03 Sale Proceeds. The proceeds of any sale under this Deed of Trust will be applied in the following manner:

FIRST: Payment of the costs and expenses of the sale, including but not limited to the Trustee's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of the Trustee, together with interest on all advances made by the Trustee at the lower of ten percent (10%) per annum or the maximum rate permitted to be charged by the Trustee under applicable law.

SECOND: Payment of all sums expended by the Beneficiary under the terms of this Deed of Trust and not yet repaid, together with interest on such sums at the interest rate set forth in the Note.

THIRD: Payment of the indebtedness and obligations of the Trustor secured by this Deed of Trust in any order that the Beneficiary chooses.

FOURTH: The remainder, if any, to the person or persons legally entitled to it.

3.04 Waiver. Trustor, for itself and for all persons hereunder claiming through or under it or who may at any time acquire a lien on all or any part of the Mortgaged Property or any interest therein, hereby expressly waives and releases all rights to direct the order in which any of the Mortgaged Property and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby will be sold in the event of any sale under this Deed of Trust, and



also any right to have any of the Mortgaged Property and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshalled upon any foreclosure of this Deed of Trust or of any other security for any of said indebtedness.

3.05 Remedies Cumulative. All remedies contained in this Deed of Trust are cumulative, and the Beneficiary also has all other remedies provided by law or in any other agreement between Trustor and the Beneficiary. No delay or failure by the Beneficiary to exercise any right or remedy under this Deed of Trust will be construed to be a waiver of that right or remedy or of any default by Trustor. The Beneficiary may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

3.06 Costs and Fees. Trustor will pay all of the Beneficiary's and the Trustee's costs, fees and expenses incurred in any efforts to enforce any terms of this Deed of Trust or in the performance of its or their duties hereunder, whether or not any lawsuit is filed, including but not limited to legal fees and disbursements, foreclosure costs and title insurance or trustee's sale guaranty charges and any other governmental charges or impositions imposed by any governmental authority on the Trustee or the Beneficiary by reason of its or their interest in the Note, any note evidencing a future advance, or this Deed of Trust.

#### **ARTICLE IV MISCELLANEOUS**

4.01 Invalidity. The invalidity or unenforceability of any one or more provisions of this Deed of Trust will in no way affect any other provision.

4.02 Indebtedness Statement. Trustor agrees to pay to the Beneficiary a reasonable charge, not to exceed the maximum allowed by law, for giving any statement of the status of the obligations secured by this Deed of Trust.

4.03 Notices. All notices given under this Deed of Trust must be in writing and will be effectively served upon personal delivery or, if mailed, no later than five (5) days after deposit in certified United States mail, postage prepaid, return receipt requested, sent to the Beneficiary at its address appearing in the recording information block on the front page of this Deed of Trust and sent to the Trustor at its addresses appearing below its signature, which addresses may be changed by written notice. However, the service of any notice of default or notice of sale under this Deed of Trust as required by law will, if mailed, be effective on the date of mailing.

4.04 Beneficiary Consent. Without affecting Trustor's liability for the payment of any of the indebtedness secured by this Deed of Trust, the Beneficiary may from time to time and without notice to the Trustor (a) release any person liable for the payment of that indebtedness, (b) extend or modify the terms of payment of that indebtedness, (c) accept additional real or personal property of any kind as security, or alter, substitute or release any property securing that indebtedness, or (d) cause the Trustee to consent to the making of any map or plat of the Mortgaged Property, or to reconvey any part of the Mortgaged Property, or to join in granting any easement or creating any restriction on the Mortgaged Property, or to join in any subordination or other agreement affecting this Deed of Trust.

4.05 Trustee Acceptance. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

4.06 Statute of Limitations. The Trustor waives all present and future statutes of limitations as a defense to any action to enforce the provisions of this Deed of Trust or to collect any indebtedness secured by this Deed of Trust to the fullest extent permitted by law, provided

that such waiver shall not apply at any time after payment in full of all sums secured by this Deed of Trust.

4.07 Interpretation. The term "Trustor" includes both the original Trustor and any subsequent owner or owners of any of the Mortgaged Property, and the term "Beneficiary" includes the original Beneficiary and also any future owner or holder, including pledgees and participants, of the Note or any interest therein. Whenever the context requires, the singular includes the plural and vice versa and each gender includes each other gender. The headings of the articles of this Deed of Trust are for convenience only and do not limit its provisions.

