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LOAN AGREEMENT¹

¹ Note that each loan should be evaluated for compliance with the lender’s obligations and may require the execution and delivery of an officer’s certificate. This form may not address all the business issues that may arise in the desired lending relationship. The documentation should be reviewed by counsel prior to finalization.

THIS LOAN AGREEMENT² (“**Agreement**”) is made and entered into as of [DATE OF AGREEMENT], by and between [COMPLETE LEGAL NAME OF LENDER], a California nonprofit [public benefit] corporation (“**Lender**”), and [COMPLETE LEGAL NAME OF BORROWER], a California nonprofit [public benefit] corporation (“**Borrower**”). As used herein, the term “**Parties**” means all of Lender and Borrower, and individually each is referred to as a “**Party**”.

RECITALS

A. Lender has determined that its charitable purposes will be advanced by funding certain requests for loans or other financial assistance for community needs in accordance with its [investment policy].

B. Borrower is a California nonprofit public benefit corporation dedicated to providing the following services: [DESCRIBE BORROWER’S CHARITABLE PURPOSE] (the “**Charitable Purpose**”).

C. Borrower is a charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “**Code**”), and is a public charity.

D. Lender and Borrower desire to set forth in this Agreement the terms and conditions pursuant to which Lender shall advance certain funds to Borrower (the “**Loan**”) to be used by Borrower in furtherance of the Charitable Purpose.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. LOAN

1.1 Loan Amount. On the basis of the covenants, agreements and representations of Borrower contained in this Agreement, the Promissory Note made by Borrower in favor of Lender substantially in the form attached to this Agreement as **Exhibit [X]**³ and incorporated herein by this reference (the “**Note**”), the Security Instrument[s]⁴ (as defined below), and all of the agreements, instruments and documents entered into in connection with the Loan, as may be amended, extended, supplemented, assigned, restated or otherwise modified [(collectively, the “**Loan Documents**”)]⁵, and subject to the terms and conditions set forth in this Agreement, Lender agrees to loan to Borrower, and Borrower agrees to borrow from Lender, principal amount equal to [_____ (\$_____)].

2 This is a form for a Loan Agreement with Promissory Note to be used for loan to a California non-profit corporation, secured by either (i) a Security Agreement (personal property collateral only) or (ii) by a Deed Of Trust (real property collateral) or (iii) both a Security Agreement and a Deed Of Trust. If secured by a Deed Of Trust, the package should also include an Environmental Indemnity. An optional Guaranty is also available.

3 Exhibits to be labeled sequentially as needed.

4 Make plural globally if using both Security Agreement and Deed Of Trust.

5 Note that the Environmental Indemnity is not secured.

1.2 Security for Loan. Borrower agrees that Borrower's obligations under this Agreement shall be secured or supported by [(i)] the Security Agreement by Borrower in favor of Lender substantially in the form attached to this Agreement as **Exhibit [X]** and incorporated herein by this reference; [(ii)] [the Deed of Trust with Fixture Filing, Assignment of Leases and Rents and Security Agreement by Borrower to [*COMPLETE NAME OF TRUSTEE*], as trustee, for the benefit of Lender] substantially in the form attached to this Agreement as **Exhibit [X]** and incorporated herein by this reference (the "**Security Instrument[s]**"⁶); [(iii)] [the Environmental Indemnity Agreement dated as of [*DATE OF INDEMNITY*] by the Company in benefit of the Corporation substantially in the form attached to this Agreement as **Exhibit [X]** and incorporated herein by this reference,]⁷ [and (iv)] a Guaranty by [*COMPLETE LEGAL NAME OF GUARANTOR*] (the "**Guarantor**"), substantially in the form attached to this Agreement as **Exhibit [X]** (the "**Guaranty**") pursuant to which the Guarantor is guarantying Borrower's obligations under this Agreement and the Loan Documents; [and (v) other security [*SPECIFY*]]; [provided, however, any environmental indemnity or environmental indemnity agreement, executed by the Borrower or any other persons in connection with Loan, shall in no event constitute a Loan Document for purposes of the [Security Instrument[s]].]⁸

2. REPRESENTATIONS AND WARRANTIES. In order to induce Lender to enter into this Agreement and to make the Loan, Borrower makes the following representations and warranties, which shall survive the execution and delivery of the Loan Documents:

2.1 Due Organization. Borrower is duly organized, validly existing and in good standing as a nonprofit public benefit corporation under the laws of the State of California and under the Code. Borrower has received all necessary determination letters from the Internal Revenue Service and the California Franchise Tax Board regarding its non-profit status, none of which has been revoked.

2.2 Public Charity Status. Borrower has been recognized by the Internal Revenue Service as a charitable organization described in Section 501(c)(3) of the Code and is a public charity within the meaning of Section 509(a)(1), (2) or (3) of the Code.

2.3 Authorization. Borrower has all requisite power and all governmental licenses, authorizations, consents, and approvals necessary to own and operate Borrower's properties and to carry on Borrower's business as now conducted and as proposed to be conducted, other than such governmental licenses, authorizations, consents, and approvals the absence of which will not materially or adversely affect the business, operations, or conditions, financial or otherwise, of Borrower. Borrower has all requisite power to borrow the sums provided for in this Agreement, to execute and deliver this Agreement and each of the other Loan Documents, and to pay, perform and observe all of the conditions, covenants, agreements and obligations contained in this Agreement and the other Loan Documents. The execution, delivery, and performance of this Agreement and each of the other Loan Documents have been duly authorized by Borrower.

2.4 Binding Agreement. This Agreement has been duly executed and delivered by Borrower and constitutes a legal, valid, and binding obligation of Borrower, enforceable against it in

6 Make plural globally if using both Security Agreement and Deed Of Trust.

7 Optional.

8 Use the last provision if secured by Deed Of Trust.

accordance with its terms, except as the enforceability thereof may be affected by (i) bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally, and (ii) the availability of certain equitable remedies or limitations imposed by certain equitable principles of general applicability.

2.5 Disclosure of Information. Borrower has provided to Lender all information, including, but not limited to, financial statements, that Lender has requested. As of the date of this Agreement no material adverse change has occurred in any of the matters reflected in such information delivered to Lender.

2.6 No Events of Default. Borrower is not in default under any debt or obligation of Borrower and that no event has occurred which would become an event of default under any such debt or obligation with or without the giving of notice, the lapse of time, or both.

2.7 Collateral. Borrower owns the property granted by Borrower as Collateral (as defined below) to Lender free and clear of any and all claims, charges, pledges, security interests, deeds of trust, mortgages and other encumbrances in favor of third parties, or any other arrangements having the practical effect of the foregoing, or preferential arrangements of any kind, including the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement. The Security Instrument[s] [is][are] a valid first lien on Borrower's interest in the Collateral.

2.8 Other Agreements. The execution, delivery, and performance of this Agreement and the other Loan Documents shall not (a) violate any provision of California or federal law or regulation or any order of any Governmental Authority (as hereinafter defined), court, arbitration board, or tribunal applicable to or binding on Borrower, Borrower's assets, or its business, or (b) result in the breach or constitute a default under any provisions of, or result in the creation of any security interest, lien, charge, or encumbrance upon any of the property or assets of Borrower pursuant to any indenture, agreement, or other instrument (other than this Agreement and the related Security Instrument[s] to the extent it creates a lien upon the assets of Borrower) to which Borrower or any of its properties is bound. As used herein, the term "**Governmental Authority**" shall mean all Federal, State, County or City governments, any political subdivision thereof, and any agency, department, court, board or instrumentality of any of them.

2.9 Litigation. There is no litigation, investigation, or proceeding in any court or before any arbitrator or governmental regulatory commission, board, administrative agency, or other Governmental Authority pending, or, to the knowledge of Borrower, threatened, against or affecting Borrower, or any of its properties that, if adversely determined, could be reasonably expected to: (a) prevent enforcement of any of the Loan Documents against Borrower; (b) prohibit Borrower from borrowing or repaying the Loan under this Agreement; or (c) have a material adverse effect on the business, operations or financial condition of Borrower.

2.10 Consents. No consent, license, permit, approval, or authorization of, exemption by, notice or report to, or registration, filing, or declaration with, any Governmental Authority or agency is required in connection with the execution, delivery, and performance by Borrower of this Agreement or the other Loan Documents, or the transactions contemplated hereby or thereby (except for standard disclosure requirements of federal securities laws and regulations), or if such a consent,

license, permit, approval or authorization is required, the failure of Borrower to obtain the same will not have any material adverse impact on Borrower or Borrower's ability to repay the Loan.

3. AFFIRMATIVE COVENANTS. Borrower covenants that, unless otherwise consented to in writing by Lender, Borrower shall comply with the following affirmative covenants until payment and performance in full of all amounts, liabilities and obligations due under this Agreement and the other Loan Documents:

3.1 Accounting Records. Borrower shall maintain adequate books and accounts in accordance with generally accepted accounting principles consistently applied, and permit any appropriate representative of Lender who is acting as an agent of Lender at any reasonable time and upon reasonable notice, to inspect, audit, and examine such books and inspect any of Borrower's properties and shall furnish Lender with such information regarding the business or finances as reasonably necessary for Lender to verify that the Loan proceeds are being used in accordance with the terms of this Agreement and the Security Instrument[s] promptly upon Lender's request.

3.2 Use of Proceeds.⁹ Borrower represents and warrants that the proceeds of the Loan from Lender shall be used solely for Borrower's charitable purposes and will not use the proceeds to engage in any activity that would give rise to unrelated business income within the meaning of Section 512 of the Code.

3.3 Financial Statements and Other Reports.¹⁰ Borrower shall deliver to Lender within a reasonable period of time after the same are prepared, all regularly prepared audited and/or unaudited financial statements of Borrower, certified as true, correct and complete by Borrower's Chief Financial Officer.

3.4 Existence. Borrower shall do or cause to be done all things necessary to preserve and keep in full force and effect the corporate existence and nonprofit status of Borrower.

3.5 Compliance with Law. Borrower shall comply with the requirements of all applicable laws, rules, regulations, and orders of any governmental agency, including but not limited to all applicable licensing requirements, other than such requirements with respect to which the noncompliance of Borrower will not materially and adversely affect the business, operations or financial condition of Borrower.

3.6 Loan Documents; Further Assurances. Borrower shall perform, at the request of Lender, such acts as may be necessary or advisable to create, attach, perfect, provide constructive knowledge, obtain a first priority or maintain ownership of a security interest or lien, or assignment provided in this Agreement or in the Security Instrument[s] or any other Loan Document otherwise to carry out the intent of this Agreement or the other Loan Documents. Borrower agrees to execute the Loan Documents and any other documents reasonably necessary to carry out the intent of this Agreement or the other Loan Documents or to create, attach, perfect, provide constructive knowledge, obtain a first priority or maintain ownership of a security interest or lien on any portion of the collateral granted to Lender under the Loan Documents, now and hereafter acquired, along with any and all additions and accessions thereto, substitutions therefor, replacements thereof and the

⁹ Include any additional specific uses of the funding, such as for a particular program or a capital improvement.

¹⁰ Include any specific required deliveries of annual or quarterly or monthly financial information.

proceeds of any of the foregoing (collectively, the “**Collateral**”). Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity.

3.7 Compliance with Material Agreements. Borrower shall comply: (a) with all covenants and agreements of Borrower in each of the other Loan Documents; and (b) in all material respects with all other contracts and agreements to which Borrower is a party or by which its assets are bound, the termination of which (or the breach by Borrower of which) could be reasonably expected to have a material adverse effect on the business, operations or financial condition of Borrower.

3.8 Taxes and Assessments. Borrower shall pay and discharge when due all material taxes, assessments and other governmental charges imposed upon it or the Collateral or on any of its properties or assets or in respect to any of its franchises, business, income or property before any penalty or interest accrues thereon; provided, however, that no such taxes, assessments and governmental charges (and interest, penalties or fines relating thereto) need be paid if being contested in good faith by appropriate proceedings diligently instituted and conducted if Borrower has established such reserves or made such other provision, if any, required by generally accepted accounting principles.

3.9 Insurance. Borrower covenants to maintain at its own expense throughout the term of this Agreement such insurance as Lender may require, including the following types of insurance from insurers acceptable to Lender with the following minimum coverage and amounts (collectively, the “**Insurance Policies**”):

3.9.1 Insurance against loss or damage to the Collateral by fire, lightning, windstorm, explosion and smoke damage, and loss or damage from the hazards which are insured against in “all risks” casualty insurance policies, and against vandalism and malicious mischief, and against such other insurable hazards as Lender may reasonably require. The minimum coverage limit of this insurance shall be not less than full replacement cost and in an amount at all times sufficient to prevent Borrower from becoming a co-insurer under the terms thereof;

3.9.2 General commercial liability insurance against any and all claims for bodily injury, disease or death or for property damage occurring upon, in or about the Collateral, with coverage of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate, or in such greater amounts as Lender shall from time to time reasonably require;

3.9.3 Automobile liability insurance for hired and non-owned automobiles, with coverage of not less than One Million Dollars (\$1,000,000.00) combined single limit;

3.9.4 Excess/umbrella liability insurance of not less than Four Million Dollars (\$4,000,000.00) per occurrence;

3.9.5 All liability insurance policies shall name Lender as an additional insured; and

3.9.6 Borrower shall provide Lender with certificates of insurance evidencing the foregoing coverage upon written request therefor.

3.10 Illegal Activity. No portion of the Collateral has been or will be purchased with proceeds of any illegal activity.

3.11 Litigation. Borrower shall give prompt notice to Lender of any litigation or governmental proceedings pending or threatened against Borrower [or Guarantor] which might have a Material Adverse Effect. “**Material Adverse Effect**” shall mean any material adverse effect upon (i) the business operations, economic performance, assets, condition (financial or otherwise), equity, contingent liabilities, prospects, material agreements or results of operations of Borrower or any Guarantor or the Collateral, (ii) the ability of Borrower or any Guarantor to perform their respective obligations under any of the Loan Documents, (iii) the enforceability or validity of any of the Loan Documents, the perfection or priority of any lien created under any of the Loan Documents or the rights, interests or remedies of Lender under any of the Loan Documents, or (iv) the value, use operation of, or cash flows from, the Collateral.

3.12 Patriot Act. Borrower shall comply with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over Borrower and/or the Collateral, including those relating to money laundering and terrorism. Lender shall have the right to audit Borrower’s compliance with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over Borrower and/or the Collateral, including those relating to money laundering and terrorism. In the event that Borrower fails to comply with the Patriot Act or any such requirements of Governmental Authorities, then Lender may, at its option, cause Borrower to comply therewith and any and all costs and expenses incurred by Lender in connection therewith shall be secured by the Security Instrument[s] and the other Loan Documents and shall be immediately due and payable.

3.13 Embargoed Person.

3.13.1 At all times, throughout the term of this Agreement, including after giving effect to any transfers, (i) none of the funds or other assets of Borrower or any Guarantor shall constitute property of, or shall be beneficially owned, directly or indirectly, by any person subject to trade restrictions under United States law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (PATRIOT Act) of 2001 and any Executive Orders or regulations promulgated thereunder, each as may be amended from time to time, with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), would be prohibited by law (each, an “**Embargoed Person**”), or the Loan made by Lender would be in violation of law, (ii) no Embargoed Person shall have any interest of any nature whatsoever in Borrower or any Guarantor, as applicable, with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), would be prohibited by law or the Loan would be in violation of law, and (iii) none of the funds of Borrower or any Guarantor, as applicable, shall be derived from any unlawful activity with the result that the investment in Borrower or any Guarantor, as applicable (whether directly or indirectly), would be prohibited by law or the Loan would be in violation of law.

3.13.2 Neither Borrower nor, to Borrower’s knowledge, any owner of a direct or indirect interest in Borrower (i) is listed on any Government Lists, (ii) is a person who has been

determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of the Office of Foreign Assets Control (“**OFAC**”) or in any enabling legislation or other Presidential Executive Orders in respect thereof, (iii) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense, or (iv) is currently under investigation by any Governmental Authority for alleged criminal activity. For purposes hereof, the term “**Patriot Act Offense**” means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (A) the criminal laws against terrorism; (B) the criminal laws against money laundering, (C) the Bank Secrecy Act, as amended, (D) the Money Laundering Control Act of 1986, as amended, or (E) the Patriot Act. “**Patriot Act Offense**” also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term “**Government Lists**” means (1) the Specially Designated Nationals and Blocked Persons Lists maintained by OFAC, (2) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Lender notified Borrower in writing is now included in “Government Lists”, or (3) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Government Authority or pursuant to any Executive Order of the President of the United States of America that Lender notified Borrower in writing is now included in “Government Lists”.]

3.14 [Title Insurance]¹¹. Upon recordation of the Security Instrument[s], Borrower shall at its expense deliver or cause to be delivered to Lender a lender’s policy of title insurance (the “**Title Policy**”) issued by Fidelity National Title Company (“**Title Company**”), in form and substance satisfactory to Lender and containing such endorsements as Lender may reasonably require, with a liability limit of not less than the Principal, insuring Lender as to the validity and priority of the Security Instrument[s] as a first lien on Borrower’s interest in the Collateral. The Title Policy shall contain only such exceptions from its coverage as shall have been approved in writing by Lender. Borrower shall furnish to Title Company all surveys and other information required to enable it to issue the Title Policy and such endorsements.

3.15 FIRPTA. Borrower is not a “foreign person” within the meaning of Sections 1445 or 7701 of the Internal Revenue Code of 1986.]

4. NEGATIVE COVENANTS. UNLESS OTHERWISE CONSENTED TO IN WRITING BY LENDER, UNTIL PAYMENT AND PERFORMANCE IN FULL OF ALL AMOUNTS, LIABILITIES AND OBLIGATIONS DUE UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, BORROWER SHALL COMPLY WITH THE FOLLOWING NEGATIVE COVENANTS:

4.1 Misrepresentations. Borrower shall not furnish to Lender any certificate or other document that will contain, and none of the other Loan Documents contains, any untrue statement of material fact or that will omit to state, and none of the other Loan Documents omits to state, a

¹¹ Add Section 3.14 through 3.15 below if secured by Deed Of Trust.

material fact necessary to make the certificate or other document not misleading in light of the circumstances under which it is furnished.

4.2 Sale. Other than in the routine replacement of surplus or obsolete assets or in the ordinary course of business, Borrower shall not sell, transfer, exchange, assign, lease or otherwise dispose of all or any part of Borrower's interest in the Collateral without Lender's prior written consent. Borrower shall not sell or convey all or substantially all of its assets to, any person or entity, unless the outstanding principal amount, all accrued and unpaid interest thereon, and any other amounts due and owing under the Loan Documents have been paid in full, or the obligations thereunder have been assumed by a successor which is satisfactory to Lender in its sole and absolute discretion.

4.3 Amendment of Documents. Borrower shall not enter into or consent to any amendment of this Agreement or any of the other Loan Documents, without obtaining the express prior written consent of Lender thereto.

4.4 Debt. Borrower shall not create or suffer to exist any secured indebtedness for borrowed money other than pursuant to this Agreement and the other Loan Documents, without the approval of Lender.

4.5 Loans/Guarantees. Borrower shall not make loans, advances or extensions of credit to any person or entity or guarantee or otherwise become responsible for the obligations of any other person or entity.

4.6 Alienation or Further Encumbrance of Property. If the Collateral, or any part of or any interest in the Collateral, is sold, conveyed, transferred, hypothecated, alienated, leased or further encumbered, whether voluntarily or involuntarily, without Lender's prior written consent (which consent may be withheld in Lender's sole discretion), Lender shall have the right at its option to declare the Loan immediately due and payable regardless of the Maturity Date (as defined in the Note), except where and to the extent such right is limited by applicable law. In any case when Lender may, in its sole discretion, consent to any further encumbrance of the Collateral, such consent may be conditioned upon delivery to Lender a subordination agreement duly executed by Borrower and the party for whose benefit such further encumbrance is being made, such subordination agreement being in form and substance acceptable to Lender, in its sole discretion.

4.7 Change in Form or Status of Borrower. Lender shall have the right at its option to declare the debt and obligations under the Loan Documents immediately due and payable regardless of the Maturity Date (as defined in the Note), upon the occurrence of any of the following:

4.7.1 If, without the written consent of Lender being first had and obtained, there is a transfer or assignment of any membership interest in Borrower which changes the ownership of Borrower; or

4.7.2 If, without the written consent of Lender being first had and obtained, there is any change in the board of directors, trustees or managers of Borrower; or

4.7.3 If, without the written consent of Lender being first had and obtained, any of the following events occurs with respect to Borrower: (i) Borrower materially ceases operations, or the

board of directors of Borrower resolves to dissolve and liquidate Borrower; (ii) a judicial decree for winding up and dissolution is granted; (iii) Borrower otherwise terminates its existence, whether voluntarily or involuntarily; (iv) the board of directors of Borrower resolves to consolidate, merge, restructure or enter into any other combination reorganization; (v) if the board of directors, trustees or managers of Borrower resolves to enter into any divisive reorganization such as, by way of example, a “spin-off” or a “split-off” (unless each surviving corporation: (A) remains jointly and severally liable under this Agreement and any other Loan Documents and (B) has executed and delivered such documents as Lender may require and in such form as Lender may require to evidence this continuing obligation); or (vi) if Borrower sells or hypothecates ten percent (10%) or more of Borrower’s gross assets based on both book value and fair market value outside the ordinary course of its business (not including providing security for Loan) in any three (3) year period.

4.7 [Change in Form or Status of Borrower Which is a Limited Liability Company, Corporation or Partnership].¹² If Borrower is a limited liability company, corporation or a partnership, Lender shall have the right at its option to declare the debt and obligations under the Loan Documents immediately due and payable regardless of the Maturity Date (as defined in the Note), upon the occurrence of any of the following:

4.7.1 If, without the written consent of Lender being first had and obtained, there is a transfer, assignment or hypothecation of any stock or ownership interest in such limited liability company, corporation, or partnership, whichever the case may be, which changes the ownership of such entity, in the aggregate, by more than twenty-five percent (25%) as compared with the ownership of such entity as it exists on the date of this Agreement;

4.7.2 If, without the written consent of Lender being first had and obtained, any of the following events occurs with respect to Borrower if it is a limited liability company or a corporation, as the case may be: (i) Borrower materially ceases operations, or its members or the board of directors of Borrower resolves to dissolve and liquidate Borrower; (ii) a judicial decree for winding up and dissolution is granted; (iii) Borrower otherwise terminates its existence, whether voluntarily or involuntarily; (iv) the members or the board of directors of Borrower resolves to consolidate, merge, restructure or enter into any other combination reorganization (unless (A) the net worth of the surviving limited liability company or corporation will exceed Borrower’s net worth as of the date of this Agreement, computed on both a book value and a fair market value basis, respectively, and (B) the members or shareholders of Borrower as of the date of this Agreement will own or control not less than twenty-five percent (25%) of the stock, on a fully diluted basis, of the surviving limited liability company or corporation); (v) if the members or the board of directors of Borrower resolves to enter into any divisive reorganization such as, by way of example, a “spin-off” or a “split-off” (unless each surviving limited liability company or corporation: (A) remains jointly and severally liable under this Agreement and any other Loan Documents and (B) has executed and delivered such documents as Lender may require and in such form as Lender may require to evidence this continuing obligation); (vi) if Borrower sells or hypothecates ten percent (10%) or more of Borrower’s gross assets based on both book value and fair market value outside the ordinary course of its business (not including providing security for Loan) in any three (3) year period; or (vii) if Borrower distributes to its members or shareholders, whether such distribution is classified as a dividend, compensation, redemption, loan

¹² Use the following Section 4.7 if the Borrower is any entity other than a nonprofit corporation.

repayment or otherwise, an amount equal to ten percent (10%) or more of Borrower's gross assets based on both book value and fair market value, respectively, in any three (3) year period; or

4.7.3 If, without the written consent of Lender being first had and obtained, any of the following events occur with respect to Borrower if it is a partnership: (i) if Borrower materially ceases operations; (ii) if the partners of Borrower elect to wind up and dissolve; (iii) if Borrower otherwise terminates its existence, whether by operation of law or by agreement; (iv) if the partners of Borrower elect to restructure, consolidate, merge or enter into any other reorganization with another partnership or entity (unless (A) the net worth of the surviving partnership will exceed Borrower's net worth as of the date of this Agreement, computed on both a book value and a fair market value basis, respectively, and (B) the partners of Borrower will own or control not less than twenty-five percent (25%) of the surviving partnership); (v) if Borrower distributes to its partners, whether such distribution is classified as a capital, income or liquidating distribution, compensation, loan repayment or otherwise, an amount equal to ten percent (10%) or more of Borrower's gross assets based on both book value and fair market value, respectively, in any three (3) year period; or (vi) in the event any of the general partners of Borrower are either a limited liability company, corporation or a partnership, if any of the events of Paragraph 4.7.2 above or this Paragraph 4.7.3 (i) - (v) occur with respect to any such general partners.]

5. RELATIONSHIP OF PARTIES

5.1 Independent Contractor. In the performance of the duties and obligations of Borrower under this Agreement, it is mutually understood and agreed that Lender and Borrower are at all times acting and performing as independent contractors, and nothing in this Agreement is intended nor shall be construed to create between Lender and Borrower, an employer/employee, joint venture, lease, landlord/tenant or fiduciary relationship.

5.2 Indemnification. Borrower shall indemnify, hold harmless, and defend Lender and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, the "**Lender Parties**") from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, that are incurred by the Lender Parties in a final non-appealable judgment (collectively, "**Losses**"), arising out of any claim alleging: (a) breach or non-fulfillment of any representation, warranty or covenant set forth in this Agreement or the other Loan Documents by Borrower; or (b) any failure by Borrower to comply with any applicable federal, state or local laws, regulations or codes in the performance of its obligations under this Agreement or the other Loan Documents. The Lender Parties shall give Borrower prompt written notice (a "**Claim Notice**") of any Losses or discovery of facts on which the Lender Parties intend to base a request for indemnification under this Agreement. The Lender Parties' failure to provide a Claim Notice to Borrower does not relieve Borrower of any liability that Borrower may have to the Lender Parties, but in no event shall Borrower be liable for any Losses that result from a delay in providing a Claim Notice. Each Claim Notice must contain a description of the claim and the nature and amount of the related Losses (to the extent that the nature and amount of the Losses are known at the time). The Lender Parties shall furnish promptly to Borrower copies of all papers and official documents received in respect of any Losses. The Lender Parties' duty to defend applies immediately, regardless of whether Borrower has paid any sums or incurred any detriment arising out of or relating, directly or indirectly, to any claim. The Lender Parties may settle or compromise any claim or consent to the entry of any judgment regarding which it is seeking indemnification under this

Agreement without the prior written consent of Borrower. Borrower shall on demand pay to Lender the amount of any and all reasonable costs and expenses, including the reasonable fees and disbursements of its counsel and of any experts or agents, which Lender may incur in connection with: (i) the exercise or enforcement by Lender of any of its rights or remedies under this Agreement or the other Loan Documents; or (ii) any failure by Borrower to perform any of its obligations under this Agreement or the other Loan Documents.

6. GENERAL PROVISIONS

6.1 Limits. Notwithstanding any other provision of this Agreement or any of the other Loan Documents, interest, fees and other amounts payable to or for Lender under this Agreement or the other Loan Documents shall be limited to the maximum rate permitted by law.

6.2 Confidentiality. This Agreement is personal and confidential between the Parties, and the Parties shall not release information concerning this Agreement or the other Loan Documents to any person without the prior written consent of the other Party. Each Party agrees to: (i) use Confidential Information (as defined below) of the other Party only for the purposes described herein; and (ii) restrict access to the Confidential Information to such of its personnel, agents and/or consultants, if any, who have a need to have access and who have been advised of and have agreed in writing or are otherwise bound to treat such information in accordance with the terms of this Agreement. The foregoing provision will not apply to Confidential Information that (a) is publicly available or in the public domain at the time disclosed; (b) is or becomes publicly available or enters the public domain through no fault of the recipient; (c) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (d) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (e) is independently developed by the recipient; or (f) is approved for release or disclosure by the disclosing Party without restriction. Further, each Party agrees it shall not, without prior written authorization from the other Party, use for its own benefit or purposes, or for the benefit or purposes of any third party, any Confidential Information, except any such use arising in connection with this Agreement. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (a) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order will first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (b) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do. "**Confidential Information**" means all written and oral information, disclosed by either Party to the other, related to the operations of such Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential.

6.3 Assignment. This Agreement shall bind and inure to the benefit of the Parties and their respective successors and assigns; provided however, that Borrower shall not assign its rights nor delegate its duties under this Agreement without the prior written consent of Lender.

6.4 Notices. Any communications between the Parties or notices or requests required or permitted to be given in this Agreement shall be in writing and shall be deemed to have been given or made on (a) the date on which it is delivered personally, (b) three (3) business days after it is

deposited in the United States mail, certified, return receipt requested, or (c) one (1) business day after it is sent by Federal Express (or other reputable overnight carrier) with postage prepaid and properly addressed, to the following addresses or at such other addresses as may be later designated by the Party:

If to Lender: _____

With copies to: _____

If to Borrower: _____

6.5 Governing Law. This Agreement shall be governed by and construed according to the laws of the State of California, and any action arising out of it shall be instituted and prosecuted only in a court of proper jurisdiction in the County of Orange. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is prohibited or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. This Agreement shall be given a fair and reasonable construction in accordance with the intention of the Parties and without regard to, or aid of, any presumption against the Party that caused this Agreement to be drafted.

6.6 Severability. This Agreement shall not terminate solely by reason of any of its provisions being declared invalid or unenforceable. If any provision hereof is or becomes invalid or unenforceable, the remaining provisions hereof shall be unimpaired and the invalid or unenforceable provision shall be replaced by a provision that is valid and enforceable and that comes closest to the intention of the invalid or unenforceable provision.

6.7 Compliance with Lender Standards. Borrower shall cooperate with Lender's corporate compliance program, audits, reviews and investigations which relate to Borrower under this Agreement.

6.8 Captions. Any captions to or headings of the articles, sections, subsections, paragraphs or subparagraphs of this Agreement are solely for the convenience of the Parties, are not part of this Agreement and shall not be used for interpretation or determination of the validity of this Agreement or any provision of this Agreement.

6.9 Entire Agreement; Amendment. The making, execution and delivery of this Agreement by the Parties has not been induced by any representations, statements, warranties or

agreements other than those expressed in this Agreement. This Agreement embodies the entire understanding of the Parties, and there are no further or other agreements or understandings, written or oral, in effect between the Parties relating to the subject matter of this Agreement, unless expressly referred to by reference in this Agreement. This Agreement supersedes and terminates any previous oral or written agreements between the Parties with respect to the subject matter of this Agreement, and any such prior agreement is null and void. This Agreement may be amended or modified only by an instrument in writing signed by both Parties.

6.10 Waiver of Provisions. Any waiver of any terms, covenants and/or conditions of this Agreement must be in writing and signed by the Parties. A waiver of any of the terms, covenants and/or conditions of this Agreement shall not be construed as a waiver of any other terms, covenants and/or conditions of this Agreement, nor shall any waiver constitute a continuing waiver.

6.11 Attorneys' Fees. In the event that any action, including mediation or arbitration, is brought by either Party to enforce or interpret the terms of this Agreement, the prevailing Party in such action shall be entitled to its costs and reasonable attorneys' fees and costs (including allocated costs of in-house counsel) incurred therein from the nonprevailing Party, in addition to such other relief as the court or arbitrator may deem appropriate.

6.12 Gender And Number. Whenever the context of this Agreement requires, the gender of all words shall include the masculine, feminine, and neuter, and the number of all words shall include the singular and plural.

6.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

6.14 Tax-Exemption. In the event that any Loan Document either (a) adversely affects Lender's or Lender's affiliates' tax-exempt status or the tax-exempt status of interest on the securities of Lender or its affiliates; or (b) requires action to be taken with respect to the securities of Lender or its affiliates, Lender may, in Lender's sole discretion, require amendment of such Loan Document to reasonably remediate the adverse effect on Lender's or Lender's affiliates' tax-exempt status or the tax-exempt status of interest on the securities of Lender or its affiliates, as applicable. In such case Borrower shall, immediately upon request from Lender, execute such amendment presented by Lender and return the same promptly to Lender.

6.15 Non-Discrimination. All of the Parties represent and warrant that they are and at all times during the term of this Agreement shall be in full compliance with Section 504 of the Rehabilitation Act of 1973 and Titles VI and VII of the 1964 Civil Rights Act, as amended and all regulations issued pursuant thereto.

6.16 Incorporation of Exhibits. All schedules, exhibits and recitals referred to in this Agreement are an integral part of this Agreement and are incorporated in full in this Agreement by this reference.

6.17 Time is of the Essence. Time is of the essence in the performance of Borrower's obligations under this Agreement.

[Signature page follows]

[Signature page]

IN WITNESS WHEREOF, Lender and Borrower have executed this Agreement as of the date first set forth above at _____, California.

LENDER:

[COMPLETE LEGAL NAME OF LENDER]

By: _____
Name: _____
Its: _____

BORROWER:

[COMPLETE LEGAL NAME OF BORROWER]

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

EXHIBIT [X]

PROMISSORY NOTE

[Document follows this page.]

[SEE FORM PROMISSORY NOTE]

EXHIBIT [X]

SECURITY AGREEMENT

[Document follows this page.]

[SEE FORM SECURITY AGREEMENT]

or

**DEED OF TRUST WITH FIXTURE FILING,
ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT**

[Document follows this page.]

[SEE FORM DEED OF TRUST]

EXHIBIT [X]

GUARANTY

[OPTIONAL]

[SEE OPTIONAL FORM OF GUARANTY TO BE USED WITH LOAN AGREEMENT FOR LOAN TO A CALIFORNIA NON-PROFIT CORPORATION, SECURED BY PERSONAL PROPERTY COLLATERAL OR REAL PROPERTY COLLATERAL]

EXHIBIT [X]

ENVIRONMENTAL INDEMNITY

[OPTIONAL]

[SEE OPTIONAL FORM OF GUARANTY TO BE USED WITH DEED OF TRUST]