4.08 Consent. The Beneficiary's consent to any act or omission by Trustor will not be a consent to any other or subsequent act or omission or a waiver of the need for such consent in any future or other instance.

4.09 Successors. The terms of this Deed of Trust will bind and benefit the heirs, legal representatives, successors and assigns of Trustor, Trustor and Beneficiary and the successors in trust of the Trustee. If more than one person is named as Trustor, each will be jointly and severally liable to perform the obligations of the Trustor.

4.10 California Law. This Deed of Trust will be governed by California law.

4.11 Removal of Trustee. The Beneficiary may remove the Trustee or any successor Trustee at any time or times and appoint a successor Trustee by recording a written substitution in the county where the real property covered by this Deed of Trust is located, or in any other manner permitted by law. Upon that appointment, all of the powers, rights and authority of the Trustee will immediately become vested in its successor.

4.12 Subordination. This Deed of Trust may be subordinated to the terms and conditions of documents evidencing financing as permitted by Section 2.13 of the Purchase and Sale Agreement entered into by the Beneficiary and the Trustor dated \_\_\_\_\_, 2018. The loan documents to which this Deed of Trust may be made subordinate shall contain, and subordination hereunder is subject to, the following conditions (alternatively, these conditions may be contained in a separately recorded subordination agreement between the lender and Beneficiary): (a) the Beneficiary shall receive copies of any notices of default issued by the lender at the same time and in the same manner as provided to the Trustor; (b) the Beneficiary shall have the right to cure any default by the Trustor within ninety (90) days after a notice of default; (c) the subordination shall be effective only during the original term of the loan being subordinated to and any extension of that loan approved in writing by the Beneficiary; and (d) the subordination shall not limit the effect of this Deed of Trust before a foreclosure, nor require consent of the holder of the loan being subordinated to in order to the exercise of any remedies by the Beneficiary contained in the Note or this Deed of Trust. The Beneficiary shall be entitled to reimbursement from the Trustor of all direct but reasonable costs and expenses incurred by Beneficiary in curing a default of Trustor.

**IN WITNESS WHEREOF**, the undersigned have executed this Deed of Trust as of the day and year first hereinabove written.

**TRUSTOR:**

**SAN PABLO ECONOMIC DEVELOPMENT  
CORPORATION, a California nonprofit public  
benefit corporation**

**By** \_\_\_\_\_

**Trustor's Address:**

**13830 San Pablo Avenue, Suite D  
San Pablo, CA 94806**

ATTACHMENT NO. 5  
FORM OF GRANT DEED

RECORDING REQUESTED BY:

San Pablo Local Successor Agency

WHEN RECORDED MAIL TO:

San Pablo Economic Development Corp.  
13830 San Pablo Avenue, Suite D  
San Pablo, CA 94806  
ATTN: Executive Director

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged,

The SAN PABLO LOCAL SUCCESSOR AGENCY, a public body, corporate and politic, of the State of California (herein called "Grantor"), hereby grants to the SAN PABLO ECONOMIC DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation (herein called "Grantee"), the real property (the "Property") legally described in the document attached hereto, labeled Exhibit A, and incorporated herein by this reference.

1. The Property is conveyed pursuant to Purchase and Sale Agreement (the "Agreement") entered into by and between the Grantor and the Grantee and dated \_\_\_\_\_, 2018. The Property is also conveyed subject to easements of record.

2. The Grantee covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Grantee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property.

All deeds, leases or contracts made relative to the Property, the improvements thereon or any part thereof, shall contain or be subject to substantially the following nondiscrimination clauses:

- a. In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”
- b. In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:  
  
“That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”
- c. In contracts: “There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.”

3. The covenants against discrimination contained in paragraph 2 of this Grant Deed shall remain in perpetuity.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SAN PABLO LOCAL SUCCESSOR  
AGENCY, "GRANTOR"

By \_\_\_\_\_ [Not for Execution/Form Only] \_\_\_\_\_  
Executive Director

APPROVED:

By \_\_\_\_\_ [Not for Execution/Form Only] \_\_\_\_\_  
Counsel for Grantor

The provisions of this Grant Deed are hereby approved and accepted by the Grantee.

SAN PABLO ECONOMIC DEVELOPMENT  
CORPORATION, "GRANTEE"

By: \_\_\_\_\_ [Not for Execution/Form Only] \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION