



**\*REVISED\***

# COUNTYWIDE OVERSIGHT BOARD

Monday, September 27, 2021  
11:00 A.M.

Department of Conservation & Development  
**To slow the spread of COVID-19, in lieu of a public gathering, the Countywide Oversight Board meetings will be remote until further notice and accessible via link to all members of the public as permitted by the Governor's Executive Order N29-20.**

**Federal D. Glover, Board of Supervisors ♦ Rita Xavier, Contra Costa Mayors' Conference  
Susan Morgan, Special Districts ♦ John Hild, Superintendent of Schools  
Phyllis Carter, Community College District  
Jack Weir, Member of the Public ♦ Gabriel Lemus, RDA Employee**

<b>Agenda Items:</b>	<p><b>Items may be taken out of order based on the business of the day and preference of the Board.</b></p> <p>Time: Sep 27, 2021 11:00 AM Pacific Time (US and Canada) Join from PC, Mac, Linux, iOS or Android: <a href="https://cccounty-us.zoom.us/j/81942377436">https://cccounty-us.zoom.us/j/81942377436</a> <b>Conference code: 841892</b> <b>Meeting ID: 819 4237 7436</b></p> <p>Or via Telephone, dial: USA 214 765 0478 USA 8882780254 (US Toll Free)</p>
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## INTRODUCTIONS

**PUBLIC COMMENT** on any matter under the jurisdiction of the Oversight Board and NOT on this agenda (speakers may be limited to three minutes).

**CONSIDER CONSENT ITEMS** (Items listed as C.1 - C.3):

### Minutes

C.1 **APPROVE** the minutes from the January 25, 2021, meeting.

### Recognized Obligation Payment Schedule (ROPS)

- C.2 ADOPT Resolution 2021/36 Approving the Amended Recognized Obligation Payment Schedule for July 1, 2021 – June 30, 2022 (ROPS 21-22B) for the Contra Costa County Successor Agency.**

**Administrative Budget**

**Contracts**

- C.3 ADOPT Resolution 2021/37 APPROVING a Purchase and Sale Agreement for 300 Cumberland Street, Pittsburg CA, and a Repayment Agreement.**

**Other Items**

**ITEMS FOR DISCUSSION and/or ACTION**

**Public Hearings**

**FUTURE AGENDA ITEMS**

**ADJOURN**

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*The Countywide Oversight Board will provide reasonable accommodations for persons with disabilities planning to attend its meetings. Contact Anna Seithel at (925) 655-2896 at least 72 hours before the meeting.*

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*Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the County to a majority of members of the Oversight Board less than 96 hours prior to that meeting are available for public inspection at the County Department of Conservation and Development, 30 Muir Road, Martinez during normal business hours.*

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For Additional Information Contact:

Maureen Toms, Oversight Board Secretary  
Phone (925) 655-2895, Fax (925) 655-2750  
maureen.toms@dcd.cccounty.us

Glossary of Acronyms, Abbreviations, and other Terms (in alphabetical order): Contra Costa County has a policy of making limited use of acronyms, abbreviations, and industry-specific language in meetings of its Board of Supervisors and Committees. Following is a list of commonly used abbreviations that may appear in presentations and written materials at meetings of the Transportation, Water and Infrastructure Committee:

AB Assembly Bill	HOT High-Occupancy/Toll
ABAG Association of Bay Area Governments	HOV High-Occupancy-Vehicle
ACA Assembly Constitutional Amendment	HSD Contra Costa County Health Services Department
ADA Americans with Disabilities Act of 1990	HUD United States Department of Housing and Urban Development
ALUC Airport Land Use Commission	IPM Integrated Pest Management
AOB Area of Benefit	ISO Industrial Safety Ordinance
BAAQMD Bay Area Air Quality Management District	JPA/JEPA Joint (Exercise of) Powers Authority or Agreement
BART Bay Area Rapid Transit District	Lamorinda Lafayette-Moraga-Orinda Area
BATA Bay Area Toll Authority	LAFCo Local Agency Formation Commission
BCDC Bay Conservation & Development Commission	LCC League of California Cities
BDCP Bay-Delta Conservation Plan	LTMS Long-Term Management Strategy
BGO Better Government Ordinance (Contra Costa County)	MAC Municipal Advisory Council
BOS Board of Supervisors	MAF Million Acre Feet (of water)
CALTRANS California Department of Transportation	MBE Minority Business Enterprise
CalWIN California Works Information Network	MOA Memorandum of Agreement
CalWORKS California Work Opportunity and Responsibility to Kids	MOE Maintenance of Effort
CAER Community Awareness Emergency Response	MOU Memorandum of Understanding
CAO County Administrative Officer or Office	MTC Metropolitan Transportation Commission
CCTA Contra Costa Transportation Authority	NACo National Association of Counties
CCWD Contra Costa Water District	NEPA National Environmental Protection Act
CDBG Community Development Block Grant	OES-EOC Office of Emergency Services-Emergency Operations Center
CEQA California Environmental Quality Act	PDA Priority Development Area
CFS Cubic Feet per Second (of water)	PWD Contra Costa County Public Works Department
CPI Consumer Price Index	RCRC Regional Council of Rural Counties
CSA County Service Area	RDA Redevelopment Agency or Area
CSAC California State Association of Counties	RFI Request For Information
CTC California Transportation Commission	RFP Request For Proposals
DCC Delta Counties Coalition	RFQ Request For Qualifications
DCD Contra Costa County Dept. of Conservation & Development	SB Senate Bill
DPC Delta Protection Commission	SBE Small Business Enterprise
DSC Delta Stewardship Council	SR2S Safe Routes to Schools
DWR California Department of Water Resources	STIP State Transportation Improvement Program
EBMUD East Bay Municipal Utility District	SWAT Southwest Area Transportation Committee
EIR Environmental Impact Report (a state requirement)	TRANSPAC Transportation Partnership & Cooperation (Central)
EIS Environmental Impact Statement (a federal requirement)	TRANSPLAN Transportation Planning Committee (East County)
EPA Environmental Protection Agency	TWIC Transportation, Water and Infrastructure Committee
FAA Federal Aviation Administration	USACE United States Army Corps of Engineers
FEMA Federal Emergency Management Agency	WBE Women-Owned Business Enterprise
FTE Full Time Equivalent	WCCTAC West Contra Costa Transportation Advisory Committee
FY Fiscal Year	WETA Water Emergency Transportation Authority
GHAD Geologic Hazard Abatement District	WRDA Water Resources Development Act
GIS Geographic Information System	
HBRR Highway Bridge Replacement and Rehabilitation	



## COUNTYWIDE OVERSIGHT BOARD OF CONTRA COSTA COUNTY

TO: \*REVISED\* COUNTYWIDE OVERSIGHT BOARD  
FROM: Maureen Toms, Oversight Board Secretary  
DATE: 09/27/2021  
SUBJECT: APPROVE the minutes from the January 25, 2021,  
meeting.  
AGENDA ITEM: C.1

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### **Recommendation(s)**

APPROVE the minutes from the January 25, 2021, meeting.

### **Background**

See attached minutes.

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### **Attachments**

01-25-21 Oversight Record of Meeting

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# COUNTYWIDE OVERSIGHT BOARD

MEETING RECORD OF ACTION FOR  
January 25, 2021

Federal D. Glover, Board of Supervisors ♦ Rita Xavier, Contra Costa Mayors' Conference  
Susan Morgan, Special Districts ♦ John Hild, Superintendent of Schools  
VACANT, Community College District  
Jack Weir, Member of the Public ♦ Gabriel Lemus, Former RDA Employee

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Present: Gabriel Lemus, RDA Employee  
John Hild  
Jack Weir, Vice Chair  
Rita Xavier, Chair  
Susan Morgan

Absent: Federal D. Glover, Board of Supervisors  
William Swenson, (Alternate Member)

## INTRODUCTIONS

Call to order; roll call; pledge of allegiance; select new Chair and Vice-Chair.

*Rita Xavier chair, M/S Hild/Lemus 5-0-0.*

**PUBLIC COMMENT** on any matter under the jurisdiction of the Oversight Board and NOT on this agenda (speakers may be limited to three minutes).

*There was no public comment.*

**CONSIDER CONSENT ITEMS** (Items listed as C.1 - C.15) : Items are subject to removal from the Consent Calendar by request of any board member or upon request of for discussion by a member of the public. Items removed from the Consent Calendar will be considered with the Discussion Items.

*Approved Consent Items C.1-C.15.*

## Minutes

**c.1 APPROVE** the minutes from the November 9, 2020 meeting.

*Minutes approved from November 9, 2020 meeting.*

AYE: John Hild  
Susan Morgan  
Chair Rita Xavier  
RDA Employee Gabriel Lemus  
Vice Chair Jack Weir

Other: Board of Supervisors Federal D. Glover (ABSENT)

Attachments:

11-09-20 SPECIAL Oversight Board Mtg minutes

**Recognized Obligation Payment Schedule (ROPS)**

**c.2 ADOPT** Resolution 2021/1 Approving the Recognized Obligation Payment Schedule for July 1, 2021– June 30, 2022 (ROPS 21-22) and Administrative Budget for the **Antioch** Successor Agency.

AYE: John Hild  
Susan Morgan  
Chair Rita Xavier  
RDA Employee Gabriel Lemus  
Vice Chair Jack Weir

Other: Board of Supervisors Federal D. Glover (ABSENT)

Attachments:

2021-1 Antioch  
2021-1 Antioch, signed  
Antioch.ROPS Staff Report.pdf  
Antioch.ROPS  
Antioch.Admin Budget

**c.3 ADOPT** Resolution 2021/2 Approving the Recognized Obligation Payment Schedule for July 1, 2021 – June 30, 2022 (ROPS 21-22) and the Administrative Budget for the **Brentwood** Successor Agency.

AYE: John Hild  
Susan Morgan  
Chair Rita Xavier  
RDA Employee Gabriel Lemus  
Vice Chair Jack Weir

Other: Board of Supervisors Federal D. Glover (ABSENT)

Attachments:

2021-2 Brentwood

2021-2 Brentwood, signed  
Brentwood ROPS Staff Report  
Brentwood.ROPS  
Brentwood.Admin Budget Ex.A

**C.4 ADOPT** Resolution 2021/3 Approving the Recognized Obligation Payment Schedule for July 1, 2021 – June 30, 2022 (ROPS 21-22) for the **Clayton** Successor Agency.

AYE: John Hild  
Susan Morgan  
Chair Rita Xavier  
RDA Employee Gabriel Lemus  
Vice Chair Jack Weir

Other: Board of Supervisors Federal D. Glover (ABSENT)

Attachments:

2021-3 Clayton  
2021-3 Clayton, signed  
Clayton.ROPS Staff Report  
Clayton ROPS 21-22

**C.5 ADOPT** Resolution 2021/4 Approving the Recognized Obligation Payment Schedule for July 1, 2021 - June 30, 2022 (ROPS 21-22) and Administrative Budget for the **Concord** Successor Agency.

AYE: John Hild  
Susan Morgan  
Chair Rita Xavier  
RDA Employee Gabriel Lemus  
Vice Chair Jack Weir

Other: Board of Supervisors Federal D. Glover (ABSENT)

Attachments:

2021-4 Concord  
2021-4 Concord, signed  
Concord.ROPS Staff Report  
Concord.ROPS  
Concord Admin Budget  
Concord ROPS Signature Page

**C.6 ADOPT** Resolution 2021/5 Approving the Recognized Obligation Payment Schedule for July 1, 2021 – June 30, 2022 (ROPS 21-22) for the **El Cerrito** Successor Agency.

AYE: John Hild  
Susan Morgan

Chair Rita Xavier  
RDA Employee Gabriel Lemus  
Vice Chair Jack Weir

Other: Board of Supervisors Federal D. Glover (ABSENT)

Attachments:

2021-5 El Cerrito  
2021-5 ROPS El Cerrito, signed  
El Cerrito ROPS Staff Report  
El Cerrito ROPS 21-22 A&B

**C.7 ADOPT** Resolution 2021/6 Approving the Recognized Obligation Payment Schedule for July 1, 2021– June 30, 2022 (ROPS 21-22) and Administrative Budget for the **Hercules** Successor Agency.

***ROPS approved with a modification to Line 16, column O and Q, changing the amount to \$0. M/S Morgan/Xavier 5-0-0.***

AYE: John Hild  
Susan Morgan  
Chair Rita Xavier  
RDA Employee Gabriel Lemus  
Vice Chair Jack Weir

Other: Board of Supervisors Federal D. Glover (ABSENT)

Attachments:

2021-6 Hercules  
2021-6 Hercules, signed  
Hercules.ROPS Staff Report  
Hercules ROPS 21-22 RAD App

**C.8**

**ADOPT** Resolution 2021/7 Approving the Recognized Obligation Payment Schedule for July 1, 2021 – June 30, 2022 (ROPS 21-22) for the Lafayette Successor Agency.

AYE: John Hild  
Susan Morgan  
Chair Rita Xavier  
RDA Employee Gabriel Lemus  
Vice Chair Jack Weir

Other: Board of Supervisors Federal D. Glover (ABSENT)

Attachments:

2021-7 Lafayette  
2021-7 Lafayette, signed  
Lafayette.ROPS Staff Report  
Lafayette ROPS

**c.9 ADOPT** Resolution 2021/8 Approving the Recognized Obligation Payment Schedule for July 1, 2021 – June 30, 2022 (ROPS 21-22) and Administrative Budget for the **Oakley** Successor Agency.

AYE: John Hild  
Susan Morgan  
Chair Rita Xavier  
RDA Employee Gabriel Lemus  
Vice Chair Jack Weir

Other: Board of Supervisors Federal D. Glover (ABSENT)

Attachments:

2021-8 Oakley  
2021-8 Oakley, signed  
Oakley ROPS Staff Report  
Oakley ROPS  
Oakley Admin Budget

**c.10 ADOPT** Resolution 2021/9 Approving the Recognized Obligation Payment Schedule for July 1, 2021 – June 30, 2022 (ROPS 21-22) for the **Pinole** Successor Agency.

AYE: John Hild  
Susan Morgan  
Chair Rita Xavier  
RDA Employee Gabriel Lemus  
Vice Chair Jack Weir

Other: Board of Supervisors Federal D. Glover (ABSENT)

Attachments:

2021-9 Pinole  
2021-9 Pinole, signed  
Pinole ROPS Staff Report  
Pinole ROPS Attachment

**c.11 Adopt** Resolution 2021/10 Approving the Recognized Obligation Payment Schedule for July 1, 2021 – June 30, 2022 (ROPS 21 – 22) for the **Pittsburg** Successor Agency.

AYE: John Hild  
Susan Morgan  
Chair Rita Xavier  
RDA Employee Gabriel Lemus  
Vice Chair Jack Weir

Other: Board of Supervisors Federal D. Glover (ABSENT)

Attachments:

2021-10 Pittsburg  
2021-10 Pittsburg, signed  
Pittsburg ROPS Staff Report  
Pittsburg.ROPS Attachment

**C.12 Adopt** Resolution 2021/11 approving the recognized obligation payment schedule for July 1, 2021 - June 30, 2022 (ROPS 21 – 22) for the **Pleasant Hill** Successor Agency.

AYE: John Hild  
Susan Morgan  
Chair Rita Xavier  
RDA Employee Gabriel Lemus  
Vice Chair Jack Weir

Other: Board of Supervisors Federal D. Glover (ABSENT)

Attachments:

2021-11 Pleasant Hill, signed  
2021-11 Pleasant Hill  
Pleasant Hill ROPS Staff Report  
Pleasant Hill ROPS

**C.13 Adopt** Resolution 2021/12 Approving the Recognized Obligation Payment Schedule for July 1, 2021 – June 30, 2022 (ROPS 21-22) and Administrative Budget for the **Richmond Successor Agency**.

AYE: John Hild  
Susan Morgan  
Chair Rita Xavier  
RDA Employee Gabriel Lemus  
Vice Chair Jack Weir

Other: Board of Supervisors Federal D. Glover (ABSENT)

Attachments:

2021-12 Richmond  
2021-12 Richmond, signed  
Richmond Staff Report ROPS 2122 and Admin Budget at 11.\_  
Richmond ROPS 21-22 Ex.A to Res.ROPS  
Richmond ROPS 21-22 Ex.B to Res. Admin Budge...

**C.14 Adopt** Resolution 2021/13 Approving the Recognized Obligation Payment Schedule and Administrative Budget for July 1, 2021 – June 30, 2022 (ROPS 21-22) and Administrative Budget for the **San Pablo** Local Successor Agency.

AYE: John Hild  
Susan Morgan  
Chair Rita Xavier

RDA Employee Gabriel Lemus

Vice Chair Jack Weir

Other: Board of Supervisors Federal D. Glover (ABSENT)

Attachments:

2021-13 San Pablo

2021-13 San Pablo, signed

San Pablo - OB Staff Report ROPS 21-22

San Pablo - RPT ROPS 21-22 Summary 121520

San Pablo - RPT ROPS 21-22 Admin Budget 121520

San Pablo - RPT ROPS 21-22 Debt Service Schedule 121520

San Pablo - CashBalances

San Pablo - RPT ROPS 21-22 Details

**C.15 Adopt** Resolution 2021/15 Approving the Recognized Obligation Payment Schedule for July 1, 2021 – June 30, 2022 (ROPS 21-22) for the **Contra Costa** Successor Agency.

AYE: John Hild

Susan Morgan

Chair Rita Xavier

RDA Employee Gabriel Lemus

Vice Chair Jack Weir

Other: Board of Supervisors Federal D. Glover (ABSENT)

Attachments:

2021-15 Contra Costa County Successor Agency

UPDATED ROPS Contra Costa County Successor Agency, signed.pdf

CCC-Staff Report

CCC-ROPS 21-22-Attachment

**Other Items**

***Items C.16-C.18 were discussed (not included in Consent).***

**C.16** Adopt Resolution 2021/16 of the Countywide Oversight Board of Contra Costa County approving reinstatement and repayment of certain prior loans made to the former Lafayette Redevelopment Agency, finding the prior loan was for legitimate redevelopment.

***Approved M/S Xavier/Lemus 5-0-0.***

AYE: John Hild

Susan Morgan

Chair Rita Xavier

RDA Employee Gabriel Lemus

Vice Chair Jack Weir

Other: Board of Supervisors Federal D. Glover (ABSENT)

Attachments:

2021-16 Lafayette

2021-16 Lafayette, signed

Lafayette.ROPS-Res2 Prior Loans FY21-22

**C.17** ADOPT Resolution No. 2021-17, approving the Third Amendment to the Agency Assistance Agreement dated December 19, 2005, between the Successor Agency to the Contra Costa County Redevelopment Agency, on one hand, and PHVP I, LP, and Pleasant Hill Transit Village Associates, LLC, on the other.

***Approved M/S Xavier/Lemus 5-0-0.***

AYE: John Hild  
Susan Morgan  
Chair Rita Xavier  
RDA Employee Gabriel Lemus  
Vice Chair Jack Weir

Other: Board of Supervisors Federal D. Glover (ABSENT)

Attachments:

2021-17 Pleasant Hill BART

2021-17 Pleasant Hill BART, signed

CCC-Agency Assistance Agreement.Resolution

**C.18** ADOPT Resolution No. 2021-18, approving the Contract between Contra Costa County Successor Agency and Ensaf for oversight of the monitoring of the Hookston Remediation Activity.

***Approved M/S Morgan/Xavier 5-0-0.***

AYE: John Hild  
Susan Morgan  
Chair Rita Xavier  
RDA Employee Gabriel Lemus  
Vice Chair Jack Weir

Other: Board of Supervisors Federal D. Glover (ABSENT)

Attachments:

2021-18 CCC and Ensaf

2021-18 CCC and Ensaf, signed

## **FUTURE AGENDA ITEMS**

## **ITEMS FOR DISCUSSION and/or ACTION**

***September 27 held for next meeting.***

# ADJOURN

For Additional Information Contact:

Maureen Toms, Oversight Board Secretary  
Phone (925) 674-7878, Fax (925) 674-7250  
maureen.toms@dcd.cccounty.us



## COUNTYWIDE OVERSIGHT BOARD OF CONTRA COSTA COUNTY

TO: \*REVISED\* COUNTYWIDE OVERSIGHT BOARD  
FROM: Maureen Toms, Oversight Board Secretary  
DATE: 09/27/2021  
SUBJECT: Contra Costa County Successor Agency - ROPS  
AGENDA ITEM: C.2

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### **Recommendation(s)**

**ADOPT** Resolution 2021/36 Approving the Amended Recognized Obligation Payment Schedule for July 1, 2021 – June 30, 2022 (ROPS 21-22B) for the **Contra Costa County Successor Agency**.

### **Background**

See attached staff report.

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### **Attachments**

Resolution 2021/36  
CCC-Staff Report  
CCC-ROPS 21-22 Attachment

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**RESOLUTION OF THE COUNTYWIDE OVERSIGHT BOARD  
FOR THE COUNTY OF CONTRA COSTA**

Adopted this Resolution on 09/27/2021 by the following vote:

**AYE:**   
**NO:**   
**ABSENT:**   
**ABSTAIN:**   
**RECUSE:**



**Resolution: 2021/36**

**IN THE MATTER OF THE COUNTYWIDE OVERSIGHT BOARD FOR THE COUNTY OF CONTRA COSTA SUCCESSOR AGENCIES APPROVING THE AMENDED RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR THE PERIOD JULY 2021 THROUGH JUNE 2022 FOR CONTRA COSTA COUNTY SUCCESSOR AGENCY.**

**WHEREAS**, the California state legislature enacted Assembly Bill x1 26 (the "Dissolution Act") to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.); and

**WHEREAS**, on January 17, 2012 and pursuant to Health and Safety Code Section 34173, the Board of Supervisors of the County of Contra Costa (the "Board of Supervisors") declared that the County of Contra Costa, a political subdivision of the State of California (the "County"), would act as successor agency (the "Successor Agency") for the dissolved Redevelopment Agency of the County of Contra Costa (the "Dissolved RDA") effective February 1, 2012; and

**WHEREAS**, on February 1, 2012, the RDA was dissolved pursuant to Health and Safety Code Section 34172; and

**WHEREAS**, the Dissolution Act provides for the appointment of an oversight board (the "Oversight Board") with specific duties to approve certain Successor Agency actions pursuant to Health and Safety Code Section 34180 and to direct the Successor Agency in certain other actions pursuant to Health and Safety Code Section 34181; and

**WHEREAS**, pursuant to Assembly Bill 1484 enacted June 27, 2012 to amend various provisions of the Dissolution Act, the Successor Agency is now declared to be a separate legal entity from the County of Contra Costa; and

**WHEREAS**, on July 18, 2013, the Department of Finance issued the Successor Agency a "finding of completion" pursuant to Health and Safety Code Section 34179.7 and as a result of the issuance of the finding of completion, pursuant to 34191.4 the Successor Agency is authorized to: (1) place loan agreements between the Dissolved RDA and the County on the Recognized Obligation Payment Schedule ("ROPS") and (2) utilize proceeds derived from bonds issued prior to January 1, 2011, in a manner consistent with the original bond covenants; and

**WHEREAS**, ROPS 21-22 was approved by the Countywide Oversight Board on January 25, 2021 and subsequently approved by the Department of Finance in accordance with the Dissolution Act; and

**WHEREAS**, the Proposed Amended ROPS 21-22 must be submitted by the Successor Agency to the Oversight Board for the Oversight Board's approval in accordance with the Dissolution Act; and

**WHEREAS**, in accordance with Health and Safety Section 34179.6, the Proposed Amended ROPS 21-22 was submitted by the Successor Agency to the Contra Costa County Administrative Officer, the Contra Costa County Auditor-Controller, and the State Department of Finance; and

**WHEREAS**, the Successor Agency is charged with paying for and completing the enforceable obligations of the Dissolved RDA (each as further defined in Health and Safety Code Section 34171(d)), disposing of the properties and other assets of the Dissolved RDA, and unwinding the affairs of the Dissolved RDA; and

**WHEREAS**, additional remediation, beyond the estimate available in January 2021, for the Hookston Station site is required by the Regional Water Quality Control Board and the accompanying staff report provides supporting information upon which the actions set forth in this Resolution are based.

**NOW, THEREFORE**, the Countywide Oversight Board for the County of Contra Costa does hereby find, resolves, approves,

and determines that the foregoing recitals are true and correct, and together with information provided by the Successor Agency staff and the public, form the basis for the approvals, findings, resolutions and determinations set forth below.

**BE IT FURTHER RESOLVED** that under Health and Safety Code Section 34180(g), the Oversight Board must approve establishment of a ROPS for the Successor Agency.

**BE IT FURTHER RESOLVED** in accordance with the Dissolution Act, the Oversight Board hereby approves ROPS 21-22 in the form on file with the Oversight Board's Designated Contact Official (the "ROPS 21-22"), including the agreements and obligations described on the ROPS 21-22, and hereby determines that such agreements and obligations constitute "enforceable obligations" and "recognized obligations" for all purposes of the Dissolution Act. In connection with such approval, the Oversight Board makes the specific findings set forth below.

**PASSED AND ADOPTED** this 27th of September, 2021 by the following vote:

AYES: NOES: ABSENT: ABSTAIN:

**I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Countywide Oversight Board, on the date shown.**

ATTEST:

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Maureen Toms, Oversight Board Secretary

**Contact:**

**cc:** Contra Costa County - Rosalia Cuevas, Contra Costa County - Maureen Toms



CONTRA COSTA COUNTY  
DEPARTMENT OF CONSERVATION & DEVELOPMENT  
30 Muir Road  
Martinez, CA 94553  
Telephone: (925) 674-7878

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TO: Countywide Oversight Board

FROM: Maureen Toms, AICP, Deputy Director

DATE: September 27, 2021

SUBJECT: Amended Recognized Obligation Payment Schedule for July 2021 - June 2022 (ROPS 21-22)

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### **Recommendation**

ADOPT Resolution No. 2021-36, approving the Amended Recognized Obligation Payment Schedule for the period of July 1, 2021 – June 30, 2022 (“ROPS 21-22”), which is attached.

### **ROPS**

The ROPS 21-22, which is a condensed version of both the “A” and “B” six-month periods, was due to the State Department of Finance (the “DOF”) by February 1, 2021. Amendments to the “B” six-month period are due to the DOF by October 1, 2021.

As required under Health and Safety Code Section 34179.6, the Amended ROPS 21-22 will be submitted to the DOF, the County Administrator and the Contra Costa County Auditor-Controller and posted on the Successor Agency’s website in accordance with the requirements thereunder.

ROPS 21-22 authorizes all payments to be made by the Successor Agency for enforceable obligations for the twelve -month time period between July 1, 2021 and June 30, 2022. The payments noted on the ROPS are estimates. In most cases, assumptions made for ROPS 21-22 were based on actual expenditures in the prior ROPS and expected expenditures in the upcoming period. The Amended ROPS 21-22, for the period of January 1, 2022 – June 30, 2022 is under consideration.

The title page of Amended ROPS 21-22B shows that enforceable obligations require \$4,695,550 from the Redevelopment Property Tax Trust Fund (the “RPTTF”) an increase of \$262,244 (originally \$4,308,306) for the period. This amount assumes the RPTTF has already set aside pass-through payments to taxing entities and administrative costs for the County Auditor-Controller.

The amendments include Line 46 adds \$250,000 for the “B” period to cover the additional costs associated with Hookston Remediation project, as required by the Regional Water Quality Control

Board. In addition, Line #82 was increased by \$12,244 to cover County Counsel staff costs for the project that are beyond that of typical Administrative Allowances.

**Amended Recognized Obligation Payment Schedule (ROPS 21-22B) - Summary  
Filed for the January 1, 2022 through June 30, 2022 Period**

**Successor Agency:** Contra Costa County

**County:** Contra Costa

<b>Current Period Requested Funding for Enforceable Obligations (ROPS Detail)</b>	<b>ROPS 21-22B Authorized Amounts</b>	<b>ROPS 21-22B Requested Adjustments</b>	<b>ROPS 21-22B Amended Total</b>
<b>A Enforceable Obligations Funded as Follows (B+C+D)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
B Bond Proceeds	-	-	-
C Reserve Balance	-	-	-
D Other Funds	-	-	-
<b>E Redevelopment Property Tax Trust Fund (RPTTF) (F+G)</b>	<b>\$ 4,433,306</b>	<b>\$ 262,244</b>	<b>\$ 4,695,550</b>
F RPTTF	4,308,306	262,244	4,570,550
G Administrative RPTTF	125,000	-	125,000
<b>H Current Period Enforceable Obligations (A+E)</b>	<b>\$ 4,433,306</b>	<b>\$ 262,244</b>	<b>\$ 4,695,550</b>

**Certification of Oversight Board Chairman:**

Pursuant to Section 34177 (o) of the Health and Safety code, I hereby certify that the above is a true and accurate Recognized Obligation Payment Schedule for the above named successor agency.

\_\_\_\_\_  
Name Title

/s/ \_\_\_\_\_  
Signature Date

**Contra Costa County**  
**Amended Recognized Obligation Payment Schedule (ROPS 21-22B) - ROPS Detail**  
**January 1, 2022 through June 30, 2022**

Item #	Project Name	Obligation Type	Total Outstanding Obligation	Authorized Amounts					Total	Requested Adjustments					Total	Notes
				Fund Sources						Fund Sources						
				Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF		Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF		
			<b>\$138,308,140</b>	<b>\$-</b>	<b>\$-</b>	<b>\$-</b>	<b>\$4,308,306</b>	<b>\$125,000</b>	<b>\$4,433,306</b>	<b>\$-</b>	<b>\$-</b>	<b>\$-</b>	<b>\$262,244</b>	<b>\$-</b>	<b>\$262,244</b>	
46	Placemaking Transit Village	OPA/DDA/Construction	\$280,000	-	-	-	-	-	\$-	-	-	-	-	-	-	\$-
60	Bond-License agreement	Professional Services	\$45,500	-	-	-	-	-	\$-	-	-	-	-	-	-	\$-
61	Bond-Treasurer fees	Fees	\$9,580	-	-	-	-	-	\$-	-	-	-	-	-	-	\$-
63	Hookston Station Remediation	Remediation	\$1,165,351	-	-	-	-	-	\$-	-	-	-	250,000	-	\$250,000	
77	Financial Assistance	OPA/DDA/Construction	\$700,000	-	-	-	-	-	\$-	-	-	-	-	-	-	\$-
78	Financial Assistance	OPA/DDA/Construction	\$18,589,368	-	-	-	1,327,812	-	\$1,327,812	-	-	-	-	-	-	\$-
82	I H Trail/Hookston Remediation (IH Hookston Station)	Professional Services	\$37,316	-	-	-	-	-	\$-	-	-	-	12,244	-	\$12,244	
91	Hookston Station Remediation (IH Hookston Station)	Professional Services	\$42,158	-	-	-	-	-	\$-	-	-	-	-	-	-	\$-
94	Administrative Allowance	Admin Costs	\$4,250,000	-	-	-	-	-	\$-	-	-	-	-	-	-	\$-
104	Iron Horse (IH) Corridor Remediation (IH Hookston Station)	Professional Services	\$-	-	-	-	-	-	\$-	-	-	-	-	-	-	\$-
110	Disclosure Statements Reporting Compliance	Fees	\$85,000	-	-	-	-	-	\$-	-	-	-	-	-	-	\$-
125	Financial Assistance-Escrow	OPA/DDA/Construction	\$23,326,527	-	-	-	-	-	\$-	-	-	-	-	-	-	\$-
126	2017 Series A&B Debt Service	Refunding Bonds Issued After 6/27/12	\$89,715,340	-	-	-	2,980,494	-	\$2,980,494	-	-	-	-	-	-	\$-
127	Trustee fees for 2017 Series A&B	Fees	\$62,000	-	-	-	-	-	\$-	-	-	-	-	-	-	\$-



## COUNTYWIDE OVERSIGHT BOARD OF CONTRA COSTA COUNTY

TO: \*REVISED\* COUNTYWIDE OVERSIGHT BOARD  
FROM: Maureen Toms, Oversight Board Secretary  
DATE: 09/27/2021  
SUBJECT: ADOPT Resolution 2021/37 APPROVING a Purchase and Sale Agreement for 300 Cumberland Street, Pittsburg CA, and a Repayment Agreement.  
AGENDA ITEM: C.3

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### **Recommendation(s)**

ADOPT Resolution 2021/37 **APPROVING** a Purchase and Sale Agreement for 300 Cumberland Street, Pittsburg CA, and a Repayment Agreement.

### **Background**

See attached staff report.

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### **Attachments**

Resolution 2021/37 re 300CmbrlndSt.

City of Pittsburg - Staff Report re 300 Cumberland Street

City of Pittsburg P&A and Joint Escrow Instructions re 300 Cumberland Street

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**RESOLUTION OF THE COUNTYWIDE OVERSIGHT BOARD**  
**FOR THE COUNTY OF CONTRA COSTA**

Adopted this Resolution on 09/27/2021 by the following vote:

AYE:   
NO:   
ABSENT:   
ABSTAIN:   
RECUSE:



**Resolution: 2021/37**

**A RESOLUTION OF THE COUNTYWIDE OVERSIGHT BOARD OF CONTRA COSTA COUNTY APPROVING A PURCHASE AND SALE AGREEMENT FOR 300 CUMBERLAND STREET AND A REPAYMENT AGREEMENT.**

**WHEREAS**, the Successor Agency to the Redevelopment Agency of the City of Pittsburg (Successor Agency) owns that certain real property located at 300 Cumberland Street, also known as County Assessor’s Parcel Number 085-108-010 (Property); and

**WHEREAS**, on November 27, 2006, by Agency Resolution 06-1166, the former Redevelopment Agency of the City of Pittsburg (Agency) approved a Building Lease Agreement with respect to the Property by and between the Agency, as landlord, and EJ Phair Brewing Company, as tenant, dated December 1, 2006, which was later amended on June 4, 2007 by Agency Resolution 07-1200, on November 3, 2008 by Agency Resolution 08-1325, and then amended and restated on December 21, 2009 by Agency Resolution 09-1400; and

**WHEREAS**, the Third Amended and Restated Lease Agreement approved by Agency Resolution 09-1400 included a tenant improvement loan by the former Agency to EJ Phair Brewing Company in the original principal amount of \$315,505.22, the current outstanding balance of which is \$5,147.78; and

**WHEREAS**, as a result of the COVID-19 pandemic, EJ Phair Brewing Company was forced to close the restaurant and bar operation for approximately fifteen months during which time Buyer accrued a substantial delinquent rent obligation; and

**WHEREAS**, pursuant to Section 18.26 of the Third Amended and Restated Lease Agreement, EJ Phair Brewing Company (Buyer) has a contractual option to purchase the Property, which predates the AB 1486 (2019 statute) amendments to the State Surplus Land Act (Government Code section 54220 et seq.), requiring local agencies to make surplus property available for sale to certain preferred purchasers, including affordable housing sponsors, prior to selling property to a third-party purchaser for non-affordable housing purposes; and

**WHEREAS**, Buyer has exercised its option to purchase the Property for its current fair market value; and

**WHEREAS**, Buyer and Successor Agency have agreed upon a fair market value purchase price for the Property and the terms under which Buyer will repay Successor Agency the amount of \$72,955.24, representing the sum of the outstanding balance of the tenant improvement loan and a portion of the delinquent rent obligation over the next 36 months, with interest, and

**WHEREAS**, the Successor Agency and Buyer propose to enter into a Purchase and Sale Agreement (PSA) in the form attached to the staff report providing, among other things, for (i) Successor Agency’s sale of the Property to Buyer for a full fair market value Resolution No. 21- Page 2 of 3 September 27, 2021 purchase price of \$710,000 and (ii) Buyer’s execution and delivery of a promissory note in favor of Successor Agency in the amount of \$72,955.24 which promissory note will be secured by a second position deed of trust to be recorded against the Property at close of escrow; and

**WHEREAS**, on August 16, 2021, by Successor Agency Resolution 21-043, the Successor Agency approved the PSA.

**NOW, THEREFORE BE IT RESOLVED** that the Countywide Oversight Board hereby:

- 1) Finds that Buyer’s contractual right to purchase the Property, which predates the State’s enactment of the AB 1486 amendments to the State Surplus Land Act is protected by the constitutional “contract clause” set forth in Article I, Section 9 of the California Constitution.
- 2) Approves the PSA between the Successor Agency and the Buyer for the sale of the Property to Buyer for \$710,000 to be paid

in full at the close of escrow and directs the Executive Director or his designee to execute the PSA in the form attached to the staff report, subject to such minor technical changes or corrections as may be approved by the City Attorney.

3) Approves the Buyer's tenant improvement loan and delinquent rent repayment obligations detailed in the promissory note secured by second deed of trust attached as an exhibit to the PSA whereby the Buyer is required to repay \$72,955.24 with 3% interest per annum over 36 months, with the first 6 months payment at \$0 per month and the remaining 30 months at \$2,500 per month.

4) Directs staff to present the PSA to the California Department of Finance (DOF) for review and consideration following Oversight Board approval.

5) Subject to review and confirmation by the Oversight Board and DOF, and notification to HCD as provided in paragraph 4 above, directs staff to execute and deliver all documents, including a grant deed and second deed of trust, and take all actions necessary to consummate the purchase and sale and repayment transactions per the terms of the PSA.

6) Directs staff to deliver the net proceeds of sale to the County Auditor Controller for distribution to taxing entities as contemplated by the Successor Agency's long range property management plan and the Redevelopment Dissolution Law (AB x1-26).

7) Directs staff to pursue foreclosure of the Successor Agency's second deed of trust if, following notice and expiration of applicable cure periods, Buyer defaults on its obligations to repay Successor Agency the repayment amounts as evidenced by the promissory note secured by second deed of trust.

**PASSED AND ADOPTED** by the Countywide Oversight Board at a regular meeting on the 27th day of September 2021 by the following vote:

AYES: NOES: ABSENT: ABSTAIN:

ATTEST:

\_\_\_\_\_  
Maureen Toms, Oversight Board Secretary

**Contact:**

cc: City of Pittsburg - Maria Alliotti, City of Pittsburg - Bill Zenoni, City of Pittsburg - Janielyn Bayona, Maureen Toms, DCD



**OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR  
65 Civic Avenue  
Pittsburg, CA 94565**

**TO:** Countywide Oversight Board

**FROM:** Garrett Evans, Executive Director

**SUBJECT:** Adoption of a Successor Agency Resolution Approving a Purchase and Sale Agreement for 300 Cumberland Street

**MEETING DATE:** September 27, 2021

**EXECUTIVE SUMMARY**

The Successor Agency to the Redevelopment Agency of the City of Pittsburg (Successor Agency) owns that certain real property located at 300 Cumberland Street, also known as County Assessor's Parcel Number 085-108-010 (Property). EJ Phair Brewing Company, a California corporation (Buyer) is the current tenant at the Property and operator of EJ Phair Brewing Company. The Successor Agency and Buyer propose to enter into a Purchase and Sale Agreement (PSA) for the sale and purchase of the Property.

**FISCAL IMPACT**

The Successor Agency proposes to sell to the Buyer and the Buyer proposes to purchase from the Successor Agency the Property for the amount of \$710,000 payable at the close of escrow.

Included in the PSA is the repayment by Buyer to Seller of \$72,955.24 (Repayment Amount), payable over 36 months, with interest at 3% per annum, with the first 6 months payment at \$0 and the remaining payments for 30 months at \$2,500 per month. The Repayment Amount will pay off amounts owed by Buyer to Seller consisting of an outstanding loan balance of \$5,147.78 and delinquent rent in the amount of \$67,807.46.

**RECOMMENDATION**

Countywide Oversight Board adopt the Resolution approving the PSA.

**BACKGROUND**

On November 27, 2006, by Agency Resolution 06-1166, the former Redevelopment Agency of the City of Pittsburg (Agency) approved the Building Lease Agreement by and between the Redevelopment Agency of the City of Pittsburg and EJ Phair Brewing Company, dated December 1, 2006, which was later amended on June 4, 2007 by Agency Resolution 07-

1200, on November 3, 2008 by Agency Resolution 08-1325, and then amended and restated on December 21, 2009 by Agency Resolution 09-1400.

The Third Amended and Restated Lease Agreement approved by Agency Resolution 09-1400 included a tenant improvement loan by the Agency to Buyer in the original principal amount of \$315,505.22. The current outstanding balance of the tenant improvement loan is \$5,147.78.

The Buyer was approximately three months behind on rent as staff was preparing to send out a Notice of Default for non-payment of rent. The COVID-19 pandemic further exacerbated the financial situation as the Buyer was forced to close the bar and restaurant operation for approximately fifteen months, during which time Buyer accrued a substantial delinquent rent obligation. Seller and Buyer have agreed to settle the outstanding delinquent rent obligation by having Buyer commit to pay Seller the amount of \$67,807.46 over time with interest as provided in the PSA. Buyer's obligation to repay the delinquent rent amount, together with the outstanding balance of the tenant improvement loan (the combined sum of which is \$72,955.24) will be memorialized in a promissory note, repayment of which will be secured by a second position deed of trust to be recorded against the Property at closing.

Pursuant to Section 18.26 of the Lease Agreement, Buyer has a contractual right to purchase the Property, which predates the AB 1486 (2019 statute) amendments to the Surplus Land Act (Government Code section 54220 et seq.), requiring local agencies to make surplus property available for sale to certain preferred purchasers, including affordable housing sponsors, prior to selling property to a third-party purchaser for non-affordable housing purposes. Buyer's contractual right to purchase the property is protected by the constitutional "contract clause" set forth in Article I, Section 9 of the California Constitution.

On August 16, 2021, by Successor Agency Resolution 21-043, the Successor Agency approved the PSA.

### **SUBCOMMITTEE FINDINGS**

The sale and purchase of the Property and the repayment of the outstanding loan amount and delinquent rent were not discussed in a subcommittee.

### **STAFF ANALYSIS**

To determine the fair market value of the Property, the Buyer submitted an appraisal, dated December 21, 2020, which determined the fair market value of the Property to be \$710,000. The Buyer has submitted an offer to the Successor Agency for the full appraised fair market value. The Successor Agency will receive \$710,000 in sales proceeds at the close of escrow.

Pursuant to the PSA, the Buyer is required to repay Seller the \$72,955.24 Repayment Amount over 36 months, with interest at the rate of 3% per annum, with the first 6 months payment at \$0 per month and the remaining 30 months at \$2,500 per month. The Repayment Amount will pay off the outstanding tenant improvement loan balance of \$5,147.78 and delinquent rent in the amount of \$67,807.46. A Deed of Trust will be recorded against the Property in second lien position. Buyer's purchase money loan amount will be secured by a first position deed of trust on the Property and shall not exceed seventy percent (70%) of the Purchase Price or Four Hundred Ninety Seven Thousand Dollars

(\$497,000), and that any purchase money loan in excess of that amount would have to be secured by a third position deed of trust that is behind and subordinate to the City's second deed of trust. If Buyer's fails to make one or more payments on the Repayment Amount, City staff, following notice and expiration of applicable cure periods, would commence a foreclosure process under the second deed of trust.

A copy of Successor Agency Resolution 21-043 was sent to the State Department of Housing and Community Development as required by the State Surplus Land Act Guidelines. If approved by the Countywide Oversight Board, the action will be submitted to the California Department of Finance (DOF) for review and consideration. If approved or deemed approved by the DOF, staff will pursue closing of the sale and repayment of the tenant improvement loan balance and delinquent rent.

Following the close of escrow and the completion of the transaction, the Successor Agency will transfer the net proceeds of sale to the County Auditor Controller for distribution to taxing entities as contemplated by the Successor Agency's long range property management plan and the Redevelopment Dissolution Law (AB x1-26).

ATTACHMENTS:                      Resolution  
   Purchase and Sale Agreement

Report Prepared By:                Maria M. Aliotti, Deputy City Manager

## PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this “**Agreement**”) is entered into as of the Effective Date (as defined in Section 1.2 below), by and between the Successor Agency for the Redevelopment Agency of the City of Pittsburg, a public agency (“**Seller**”) and EJ Phair Brewing Company, a California corporation (“**Buyer**”). Seller and Buyer are each individually referred to herein as a “**Party**” and collectively as the “**Parties.**”

### RECITALS

A. Seller is the owner of certain real property located at 300 Cumberland Street, known as APN No. 085-108-010, in the City of Pittsburg (“**Property**”), as more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

B. On November 27, 2006, by Agency Resolution 06-1166, the former Redevelopment Agency of the City of Pittsburg (“**Agency**”) approved a Building Lease Agreement with respect to the Property by and between the Agency, as landlord, and the Buyer, as tenant, dated December 1, 2006, which was later amended on June 4, 2007 by Agency Resolution 07-1200, on November 3, 2008 by Agency Resolution 08-1325, and then amended and restated on December 21, 2009 by Agency Resolution 09-1400.

C. The Third Amended and Restated Lease Agreement approved by Agency Resolution 09-1400 (the “**Lease**”) included a tenant improvement loan by the Agency to Buyer in the original principal amount of Three Hundred Fifteen Thousand, Five Hundred Five and 22/100ths Dollars (\$315,505.22), the current balance of which is Five Thousand, One Hundred Forty-Seven and 78/100ths Dollars (\$5,147.78).

D. As of March 2020, Buyer became approximately three (3) months behind in Rent payments under the Lease, and Seller was preparing a notice of default to send to Buyer. Then, as a result of the COVID-19 pandemic, Buyer was forced to close the restaurant and bar operations for approximately fifteen (15) months during which time Buyer accrued a substantial delinquent rent obligation. Seller and Buyer have agreed to settle the outstanding delinquent rent obligation by having Buyer commit to pay Seller the amount of \$67,807.46 and the current balance of the tenant improvement loan of \$5,147.78 (for a combined sum of Seventy-Two Thousand, Nine Hundred Fifty-Five and 24/100ths Dollars (\$72,955.24)) over a period of thirty-six (36) months, as provided in this Agreement.

E. Pursuant to the Lease, Buyer has been in continuous and exclusive possession of the Property for over fourteen (14) years, and Buyer is thereby familiar with the condition and operation of the Property and all of the Property’s attributes, components, facilities and equipment.

F. Pursuant to Section 18.26 of the Lease, Buyer has a contractual right to purchase the Property, which predates the AB 1486 (2019 statute) amendments to the Surplus Lands Act (Government Code section 54220 et seq.) requiring local agencies to make surplus property available for sale to certain preferred purchasers, including affordable housing sponsors, prior to selling property to a third party purchaser for non-affordable housing purposes, and Buyer's contractual right to purchase the property is protected by the constitutional "contract clause" set forth in Article I, Section 9 of the California Constitution.

F. Buyer has exercised its contractual right to purchase the Property for its current fair market value, and the Parties agree that the fair market value of the Property, pursuant to the appraisal of the Property by Krauss Appraisal, is Seven Hundred Ten Thousand Dollars (\$710,000).

G. Buyer agrees to purchase the Property, and Seller agrees to sell the Property to Buyer, subject to the terms and conditions of this Agreement.

H. This Agreement is subject to approval by the Countywide Oversight Board ("C-OB") and by the California Department of Finance ("DOF"). Seller will notify the State Department of Housing and Community Development ("HCD") as required by the State Surplus Land Act Guidelines.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the Parties, Seller and Buyer hereby agree as follows:

## **AGREEMENTS**

### **1. EFFECTIVE DATE; INCORPORATION OF RECITALS AND EXHIBITS.**

1.1 Recitals and Exhibits. The Recitals set forth above and the Exhibits attached to this Agreement are each incorporated into the body of this Agreement as if set forth in full.

1.2 Effective Date. The effective date of this Agreement shall be the date that this Agreement is approved, or deemed approved, by DOF (the "**Effective Date**"). This Agreement shall automatically terminate on November 16, 2021 if not approved or deemed approved by DOF by such date, and thereafter neither Party shall have any further rights or obligations hereunder, other than those obligations which by their terms survive expiration or termination of this Agreement.

## 2. PURCHASE AND SALE.

2.1 Agreement to Buy and Sell. Subject to the terms and conditions set forth herein, Seller agrees to sell the Property to Buyer, and Buyer hereby agrees to acquire the Property from Seller.

2.2 Purchase Price. The purchase price for the Property to be paid by Buyer to Seller is Seven Hundred Ten Thousand Dollars (\$710,000) (the "**Purchase Price**"). The Purchase Price will be paid in immediately available funds to Seller through Escrow on the Closing Date (defined below).

2.3 Maintenance Expenses. Buyer hereby agrees to reimburse Seller on the Closing Date for costs to maintain the property (the "**Maintenance Expenses**") from the Effective Date through the Closing Date in an amount not to exceed Five Hundred Dollars (\$500.00) per month. Maintenance Expenses include, but are not limited to, costs to fence the property, weed abatement, and graffiti removal.

2.4 Repayment of Tenant Improvement Loan and a Portion of the Delinquent Rent under the Lease. Buyer shall repay the Seller Seventy-Two Thousand, Nine Hundred Fifty-Five and 24/100ths Dollars (\$72,955.24) ("**Repayment Amount**"), representing the sum of the outstanding tenant improvement loan (\$5,147.78) and an agreed-upon portion of the delinquent rent under the Lease (\$67,807.46), over 36 months, with interest at the rate of three percent (3%) per annum, with the first 6 months payment at \$0 per month and the remaining 30 months at \$2,500 per month. Buyer's obligation to repay the Repayment Amount shall be memorialized in a promissory note in a form substantially as set forth in Exhibit B attached thereto and incorporated by this reference ("**Promissory Note**"). Repayment of the Promissory Note shall be secured by a second position deed of trust for the benefit of Seller to be recorded against the Property at Closing in a form substantially as set forth in Exhibit C attached hereto and incorporated by this reference ("**Deed of Trust**"). Buyer agrees that Buyer's purchase money loan amount that will be secured by a first position deed of trust on the Property shall not exceed seventy percent (70%) of the Purchase Price or Four Hundred Ninety Seven Thousand Dollars (\$497,000) and that any purchase money loan in excess of that amount would have to be secured by a third position deed of trust that is behind and subordinate to the City's second deed of trust. Buyer further agrees that if Buyer's fails to make one or more payments on the Repayment Amount, City, following notice and expiration of applicable cure periods, may commence a foreclosure process under the Deed of Trust.

## 3. ESCROW.

3.1 Escrow Account. Seller has opened or will open an escrow account (the "**Escrow**") maintained by Old Republic Title Company, 1000 Burnett Avenue, Suite 400, Concord, CA 94520, Attn: Sean Hamilton (the "**Escrow Holder**"). Escrow Holder shall perform all escrow and title services in connection with this Agreement.

3.2 Opening of Escrow. Within three (3) business days after the Effective Date, the Parties will deposit into Escrow the fully executed Agreement, or executed counterparts thereto. The date such fully executed Agreement is received by Escrow Holder will be deemed the “**Opening of Escrow**” and Escrow Holder will give written notice to the Parties of such occurrence.

3.3 Buyer’s Deposit. Within two (2) business days after the Opening of Escrow, the Buyer shall deposit Thirty-Five Thousand Dollars (\$35,000) in Escrow (“**Deposit**”).

3.4 Satisfaction of Due Diligence Contingency. Buyer shall have the right, in his sole discretion, to terminate this Agreement for any reason prior to the expiration of the Due Diligence Contingency Period (as defined in Section 5(a) below) and receive a refund of the Deposit. Buyer hereby agrees to provide written notice to Seller prior to the expiration of the Due Diligence Contingency Period if Buyer disapproves of any due diligence items or approves all due diligence items (“**Approval Notice**”). If Buyer disapproves of any items through the delivery of the Approval Notice to Seller before 5:00 p.m. on the last day of the Due Diligence Contingency Period, this Agreement shall terminate, and the Deposit (less the Independent Consideration), shall be returned to Buyer, and neither Party shall have any further rights or obligations hereunder except those which expressly survive the termination hereof. If Buyer fails to timely deliver the Approval Notice to Seller, it will be conclusively presumed that Buyer has approved all due diligence items, matters and documents, in which case the Deposit will become non-refundable. Thereafter, in the event that Buyer fails to complete the sale by the Closing Date, this Agreement shall terminate and the Deposit shall be released to the Seller as liquidated damages pursuant to Section 7 below.

3.5 Independent Consideration. As independent consideration for Seller’s entering into this Agreement to sell the Property to Buyer, Buyer shall deliver the sum of One Hundred Dollars (\$100.00) to Seller through Escrow (“**Independent Consideration**”). In the event that Buyer terminates this Agreement in accordance with Section 3.4 above, Seller shall retain the Independent Consideration; in the event that Buyer does not terminate this Agreement as aforesaid, the Independent Consideration shall be applied to the Purchase Price at Closing.

#### 4. PROPERTY DISCLOSURE REQUIREMENTS.

4.1 Condition of Title/Preliminary Title Report. Seller shall cause Escrow Holder to deliver a Preliminary Title Report for the Property (the “**Preliminary Report**”) to Buyer within three (3) business days after the Opening of Escrow. Pursuant to Section 5.2(a)(ii), Buyer shall have until the Title Approval Date (as defined below) to give Seller and Escrow Holder (“Buyer’s Title Notice (as defined below) of Buyer’s disapproval or conditional approval of any matters shown in the Preliminary Report. Buyer agrees that at the Close of Escrow, title to the Property shall be conveyed to Buyer by Seller subject only to the following matters (collectively the “**Approved Conditions of Title**”):

- (a) a lien to secure payment of real estate taxes and assessments, not delinquent;
- (b) the lien of supplemental taxes;
- (c) all matters affecting title to the Property created by or with the written consent of Buyer or which are waived or deemed approved by Buyer;
- (d) all matters which would be disclosed by an inspection or survey of the Real Property; and
- (e) all exceptions which are disclosed by the Preliminary Report, and which are approved by Buyer in accordance with this Agreement.

It is acknowledged and agreed by Seller and Buyer that the listing of the foregoing matters in this Section 4.1 shall be subject to Buyer's approval pursuant to Section 5.2(a)(ii).

4.2. Title Policy. As a condition to the Close of Escrow, title shall be evidenced by the willingness of the Title Company to issue its CLTA Owner's Policy of Title Insurance with extended coverage, if available and requested by Buyer, inclusive of any endorsements requested or required by Buyer or its lender ("**Title Policy**"), in the amount of the Purchase Price showing title to the Property vested in Buyer upon conveyance of the Grant Deed subject to the Approved Conditions of Title (it being acknowledged and agreed by Buyer that it has elected to obtain the Title Policy at the Close of Escrow) and such other exceptions to title as may be set forth in the Preliminary Report and not objected to by Buyer.

4.3 Environmental and Natural Hazards Disclosure. California Health & Safety Code section 25359.7 requires owners of non-residential real property who know, or have reasonable cause to believe, that any release of hazardous substances are located on or beneath the real property to provide written notice of same to the buyer of real property. Other applicable laws require Seller to provide certain disclosures regarding natural hazards affecting the Property. Seller agrees to make all necessary disclosures required by law.

## 5. CLOSING AND PAYMENT OF PURCHASE PRICE.

5.1 Closing. The closing (the "**Closing**" or "**Close of Escrow**") will occur within forty-five (45) days after the Effective Date ("**Closing Date**"). In the event the Closing has not occurred within forty-five (45) days after the Effective Date due to a delay beyond the Buyer's control, then Close of Escrow may be extended up to an additional thirty (30) days (the "**Extension Period**") upon the request of Buyer and at the sole discretion of the Executive Director of the Seller. If the Closing Date is extended for the thirty (30) day Extension Period, then such extended closing date shall become the "Closing Date". If the Close of Escrow has not occurred by the end of the

Extension Period, the non-defaulting Party may elect to terminate this Agreement and/or pursue any other remedy set forth in this Agreement.

5.2 Buyer's Conditions to Closing. Buyer's obligation to purchase the Property is subject to the satisfaction of all of the following conditions or Buyer's written waiver thereof (in Buyer's sole discretion) on or before the Closing Date:

(a) Buyer will have thirty (30) days from the Effective Date (the "**Due Diligence Contingency Period**") to complete physical inspections of the Property and due diligence related to the purchase of the Property.

(i) Seller shall provide to Buyer copies of all reasonably available and known documents relating to the ownership and operation of the Property, including but not limited to plans, permits and reports (environmental, structural, mechanical, engineering and land surveys) that Seller has in its possession (collectively, "**Property Documents**") not later than three (3) business days following the execution and delivery of this Agreement. Buyer shall have until the end of the Due Diligence Contingency Period to satisfy itself as to the review and approval of the Property Documents and the condition and suitability of the Property. Nothing in this Section 5.2 (a) shall in any manner be construed as any representation, assurance or warranty of any kind by Seller.

(ii) Buyer shall have until the date ("**Title Approval Date**") which is four (4) days following the receipt of the Preliminary Report to give Seller and Escrow Holder written notice ("**Buyer's Title Notice**") of Buyer's disapproval or conditional approval of any matters shown in the Preliminary Report. The failure of Buyer to give Buyer's Title Notice on or before the Title Approval Date shall be deemed to constitute Buyer's approval of the condition of title to the Property unless Buyer shall have previously terminated this Agreement. If Buyer disapproves or conditionally approves any matter of title shown in the Preliminary Report, then on or before the expiration of four (4) days from the date of Seller's receipt of Buyer's Title Notice, Seller may elect to eliminate or ameliorate to Buyer's satisfaction the disapproved or conditionally approved title matters. Seller shall give Buyer written notice ("**Seller's Title Notice**") not later four (4) days after Seller's receipt of Buyer's Title Notice of those disapproved or conditionally approved title matters, if any, which Seller agrees to either eliminate from the Title Policy as exceptions to title to the Property or to ameliorate to Buyer's satisfaction by the Closing Date. If Seller does not elect to eliminate or ameliorate to Buyer's satisfaction any disapproved or conditionally approved title matters, or if Buyer disapproves of Seller's Title Notice, or if Seller is unable to eliminate or ameliorate to Buyer's satisfaction all such disapproved matters prior to the Closing Date, then Buyer shall elect by written notice to Seller and Escrow Holder on or before the date which is two (2) days after Buyer's receipt of Seller's Title Notice, to: (1) waive its prior disapproval, in which event said disapproved matters shall be deemed approved; or (2) terminate this Agreement and the Escrow created pursuant hereto, in which event, Escrow Holder shall disburse the Deposit together to Buyer.

(iii) Since Buyer has access to the Property, all physical inspections may be coordinated without Seller's representative; however, any environmental investigation of the Property beyond a "Phase 1 Site Assessment" must first be approved in writing by Seller, which approval shall not be unreasonably withheld or delayed. If Buyer receives a draft Phase I environmental Site Assessment that recommends additional environmental testing, Buyer shall provide Seller an opportunity to review the draft Phase I and discuss the basis of the recommendation for additional testing with the Buyer and its environmental consultant before the draft is finalized. The plans for any physical penetration of the surface or subsurface of the Property must first be delivered to and approved by Seller, which approval shall not be unreasonably withheld or delayed. Buyer shall restore the Property as near as reasonably possible to its condition prior to any intrusive or invasive tests and/or inspections. Prior to any entry on the Property by Buyer or any of its agents, employees, consultants or contractors, Buyer shall secure and maintain the following insurance policies: (a) a comprehensive commercial general liability and property damage policy in an amount of not less than Two Million Dollars (\$2,000,000) per occurrence, that will cover the activities of Buyer and its agents, employees, consultants and contractors on the Property and shall deliver to Seller an additional insured endorsement naming Seller an additional insured thereunder, and (b) workers' compensation and employer's liability insurance in accordance with the provisions of California law. On request by Seller, Buyer shall provide a certificate of insurance to Seller evidencing the insurance required herein.

(iv) Buyer shall indemnify, defend (with counsel reasonably satisfactory to Seller) and hold Seller harmless from and against any and all loss, expense, claim, damage, liability and injury to person or property resulting from the acts of Buyer, Buyer's employees, agents, contractors and/or subcontractors on the Property in connection with the performance of any investigation or other activities upon the Property as contemplated herein. The foregoing indemnity, defense and hold harmless obligations do not apply to (a) any loss, liability cost, claim, damage, injury or expense to the extent arising from the negligent acts or omissions of Seller, (b) any diminution in value in the Property arising from or relating to matters discovered by Buyer during its investigation of the Property, (c) any latent defects in the Property discovered by Buyer, and (d) the release or spread of any Hazardous Materials (as defined in Section 6.1(e) herein) that are discovered (but not deposited) on or under the Property by Buyer unless caused by the negligence or willful misconduct of Buyer or its agents or contractors. The indemnification and defense obligations of Buyer in this Section 5.2(a)(iv) shall survive the termination of this Agreement.

(v) If Buyer does not acquire the Property for any reason whatsoever, Buyer shall deliver to Seller (i) all reports, documents and other materials, and (ii) all soils, engineering and other reports, plans, studies, documents and information pertaining to the Property that Buyer has prepared or caused to be prepared ("**Work Product**") (provided that "Work Product" shall be deemed to exclude internal documents of Buyer, any confidential or privileged information, or financial analyses. Buyer makes no representation or warranty, express or implied, as to the accuracy or

completeness of the Work Product, and Seller hereby releases Buyer from all Claims arising from Seller's use of the Work Product.

(b) Seller has performed all obligations to be performed by Seller pursuant to this Agreement.

(c) Seller's representations and warranties herein are true and correct in all material respects as of the Closing Date.

(d) The Title Company is irrevocably committed to issue a CLTA Title Policy to Buyer, effective as of the Closing Date, insuring title to Buyer in the full amount of the Purchase Price subject only to the Permitted Exceptions.

5.3 Seller's Conditions to Closing. The Close of Escrow and Seller's obligation to sell and convey the Property to Buyer are subject to the satisfaction of the following conditions or Seller's written waiver (in Seller's sole discretion) of such conditions on or before the Closing Date:

(a) Buyer has performed all obligations to be performed by Buyer pursuant to this Agreement before Closing Date.

(b) Buyer's representations and warranties set forth herein are true and correct in all material respects as of the Closing Date.

5.4 Conveyance of Title. Seller will deliver fee simple title to Buyer at the Closing, subject only to the Permitted Exceptions.

5.5 Deliveries at Closing.

(a) Deliveries by Seller. No less than one (1) business day prior to the Closing Date, Seller shall deposit into the Escrow for delivery to Buyer at Closing: (i) a grant deed; (ii) an affidavit or qualifying statement which satisfies the requirements of paragraph 1445 of the Internal Revenue Code of 1986, as amended, any regulations thereunder (the "**Non-Foreign Affidavit**"); (iii) a California Franchise Tax Board form 590 to satisfy the requirements of California Revenue and Taxation Code Section 18805(b) and 26131; and (iv) a statement of the actual costs of Maintenance Expenses.

(b) Deliveries by Buyer. No less than one (1) business day prior to the Closing Date, Buyer shall deposit into Escrow immediately available funds in the amount, which together with the Deposit, is equal to: (i) the Purchase Price as adjusted by any prorations between the Parties; (ii) the escrow fees and recording fees; (iii) the cost of the Title Policy; (iv) payment of the Maintenance Expenses due to Seller; and (v) any other closing costs to be paid by Buyer.

(c) Closing. Upon Closing, Escrow Holder shall: (i) record the grant deed; (ii) disburse to Seller the Purchase Price, less Seller's share of any escrow

fees, costs and expenses; (iii) deliver to Buyer the Non-Foreign Affidavit, the California Certificate (Form 590) and the original recorded grant deed; (iv) pay any commissions and other expenses payable through Escrow; and (v) distribute to itself the payment of escrow fees and expenses required hereunder.

(d) Closing Costs. Buyer will pay all escrow fees (including the costs of preparing documents and instruments), and recording fees. Buyer will pay title insurance and title report costs and Seller will pay all governmental conveyance fees and all transfer taxes. All other costs and fees shall be paid in accordance with custom and practice in Contra Costa County.

(e) Pro-Rations. At the Close of Escrow, the Escrow Agent shall make the following prorations: (i) possessory interest taxes shall be paid in full by Buyer and shall not be prorated, and (ii) any bond or assessment that constitutes a lien on the Property at the Close of Escrow will be assumed by Buyer. Seller does not pay property taxes and therefore property taxes shall not be prorated.

## 6. REPRESENTATIONS, WARRANTIES AND COVENANTS.

6.1 Seller's Representations, Warranties and Covenants. In addition to the representations, warranties and covenants of Seller contained in other sections of this Agreement, Seller hereby represents, warrants and covenants to Buyer that the statements below in this Section 6.1 are each true and correct as of the Effective Date and as of the Closing Date.

(a) Seller is a public agency, lawfully formed, in existence and in good standing under the laws of the State of California. Seller has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement. This Agreement has been duly executed by Seller, and upon delivery to and execution by Buyer is a valid and binding agreement of Seller.

(b) Seller has not alienated, encumbered, transferred, mortgaged, assigned, pledged, or otherwise conveyed its interest in the Property or any portion thereof, nor entered into any agreement to do so, and to Seller's actual knowledge (y) there are no agreements affecting the right to possession of the Property other than the Lease, the Property Documents and/or any other instrument or document that is part of the Permitted Exceptions and (z) there are no maintenance, service or other agreements (other than the Lease) affecting or relating to the Property that cannot be terminated or cancelled without penalty or fee by giving not more than thirty (30) days' notice.

(c) Neither Seller nor any entity or person that owns or controls Seller is bankrupt or insolvent under any applicable Federal or state standard, has filed for protection or relief under any applicable bankruptcy or creditor protection statute, or has been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute. Seller is not entering into the transactions described in this Agreement intending to defraud any creditor or to prefer the rights of

one creditor to any other. Seller and Buyer have negotiated this Agreement at arm's length and the consideration paid represents fair value for the assets being transferred.

(d) Seller is not a "foreign person" within the meaning of 26 U.S.C.A. §1445(f)(3) and Seller is not, nor is any person who owns a controlling interest in or otherwise controls Seller, (a) listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control ("**OFAC**"), Department of the Treasury, and/or on any other similar list maintained by the OFAC pursuant to any authorizing statute, Executive Order or regulation (collectively, "**OFAC Laws and Regulations**"); or (b) a person either (i) included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (ii) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or similarly designated under any related enabling legislation or any other similar Executive Orders (collectively, the "**Executive Orders**"). Neither Seller nor any of its principals or affiliates is (x) a person or entity with which Buyer is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, or that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Orders, or (y) is affiliated or associated with a person or entity listed in the preceding clause (x). To the actual knowledge of Seller, neither Seller nor any of its principals or affiliates, nor any brokers or other agents acting in any capacity in connection with the transactions contemplated herein (I) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Orders or (II) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law. As used herein, "**Anti-Terrorism Law**" means the OFAC Laws and Regulations, the Executive Orders and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001), as amended.

(e) Except as may be disclosed in the Property Documents, neither Seller nor, to Seller's actual knowledge, any third party, has used, generated, transported, discharged, released, manufactured, stored, or disposed any Hazardous Material from, into, at, on, under, or about the Property. Additionally, Seller has not received any written notice that the Property has been or is in violation of any Environmental Law.

The term "**Hazardous Material**" as used herein shall mean any hazardous or toxic substances, materials, chemicals, or wastes in any form and in any concentration that is or becomes, prior to the close of escrow, regulated by the United States or any state or local government authority having jurisdiction over the Property (including any present order or agreement imposing liability or standards concerning any such substances, materials, chemicals, or wastes and any future such order or agreement that becomes effective prior to the close of escrow), and includes without limitation: any "hazardous substance," as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 United States Code sections 9601-9675); any "hazardous waste," as that term is defined in the Resource

Conservation and Recovery Act of 1976 (RCRA) (42 United States Code sections 6901-6992k); petroleum products; volatile organic compounds; radioactive materials; asbestos and lead paint, in any form or condition; and substances or compounds containing PCBs. The term “**Environmental Law**” as used herein shall mean any federal, state, or local law, ordinance or regulation, or any order, demand or guidance document of any governmental agency, relating to Hazardous Materials.

As used herein, Seller’s “actual knowledge” shall encompass only the actual knowledge of \_\_\_\_\_ [**Name of City staff person most knowledgeable about site conditions to be inserted**], without such persons having any duty of inquiry or investigation as to such matters, without any knowledge being imputed to such persons and without such persons having any personal liability whatsoever under this Agreement. Anything to the contrary notwithstanding, the foregoing representations and warranties in this Section 6.1 and Seller’s representation in Section 8 hereof are the only representations and/or warranties of any kind made under this Agreement or otherwise in connection with the sale of the Property and such representations and warranties contained in this Section 6.1 shall be deemed to survive the Closing of Escrow and the delivery of the Grant Deed for a period not to exceed 365 days after the Closing Date (“**Limitation Period**”) and no action, proceeding, suit or claim of any kind may be commenced or asserted by virtue of any of the representations or warranties contained in this Section 6.1 after the Limitation Period has expired. No claim for breach of a representation or warranty by Seller shall be actionable or payable by Seller if the breach in question results from or is based on a condition, state of facts or other matter which was actually known to Buyer prior to the Close of Escrow. If Buyer has knowledge of the incorrectness of any representation or warranty by Seller and fails to so notify Seller prior to the Close of Escrow, then such representation or warranty shall be deemed to be stricken from this Agreement and shall be of no further force or effect.

The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Seller contained in this Agreement are conditions precedent to Buyer’s obligation to proceed with the Closing hereunder.

6.2 Buyer’s Representations, Warranties and Covenants. In addition to the representations, warranties and covenants of Buyer contained in other sections of this Agreement, Buyer hereby represents, warrants and covenants to Seller that the statements below in this Section 6.2 are each true as of the Effective Date and as of the Closing Date.

(a) Buyer is a California corporation. Buyer has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement. This Agreement has been duly executed by Buyer, and upon delivery to and execution by Seller shall be a valid and binding agreement of Buyer.

(b) Buyer and any entity or person that owns or controls Buyer are not bankrupt or insolvent under any applicable federal or state standard, have not filed for protection or relief under any applicable bankruptcy or creditor protection statute and have not been threatened by creditors with an involuntary application of any

applicable bankruptcy or creditor protection statute. Buyer is not entering into the transactions described in this Agreement intending to defraud any creditor or to prefer the rights of one creditor to any other. Buyer and Seller have negotiated this Agreement at arm's-length and the consideration paid represents fair value for the assets to be transferred.

(c) Buyer has or will inspect, review and become familiar with all matters that it believes pertinent to its ownership, operation and maintenance of the Property. Buyer has or will make such independent investigations, inspections, analyses and research as Buyer has deemed necessary or appropriate (or, in the alternative, Buyer has elected at its risk not to make such investigations, inspections, analyses and research), concerning the condition, ownership, use and operation of the Property, including, but not limited to, investigations, inspections, analyses and research of: (A) present and future Laws, including, without limitation, zoning, subdivision, environmental and other such Laws; (B) the obligations of the owner of the Property under all documents disclosed in the Preliminary Report; (C) the necessity and availability of any entitlements or development approvals and permits; (D) the necessity or existence of any and all development costs, dedications, fees, charges or assessments that may be imposed or required to be paid in connection with any Laws or the obtaining of any development approvals, permits or entitlements or otherwise in connection with the development of the Property, all of which shall be the responsibility of Buyer; (E) the economic value of the Property; (F) the seismic and structural integrity of the Improvements constructed or installed on the Property; (G) the size, dimensions, location and topography of the Property; (H) any surface, soil, subsoil, geologic or ground water conditions or other physical conditions of or affecting the Property, such as aircraft overflight, traffic, climate, drainage and air; (I) the extent or condition of title to the Property and the extent of existing liens and encumbrances against the Property; (J) the possibility of future fees and assessments or increases in existing fees and assessments by one or more governmental authorities; (K) the presence, use, transportation or storage of Hazardous Material on, over, under or nearby the Property; (L) the presence on the Property of threatened and endangered species under the Endangered Species Act; (M) the availability, character, quality, composition and/or adequacy of access to the Property; (N) the location on or near the Property of any earthquake faults; and (O) the availability or quality of reclaimed water provided by any utility company or governmental authority. The term "**Laws**" means shall mean all federal, state and local laws, statutes, codes, ordinances, rules, regulations, restrictions and limitations as they may be amended from time to time. The term "Laws" shall include Environmental Laws.

(d) Subject to the representations and warranties of Seller set forth in Section 6.1, Buyer is relying solely upon its own inspections, investigations, research and analyses of the foregoing matters in entering into this Agreement and is not relying in any way upon any representations, warranties, statements, plans, specifications, cost estimates, studies, reports, descriptions, guidelines or other information or material furnished by Seller or its representatives to Buyer or its representatives, whether oral or written, including, without limitation, the materials specified in the Property Documents or the Preliminary Report, express or implied, of

any nature whatsoever regarding any such matters. Seller makes no express or implied representation or warranty of any kind or nature as to the accuracy or completeness of the Property Documents or the Preliminary Report, and Seller shall have no liability or responsibility to Buyer of any kind or nature resulting from the furnishing or use of the Property Documents or Preliminary Report by Buyer, all of which Buyer shall verify to its own satisfaction and all of which Buyer shall use and rely on solely at its own risk.

Except for the representations and warranties of Seller expressly set forth in Section 6.1 and the covenants and agreements of Seller expressly set forth in this Agreement: (a) Buyer accepts the Property “**AS-IS, WHERE-IS, WITH ALL FAULTS**” in its existing state and condition at the Closing; (b) Buyer accepts the Property subject to any and all Laws which are now or may hereafter be imposed on or against the Property by any governmental authority; (c) Seller is not obligated to do any processing, grading, restoration, repairs or other work of any kind or nature whatsoever on or with respect to the Property and, without limiting the generality of the foregoing, Seller is not responsible for any work on or improvement of the Property necessary to cause the Property to meet any applicable Laws, to be suitable for any particular use, or to repair, retrofit or support any portion of the improvements constructed on the Property due to the seismic or structural integrity (or any deficiencies therein) of such improvements; (d) Buyer accepts the Property in the condition, and state of repair or lack of repair of the improvements or any other portion of the Property; (e) Buyer accepts all of the restrictions, obligations, rights of way or conditions affecting the ownership, use, operation, development or operation of the Property; (f) Buyer accepts the Property in its existing condition with respect to (i) the existence of Hazardous Material from, to or on the Property, whether or not the existence of such matters is disclosed in Buyer’s inspections, research, investigations and analyses, if any, and (ii) the compliance of the Property with all Laws; (g) Buyer acknowledges that Seller has not warranted and does not hereby warrant that the improvements located on the Property will meet or comply with the requirements of any health, fire, building, zoning, or safety code, ordinance or regulation of the state of California, or City of Pittsburg, or any other authority or jurisdiction and that Seller has not warranted and does not hereby warrant that the Property will meet or satisfy any particular use, purpose, development or operation; and (h) no patent or latent condition affecting the Property in any way, whether or not known or discoverable or hereafter discovered, shall affect Buyer’s obligation to purchase the Property or to perform any other act otherwise to be performed by Buyer under this Agreement, nor shall any such condition give rise to any action, proceeding, right of damage or rescission or other claim against Seller. Without limiting the generality of the foregoing, Buyer acknowledges and agrees that Seller specifically disclaims any responsibility for and opinions, conclusions or work product contained within the Property Documents.

Except for the Excluded Claims (defined below) and to the fullest extent permitted by Law, from and after the Close of Escrow, Buyer (and its successors and assigns) shall indemnify, defend (with counsel reasonably acceptable to Seller), protect and hold harmless Seller, and the other Indemnitees from and against any and all claims, suits, liabilities, losses, costs, expenses (including, without limitation, reasonable attorneys’ fees and costs) and damages of any kind or character to any

person or property arising from or relating to the Property, Buyer's ownership and further development thereof (collectively, the "**Post-Closing Claims**").

The term "**Indemnitees**" shall mean, collectively, Seller and its direct and indirect constituent partners, members, shareholders, owners and related and affiliated entities, and each of their respective officers, directors, agents, employees, attorneys, partners, direct and indirect lenders, parents, subsidiaries or affiliate companies, servants, and representatives.

The term "**Excluded Claims**" shall mean claims by Buyer with respect to, (i) the express representations, covenants or warranties of Seller in this Agreement or in any document or instrument executed and delivered by Seller at Close of Escrow, (ii) a breach of Seller's obligations under this Agreement, and (iii) any premises liability or bodily injury claims accruing prior to the Closing arising from the sole negligence or willful misconduct of any of the Indemnitees.

To the fullest extent permitted by Law, as a material part of the consideration of this Agreement, effective upon Close of Escrow, Buyer, on its behalf and on behalf of its predecessors, successors and assigns hereby releases and discharges the Indemnitees, and each and all of them, from and against, and waives, any and all Post-Closing Claims against the Indemnitees, except for the Excluded Claims. Further, and without limiting any of the foregoing, Buyer hereby releases Seller from all risks and liability (and agrees that Seller shall not be liable for any special, direct, indirect, consequential, or other damages) resulting or arising from or relating to the ownership, use, condition, location, maintenance, repair or operation of the Property except with respect to the representations and warranties expressly set forth in Section 6.1 hereof, subject to the Limitation Period, provided, however, that Seller shall under no circumstances be liable for any special, indirect or consequential damages in the event of any breach by Seller of any of the representations or warranties set forth in Section 6.1.

BUYER ACKNOWLEDGES THAT IT HAS BEEN ADVISED BY ITS LEGAL COUNSEL AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, AND IN CONNECTION WITH FOREGOING WAIVER AND RELEASE, BUYER EXPRESSLY WAIVES THE BENEFITS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

\_\_\_\_\_ Initials of Buyer

(e) Buyer represents and warrants that the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not result in any breach of the terms of, conditions of, or constitute a default under, any instrument or obligation by which Buyer is bound, or violate any order, writ, injunction or decree of any court in any litigation to which Buyer is a party.

(f) Buyer represents and warrants that each person executing this Agreement is legally competent and is duly authorized so as to fully and legally bind Buyer.

Each of the representations and warranties made by Buyer in this Agreement, shall be true and correct in all material respects on the date hereof, and shall be deemed to be made again as of the Close of Escrow, and shall then be true and correct in all material respects. The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Buyer contained in this Agreement, are conditions precedent to the Close of Escrow. Buyer shall notify Seller immediately of any facts or circumstances that are contrary to the foregoing representations and warranties contained in this Section 6.2.

7. REMEDIES In the event of a breach or default under this Agreement by Seller, if such breach or default occurs prior to Close of Escrow, Buyer reserves the right to either (a) seek specific performance from Seller or (b) to do any of the following: (i) to waive the breach or default and proceed to Closing as provided herein; (ii) to extend the time for performance and the Closing Date until Seller is able to perform; or (iii) to terminate this Agreement upon written notice to Seller, whereupon Seller shall cause Escrow Holder to return to Buyer any and all sums placed into the Escrow by Buyer, and except for the rights and obligations expressly provided to survive termination of this Agreement, neither party shall have any further obligations or liabilities hereunder. IN THE EVENT OF A BREACH OR DEFAULT HEREUNDER BY BUYER AND THE CLOSING DOES NOT OCCUR DUE TO SUCH DEFAULT, SELLER'S SOLE REMEDY SHALL BE TO RETAIN THE DEPOSITS AS LIQUIDATED DAMAGES. THE PARTIES AGREE THAT IN SUCH INSTANCE, THE DEPOSITS REPRESENT A REASONABLE APPROXIMATION OF SELLER'S DAMAGES AND ARE NOT INTENDED AS A FORFEITURE OR PENALTY BUT RATHER AN ENFORCEABLE LIQUIDATED DAMAGES PROVISION PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1671, ET SEQ. IN NO EVENT SHALL EITHER PARTY BE ENTITLED TO LOST PROFITS OR CONSEQUENTIAL DAMAGES AS A RESULT OF THE OTHER PARTY'S BREACH OF THIS AGREEMENT.

\_\_\_\_\_  
Buyer's Initials

\_\_\_\_\_  
Seller's Initials

8. BROKERS. Seller represents that no real estate broker has been retained by Seller in the sale of the Property or the negotiation of this Agreement. Buyer represents that no real estate broker has been retained by Buyer in the purchase of the Property or negotiation of this Agreement. Buyer shall indemnify, hold harmless and defend Seller from any and all claims, actions and liability for any breach of the

preceding sentence, and any commission, finder's fee, or similar charges arising out of Buyer's conduct.

9. ASSIGNMENT. Absent an express signed written agreement between the Parties to the contrary, neither Seller nor Buyer may assign its rights or delegate its duties under this Agreement without the express written consent of the other, which consent may be withheld for any reason. No permitted assignment of any of the rights or obligations under this Agreement shall result in a novation or in any other way release the assignor from its obligations under this Agreement.

10. MISCELLANEOUS.

10.1 Attorneys' Fees. If any Party employs counsel to enforce or interpret this Agreement, including the commencement of any legal proceeding whatsoever (including insolvency, bankruptcy, arbitration, mediation, declaratory relief or other litigation), the prevailing Party shall be entitled to recover its reasonable attorneys' fees and court costs (including the service of process, filing fees, court and court reporter costs, investigative fees, expert witness fees, and the costs of any bonds, whether taxable or not) and shall include the right to recover such fees and costs incurred in any appeal or efforts to collect or otherwise enforce any judgment in its favor in addition to any other remedy it may obtain or be awarded. Any judgment or final order issued in any legal proceeding shall include reimbursement for all such attorneys' fees and costs. In any legal proceeding, the "prevailing party" shall mean the party determined by the court to most nearly prevail and not necessarily the party in whose favor a judgment is rendered.

10.2 Interpretation. This Agreement has been negotiated at arm's length and each Party has been represented by independent legal counsel in this transaction and this Agreement has been reviewed and revised by counsel to each of the Parties. Accordingly, each Party hereby waives any benefit under any rule of law (including Section 1654 of the California Civil Code) or legal decision that would require interpretation of any ambiguities in this Agreement against the drafting Party.

10.3 Survival. All indemnities, covenants, representations and warranties contained in this Agreement shall survive Close of Escrow.

10.4 Successors. Except as provided to the contrary in this Agreement, this Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

10.5 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

10.6 Integrated Agreement; Modifications. This Agreement contains all the agreements of the Parties concerning the subject hereof any cannot be amended or modified except by a written instrument executed and delivered by the Parties. There are no representations, agreements, arrangements or understandings, either oral or written, between or among the Parties relating to the subject matter of this Agreement

that are not fully expressed herein. In addition there are no representations, agreements, arrangements or understandings, either oral or written, between or among the Parties upon which any party is relying upon in entering this Agreement that are not fully expressed herein.

10.7 Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, any such provision shall not be affected by the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this Section, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision this is in keeping with the intent of the Parties as expressed herein.

10.8 Notices. Any delivery of this Agreement, notice, modification of this Agreement, collateral or additional agreement, demand, disclosure, request, consent, approval, waiver, declaration or other communication that either Party desires or is required to give to the other Party or any other person shall be in writing. Any such communication may be served personally, or by nationally recognized overnight delivery service (i.e., Federal Express) which provides a receipt of delivery, or sent by prepaid, first class mail, return receipt requested to the Party's address as set forth below:

To Buyer: EJ Phair Brewing Company  
Attn: John Phair  
[INSERT ADDRESS]

To Seller: Successor Agency for the Redevelopment Agency of  
the City of Pittsburg  
65 Civic Avenue  
Pittsburg, CA 94565  
Attn: Executive Director

To Escrow Holder: Old Republic Title Company  
1000 Burnett Avenue, Suite 400  
Concord, CA 94520  
Att: Sean Hamilton

Any such communication shall be deemed effective upon personal deliver or on the date of first refusal to accept delivery as reflected on the receipt of delivery or return receipt, as applicable. Any Party may change its address by notice to the other Party. Each Party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this section and that any person to be given notice actually receives such notice.

10.9 Time. Time is of the essence to the performance of each and every obligation under this Agreement.

10.10 Days of Week. If any date for exercise of any right, giving of any notice, or performance of any provision of this Agreement falls on a Saturday, Sunday or holiday, the time for performance will be extended to 5:00 p.m. on the next business day.

10.11 Reasonable Consent and Approval. Except as otherwise provided in this Agreement, whenever a Party is required or permitted to give its consent or approval under this Agreement, such consent or approval shall not be unreasonably withheld or delayed. If a Party is required or permitted to give its consent or approval in its sole and absolute discretion or if such consent or approval may be unreasonably withheld, such consent or approval may be unreasonably withheld but shall not be unreasonably delayed.

10.12 Further Assurances. The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

10.13 Waivers. Any waiver by any Party shall be in writing and shall not be construed as a continuing waiver. No waiver will be implied from any delay or failure to take action on account of any default by any Party. Consent by any Party to any act or omission by another Party shall not be construed to be a consent to any other subsequent act or omission or to waive the requirement for consent to be obtained in any future or other instance.

10.14 Signatures/Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

10.15 Date and Delivery of Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Parties intend that this Agreement shall be deemed effective, and delivered for all purposes under this Agreement, and for the calculation of any statutory time periods based on the date an agreement between Parties is effective, executed, or delivered, as of the Effective Date.

10.16 Representation on Authority of Parties. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

10.17 Approvals. Whenever this Agreement calls for Seller approval, consent, extension or waiver, the written approval, consent, or waiver of the Seller's Executive Director or his or her designee(s) shall constitute the approval, consent,

extension or waiver of the Seller, without further authorization required from the Seller's Board. The Seller hereby authorizes the Agency's Executive Director and his or her designee(s) to deliver any such approvals, consents, or extensions or waivers as are required by this Agreement, or that do not otherwise reduce Seller's rights under this Agreement, and to waive requirements under this Agreement, on behalf of the Seller.

**SIGNATURES ON FOLLOWING PAGE**

IN WITNESS WHEREOF, this Agreement is executed by Buyer and Seller as of the Effective Date.

**Seller:**

Successor Agency for the Redevelopment  
Agency of the City of Pittsburg, a public  
agency

By: \_\_\_\_\_  
Garrett Evans  
Executive Director

Attest:

\_\_\_\_\_  
Alice E. Evenson, Agency Secretary

Reviewed as to Form:

\_\_\_\_\_  
Donna Mooney, Agency Counsel

**Buyer:**

EJ Phair Brewing Company,  
a California corporation

By: \_\_\_\_\_  
John Phair, President

**Acceptance by Escrow Holder:**

Old Republic Title Company hereby acknowledges that it has received a fully-executed counterpart of the foregoing Agreement of Purchase and Sale and Joint Escrow Instructions and agrees to act as Escrow Holder thereunder and to be bound by and perform the terms thereof as such terms apply to Escrow Holder.

Old Republic Title Company

By: \_\_\_\_\_

Its: \_\_\_\_\_

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

This land referred to herein is situated in the State of California, County of Contra Costa, City of Pittsburg, and is described as follows:

THE EASTERLY EIGHTY (80) FEET OF LOTS 11 AND 12, IN BLOCK F, AS SAID LOTS AND BLOCK ARE SHOWN, DELINEATED, NUMBERED AND LETTERED UPON THE OFFICIAL MAP ENTITLED, "PLAT AND CENTRAL ADDITION TO THE TOWN OF BLACK DIAMOND, 1905", FILED OCTOBER 27, 1905, IN MAP BOOK B AT PAGE 33, IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, CALIFORNIA, AND ALSO SHOWN UPON THE OFFICIAL MAP ENTITLED, "OFFICIAL MAP OF THE CITY OF PITTSBURG, CONTRA COSTA COUNTY. CAL", FILED MARCH 23, 1914, IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, CALIFORNIA.

APN: 085-108-010

## EXHIBIT B

### FORM OF PROMISSORY NOTE

#### PROMISSORY NOTE SECURED BY SECOND LIEN POSITION DEED OF TRUST

\$72,955.24

Pittsburg, CA \_\_\_\_\_, 2021

FOR VALUE RECEIVED, the undersigned, EJ PHAIR BREWING COMPANY, a California corporation ("**Borrower**") hereby promises to pay the SUCCESSOR AGENCY FOR THE REDEVELOPMENT AGENCY OF THE CITY OF PITTSBURG, a public agency ("**Lender**"), the principal sum of Seventy-Two Thousand, Nine Hundred Fifty-Five and 24/100ths Dollars (\$72,955.24), together with interest on the unpaid principal balance of this Promissory Note Secured by Second Lien Position Deed of Trust ("**Note**") from time to time outstanding at an annual rate as set forth below from the date of advance until fully paid at the Successor Agency for the Redevelopment Agency of the City of Pittsburg, Attention: Executive Director, or at such other place as Lender may from time to time designate in writing.

#### 1. INTEREST

1.1 Amount. Interest on the unpaid principal balance will accrue from the date of advance at an annual rate equal to Three Percent (3%) per annum.

1.2 Method of Calculating Interest. Interest shall be computed based on a 360-day year and the actual number of days elapsed. Interest computed based on a 360-day year is greater than interest computed based on a 365-day year.

#### 2. SECURITY

2.1 Secured by Deed of Trust. This Note is secured by, among other things, that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("**Deed of Trust**") of even date herewith made by Borrower, as trustor, for the benefit of Lender, as beneficiary.

#### 3. PAYMENTS

3.1 Payment of Principal and Interest. Principal and interest shall be payable over thirty-six (36) months with the first six (6) months payment at \$0 per month and the remaining thirty (30) months at \$2500 per month, with the Maturity Date of \_\_\_\_\_, 2024.

3.2 Application of Payments. Each payment under this Note shall be credited in the following order: (a) costs, fees, charges, and advances paid or incurred by Lender or payable to Lender and interest under any provision of this Note or the Deed of Trust, in such order as Lender, in its sole and absolute discretion, elects, (b) interest payable under this Note, and (c) principal under this Note.

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3.3 Lawful Money. All sums due under this Note are payable in lawful money of the United States. Checks constitute payment only when collected.

#### 4. PREPAYMENT

4.1 Allowed. Borrower may prepay this Note in whole or in part.

#### 5. DEFAULT

5.1 Default. On (a) Borrower's failure to pay any installment or other sum due under this Note within ten (10) days after the date due and payable (whether by extension, acceleration, or otherwise), or (b) any material breach of any other promise or obligation in this Note or in any other instrument now or hereafter securing the indebtedness evidenced by this Note (a "Default"), then, and in any such event, Lender may, at its option, declare this Note (including, without limitation, all accrued interest) due and payable immediately regardless of the Maturity Date. Borrower expressly waives notice of the exercise of this option.

#### 6. LATE CHARGES; INTEREST ON DEFAULT; INTEREST ON INTEREST

6.1 Late Charges. Borrower acknowledges that a Default in the payment of any sum due under this Note will result in losses and additional expenses to Lender in servicing the indebtedness evidenced by this Note, handling such delinquent payments, and meeting Lender's other financial obligations. Borrower further acknowledges that the extent of such loss and additional expenses is extremely difficult and impractical to ascertain. Borrower therefore agrees that, if any payment due under this Note is not made within five (5) calendar days after the date due, a charge of five percent (5%) of the amount that is not paid when due would be a reasonable estimate of expenses so incurred ("Late Charge"). If any payment is not received within five (5) calendar days after the date due, Borrower shall immediately after written demand pay the Late Charge to Lender (without prejudicing or affecting any other rights or remedies of Lender) as liquidated damages to cover expenses incurred in handling such delinquent payment.

6.2 Interest on Default. From and after the Maturity Date (either according to the terms of this Note or as the result of an acceleration of the then unpaid principal balance under the terms of this Note), the entire unpaid principal balance shall automatically bear an annual interest rate (instead of the interest rate specified in Section 1) equal to the lesser of: (a) ten percent (10%) compounded annually, or (b) the maximum interest rate allowed by law ("Default Rate").

6.3 Interest on Interest. If any interest payment under this Note is not paid when due, the unpaid interest shall be added to the principal of this Note, shall become and be treated as principal, and shall thereafter bear like interest.

#### 7. GENERAL PROVISIONS

7.1 Attorneys' Fees. Borrower agrees to pay the following costs, expenses, and attorneys' fees paid or incurred by Lender, or adjudged by a court: (a) any and all costs of collection and costs, expenses, and reasonable attorneys' fees paid or incurred in connection with

the collection or enforcement of this Note or the Deed of Trust, whether or not suit is filed; (b) any and all costs, expenses, and reasonable attorneys' fees paid or incurred in connection with representing Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights to the extent it involves a claim under this Note or the Deed of Trust; (c) any and all costs, expenses, and reasonable attorneys' fees incurred reasonably necessary or advisable to protect the lien of the Deed of Trust or its interest in the mortgaged property; and (d) costs of suit and such sum as the court may adjudge as reasonable attorneys' fees in any action to enforce payment of this Note, or any part thereof.

7.2 Waiver. Borrower, endorsers, and all other persons liable or to become liable on this Note waive presentment, protest, and demand; notice of protest, demand, and dishonor; and all other notices or matters of a like nature.

7.3 Notices. Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by a commercial overnight courier that guarantees next day delivery and provides a receipt. Such notices shall be addressed as follows:

Lender Notice Address:

Successor Agency for the Redevelopment Agency  
of the City of Pittsburg  
65 Civic Avenue  
Pittsburg, California 94565  
Attention: Executive Director  
Telephone No.: \_\_\_\_\_

Borrower Notice Address:

EJ Phair Brewing Company  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: John Phair  
Telephone No.: \_\_\_\_\_

or to such other address as either party may from time to time specify in writing to the other party. All notices shall be deemed effective on the earliest of (i) actual receipt; (ii) rejection of delivery; (iii) if sent by certified mail, the third day on which regular United States mail delivery service is provided after the day of mailing or, if sent by overnight delivery service, on the next day on which such service makes next-business-day deliveries after the day of sending.

7.4 Forbearance Not a Waiver. If Lender delays in exercising or fails to exercise any of its rights under this Note, that delay or failure shall not constitute a waiver of any Lender rights or of any breach, Default, or failure of condition under this Note. No waiver by Lender of any of its rights or of any such breach, Default, or failure of condition shall be effective, unless the waiver is expressly stated in a writing signed by Lender.

7.5 Assignment. This Note inures to and binds the heirs, legal representatives, successors, and assigns of Borrower and Lender; provided, however, that Borrower may not assign this Note, or assign or delegate any of its rights or obligations, without Lender's prior written consent in each instance granted or denied in Lender's sole and absolute discretion. Lender, at its option, may assign this Note and the beneficial interest in the Deed of Trust to any person or entity and Borrower will, upon receipt of direction from Lender, pay to the party identified by Lender as entitled to receive payment. Any Borrower payment in accordance with a written direction of Lender will be deemed duly paid in accordance with this Note.

7.6 Governing Law. This instrument shall be deemed to have been made in the State of California, and the validity of this Note shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California for all purposes; except when federal law applies (including, without limitation, any federal usury ceiling or other federal law preempting state usury laws, which, from time to time, is applicable to the indebtedness evidenced by this Note). The parties agree that all actions or proceedings arising in connection with this Note shall be tried and litigated only in the state courts located in the County of Contra Costa, State of California, or the federal courts located in the Northern District of California. Borrower waives any right Borrower may have to assert the doctrine of forum non conveniens or to object to such venue.

7.7 Usury. All agreements between Borrower and Lender are expressly limited, so that in no event or contingency, whether because of the advancement of the proceeds of this Note, acceleration of maturity of the unpaid principal balance, or otherwise, shall the amount paid or agreed to be paid to Lender for the use, forbearance, or retention of the money to be advanced under this Note exceed the highest lawful rate permissible under applicable usury laws. If, under any circumstances, fulfillment of any provision of this Note or the Deed of Trust securing this Note or any other agreement pertaining to this Note, after timely performance of such provision is due, shall involve exceeding the limit of validity prescribed by law that a court of competent jurisdiction deems applicable, then, ipso facto, the obligations to be fulfilled shall be reduced to the limit of such validity. If, under any circumstances, Lender shall ever receive as interest an amount that exceeds the highest lawful rate, the amount that would be excessive interest shall be applied to reduce the unpaid principal balance under this Note and not to pay interest, or, if such excessive interest exceeds the unpaid principal balance under this Note, such excess shall be refunded to Borrower.

7.8 Time Is of the Essence. Time is of the essence with respect to all obligations of Borrower under this Note.

7.9 Waiver of Statute of Limitations. The pleading of any statute of limitations as a defense to the obligations evidenced by this Note is waived to the fullest extent permissible by law.

7.10 Severability. If any provision of this Note or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Note, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Note shall be valid and be enforceable to the full extent permitted by law.

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IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the date first written above.

**BORROWER:**

**EJ PHAIR BREWING COMPANY**

By: \_\_\_\_\_  
Name: John Phair  
Its: President

## EXHIBIT C

### FORM OF DEED OF TRUST

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO

Successor Agency for the Redevelopment Agency  
of the City of Pittsburg  
65 Civic Avenue  
Pittsburg, CA 94565  
Attention: Executive Director

\_\_\_\_\_  
SPACE ABOVE THIS LINE FOR RECORDER'S USE

#### Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing

**APN:085-108-010**

**This Deed of Trust** is made as of \_\_\_\_\_, 2021, among EJ PHAIR BREWING COMPANY, a California corporation ("TRUSTOR"), whose address is \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ Title Company, a \_\_\_\_\_ ("TRUSTEE"), and RHW SUCCESSOR AGENCY FOR THE REDEVELOPMENT AGENCY OF THE CITY OF PITTSBURG, a public agency ("BENEFICIARY"), whose address is 65 Civic Avenue, Pittsburg, CA 94565.

Trustor irrevocably grants, conveys, transfers and assigns to Trustee in trust, with power of sale and right of entry and possession, all of Trustor's right, title and interest now owned or hereafter acquired in and to the real property in Contra Costa County, California, described on Exhibit "A" attached hereto and incorporated herein by this reference, together with all buildings, structures and improvements now existing or hereafter constructed thereon (the "Improvements") and all other property and interests of any kind or character which may be reasonably necessary or desirable to promote the present and future beneficial use and enjoyment of such real property and improvements (the "Property").

**1. Secured Obligations.** Trustor makes the grant, conveyance, transfer and assignment herein for the purpose of securing the following obligations (the "Secured Obligations"): (a) payment of the sum of Seventy-Two Thousand, Nine Hundred Fifty-Five and 24/100ths Dollars (\$72,955.24), with interest thereon according to the terms of a promissory note (the "Note") of even date herewith, executed by Trustor in favor of Beneficiary or order and any extension or renewals thereof; (b) payment of such further sums as the then record owner of the Property may borrow from Beneficiary, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; and (c) performance of each agreement of Trustor incorporated by reference or contained herein.

**2. Maintenance and Repair.** Trustor shall (a) keep the Property in good condition and repair and not remove or demolish any building; (b) complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed; (c) pay when due all claims for labor performed and materials furnished; (d) comply with all laws affecting the Property or requiring any alterations or improvements to be made; (e) not commit

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or permit waste; and (f) cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of the Property may be reasonably necessary.

**3. Insurance.** Trustor shall maintain hazard insurance against loss by fire, hazards included with the term "extended coverage," and any other hazards for which Beneficiary requires insurance, and liability insurance. The insurance carrier and the insurance policies and amounts of coverage shall be acceptable to Beneficiary, the policies shall name Beneficiary as a loss payee or an additional insured, as applicable, the policies shall include Beneficiary as an additional insured, as applicable, and shall require 30 days' prior notice to Beneficiary before the policy is modified or terminated.

**4. Defense of Security.** Trustor shall appear in and defend any action or proceeding purporting to affect the security or the rights or powers of Beneficiary or Trustee. Trustor shall pay all costs and expenses, including costs of evidence of title and attorneys' fees, in any such action or proceeding in which Trustee or Beneficiary may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

**5. Payment of Taxes and Liens.** Trustor shall pay (a) at least 10 days before delinquency, all taxes and assessments affecting the Property, including water stock assessments; (b) when due, all encumbrances, charges and liens, with interest, on the Property, which are or appear to be prior or superior to this Deed of Trust; and (c) upon demand all costs, fees and expenses of this Deed of Trust. If Trustor fails to make any payment or to do any act provided for in this Deed of Trust, then Beneficiary or Trustee may, without obligation to do so, and with or without notice to or demand upon Trustor, and without releasing Trustor from any obligation under this Deed of Trust: (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; (b) appear in or commence any action or proceeding purporting to affect the security, or the rights or powers of Beneficiary or Trustee; (c) pay, purchase, contest or settle any encumbrance, charge or lien which in the judgment of either appears to be senior to this Deed of Trust; and (d) in exercising any such powers, pay allowable expenses, including attorneys' fees.

**6. Reimbursement of Costs.** Trustor shall pay upon demand all sums expended by Beneficiary or Trustee provided for in this Deed of Trust or allowed by law, with interest from date of expenditure at the maximum rate provided in the Note.

**7. No Waiver.** By accepting payment of any sum after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums or declare a default for failure to pay.

**8. Reconveyance.** That upon written request of Beneficiary or Trustor stating that all sums secured hereby have been paid, Trustee shall, upon surrender of this Deed of Trust and said Note or notes to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, reconvey, without warranty, the property then held hereunder. The recitals of such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

**9. Assignment of Rents.** To the extent of all outstanding indebtedness pursuant to the Note and this Deed of Trust, Trustor hereby absolutely and unconditionally assigns to Beneficiary all of the rents, issues, profits, royalties, revenues, income and other benefits (collectively, the "Rents") derived from the Property, whether now due, past due or to become due, and hereby gives to and confers upon Beneficiary, either directly or through a receiver, the right, power and authority, but not the obligation, to collect the Rents, and to sue, either in the name of Trustor or Beneficiary, for all such Rents and to apply the same to the indebtedness secured hereby in such order as Beneficiary may determine in its sole discretion. This assignment of Rents is intended to create and shall be construed to create an absolute assignment to Beneficiary of all of Trustor's right, title and interest in the Rents; provided, however, so long as no default exists by Trustor in the payment of any indebtedness secured hereby, or in any other covenant contained herein, or in said Note or notes or in any other document evidencing or securing such indebtedness, Trustor shall have the right to collect all Rents from the Property and to retain, use and enjoy the same. Upon the occurrence of such a default, without the necessity of demand or other notice to Trustor or any other act to enforce Beneficiary's interest pursuant to this assignment, Trustor shall have no interest whatsoever in the Rents that are received by Trustor after a default, and all such Rents shall be received and held by Trustor in constructive trust for Beneficiary and delivered promptly to Beneficiary, or to a court-appointed receiver for the Property, without the necessity for further notice to, or demand upon, Trustor. Upon the occurrence of such a default and at any time thereafter during the continuance thereof, Beneficiary may, at its option, send any tenant of the Property a notice to the effect that: (a) a default has occurred; (b) Beneficiary has elected to exercise its rights under this assignment; and (c) such tenant is thereby directed to thereafter make all payments of Rents to or for the benefit of Beneficiary or as Beneficiary shall direct. Any such tenant shall be entitled to rely upon any notice from Beneficiary and shall be protected with respect to any payment of Rents made pursuant to such notice, irrespective of whether a dispute exists between Trustor and Beneficiary with respect to the existence of a default or the rights of Beneficiary hereunder. Any such tenant shall not be required to investigate or determine the validity or accuracy of such notice or the validity or enforceability of this assignment. Trustor hereby agrees to indemnify, defend and hold any such tenant harmless from and against any and all losses, claims, damages or liabilities arising from or related to any payment of Rents by such tenant made in reliance on and pursuant to such notice.

**10. Default and Foreclosure.** Upon default by Trustor in payment or performance of any Secured Obligation, Beneficiary may declare all sums secured immediately due and payable by delivery to Trustee of a declaration of default and demand for sale and of a notice of default and of a notice of sale, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, said Note or notes and all documents evidencing expenditures secured by this Deed of Trust. Upon default of any obligation secured by this Deed of Trust and acceleration of all sums due, Beneficiary may instruct Trustee to proceed with a sale of the Property under the power of sale granted in this Deed of Trust, noticed and held in accordance with California Civil Code Sections 2924, et seq., as such statutes may be amended from time to time. Trustor waives all rights it may have to require marshaling of assets or to require sales of assets in any particular order, including any rights under California Civil Code Sections 2899 and 3433.

**11. Substitution of Trustee.** Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or

successors to any Trustee named herein or acting hereunder, which instrument executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.

**12. Successors and Assigns.** This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Beneficiary" shall mean the owner and holder, including pledgees, of the secured Note or notes, whether or not named as Beneficiary herein.

**13. Trustee Acceptance.** Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

**14. Further Assurances.** Trustor shall, at its own cost and expense, do, execute, acknowledge, and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers, and assurances as Trustee or Beneficiary shall from time to time require, for better assuring, conveying, assigning, transferring, and confirming unto Trustee the Property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Trustee, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust, or for filing, registering, or recording this Deed of Trust. Trustor shall, on demand, execute and deliver, and hereby authorizes Trustee and Beneficiary, or either of them, to execute in the name of Trustor, to the extent it may lawfully do so, one or more financing statements, chattel mortgages, or comparable security instruments, to evidence more effectively the lien hereof. Immediately upon the execution and delivery of this Deed of Trust, and thereafter from time to time, Trustor shall cause this Deed of Trust, and any security instruments creating a lien or evidencing the lien hereof upon any personal property and each instrument of further assurance, to be filed, registered, or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee to, the Property encumbered hereby.

**15. Condemnation and Insurance Proceeds.** Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or other taking of all or any portion of the Property, or knowledge of any casualty damage to the Property, or damage in any other manner, Trustor shall immediately notify Beneficiary thereof. Trustor hereby authorizes and empowers Beneficiary as attorney-in-fact for Trustor to make proof of loss, to adjust and compromise any claim under the insurance policies covering the Property, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Beneficiary's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this Section shall require Beneficiary to incur any expense or take any action hereunder. Trustor hereby authorizes and empowers Beneficiary, at Beneficiary's option, as attorney-in-fact for Trustor, to commence, appear in and

prosecute, in Beneficiary's or Trustor's name, any action or proceeding relating to any condemnation or other taking of all or any part of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or any part thereof, or for conveyances in lieu of the Property, or any part thereof, shall be paid to Beneficiary. The foregoing powers of attorney are coupled with an interest and are irrevocable. Trustor hereby authorizes Beneficiary to apply such awards, payments, proceeds or damages relating to condemnation of the Property and insurance covering the Property, after the deduction of Beneficiary's expenses incurred in the collection of such amounts, at Beneficiary's option, subject to the requirements of applicable law and the provisions hereof, to restoration or repair of the Property or to payment of the sums secured by this Deed of Trust. Beneficiary shall be under no obligation to question the amount of any compensation, awards, proceeds, damages, claims, rights of action, and payments relating to condemnation or other taking of the Property or insured casualty affecting the Property, and may accept the same in the amount in which the same shall be paid. Trustor shall execute such further evidence of assignment of any awards, proceeds damages or claims arising in connection with such condemnation or taking or such insurance as Beneficiary may require.

**16. Severability.** If any one or more of the provisions contained in this Deed of Trust shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein or therein, but only to the extent of such invalidity.

**17. Estoppel Certificate.** Trustor shall, within ten (10) days of a written request from Beneficiary, furnish Beneficiary with a written statement, duly acknowledged, setting forth the sums secured by this Deed of Trust and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Deed of Trust.

**18. California Uniform Commercial Code Security Agreement; Fixture Filing.** Trustor hereby grants Beneficiary a security interest in all personal property of Trustor located on the Property and wherever located and used in any way in connection with or in any way relating to the Property, and whether now owned or hereafter in existence, acquired or created (including equipment, inventory, goods, documents, instruments, general intangibles, chattel paper, accounts, accounts receivable, deposit accounts and contract rights), and all fixtures of Trustor now owned or hereafter in existence, acquired or created on, of or relating to the Property, and all substitutions, replacements, additions, accessions and proceeds (including insurance proceeds) of all of the foregoing (collectively, the "Personal Property"). Beneficiary may file this Deed of Trust, or a reproduction hereof, in the real estate records or other appropriate index, as a financing statement for the Personal Property. Any reproduction of this Deed of Trust or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Trustor shall execute and deliver to Beneficiary, upon Beneficiary's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Deed of Trust in such form as Beneficiary may require to perfect a security interest with respect to the Personal Property. Trustor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable

costs and expenses of any record searches for financing statements Beneficiary may reasonably require. Without the prior written consent of Beneficiary, Trustor shall not create or suffer to be created pursuant to the California Uniform Commercial Code any other security interest in the Personal Property. Upon Trustor's breach of any covenant or agreement of Trustor contained in this Deed of Trust, including the covenants to pay when due all sums secured by this Deed of Trust, Beneficiary shall have the remedies of a secured party under the California Uniform Commercial Code and, at Beneficiary's option, may also invoke any remedies provided in this Deed of Trust as to the Personal Property. In exercising any of such remedies, Beneficiary may proceed against the Property and any of the Personal Property separately or together and in any order whatsoever, without in any way affecting the availability of Beneficiary's remedies under the California Uniform Commercial Code or the remedies provided in the Deed of Trust. This Deed of Trust also covers goods which are or which are to become fixtures on the Property and constitutes and is filed as a fixture filing under the California Uniform Commercial Code.

**19. Due-On-Sale or Encumbrance.** If all or any part of the Property, or any interest therein, or any beneficial interest in Trustor (if Trustor is not a natural person or persons but is a corporation, partnership, trust, limited liability company or other legal entity), is sold, transferred, mortgaged, assigned, pledged, or further encumbered, whether directly or indirectly, whether voluntarily or involuntarily or by operational law, Beneficiary may, at Beneficiary's option, declare all of the sums secured by this Deed of Trust to be immediately due and payable, and Beneficiary may invoke any remedies permitted by this Deed of Trust.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to Trustor at Trustor's address hereinbefore set forth.

TRUSTOR:

EJ PHAIR BREWING COMPANY,  
a California corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

A Notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA            )  
  )        SS.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for said State, personally appeared, \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

[SEAL]

**EXHIBIT A**

The land referred to herein is situated in: City of Pittsburg, County of Contra Costa, State of California, more particularly described as follows:

THE EASTERLY EIGHTY (80) FEET OF LOTS 11 AND 12, IN BLOCK F, AS SAID LOTS AND BLOCK ARE SHOWN, DELINEATED, NUMBERED AND LETTERED UPON THE OFFICIAL MAP ENTITLED, "PLAT AND CENTRAL ADDITION TO THE TOWN OF BLACK DIAMOND, 1905", FILED OCTOBER 27, 1905, IN MAP BOOK B AT PAGE 33, IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, CALIFORNIA, AND ALSO SHOWN UPON THE OFFICIAL MAP ENTITLED, "OFFICIAL MAP OF THE CITY OF PITTSBURG, CONTRA COSTA COUNTY, CAL", FILED MARCH 23, 1914, IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, CALIFORNIA.

APN: 085-108-010

**ADDENDUM TO DEED OF TRUST,  
ASSIGNMENT OF RENTS, SECURITY  
AGREEMENT AND FIXTURE FILING**

This ADDENDUM TO DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING is made a part of that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Deed of Trust") dated as of \_\_\_\_\_, 2021, executed by EJ Phair Brewing Company, a California corporation, as Trustor, in favor of the Successor Agency for the Redevelopment Agency of the City of Pittsburg, a public agency, as Beneficiary.

1. Hazardous Materials.

(a) Special Representations And Warranties. Without in any way limiting the other representations and warranties set forth in the Deed of Trust, and after reasonable investigation and inquiry, Trustor hereby specially represents and warrants to the best of Trustor's knowledge as of the date of this Deed of Trust as follows:

(i) Except as previously disclosed to Beneficiary the subject property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any oil, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under the Hazardous Materials Laws, as described below, and/or other applicable environmental laws, ordinances and regulations (collectively, the "Hazardous Materials"). "Hazardous Materials" shall not include commercially reasonable amounts of such materials used in the ordinary course of operation of the subject property which are used and stored in accordance with all applicable environmental laws, ordinances and regulations.

(ii) The subject property is in compliance with all laws, ordinances and regulations relating to Hazardous Materials ("Hazardous Materials Laws"), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f et seq.; and all comparable state and local laws, laws of other jurisdictions or orders and regulations.

(iii) There are no claims or actions ("Hazardous Materials Claims") pending or threatened against Trustor or the subject property by any governmental entity or agency or by any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws.

(b) Hazardous Materials Covenants. Trustor agrees as follows:

(i) Trustor shall not cause or permit the subject property to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.

(ii) Trustor shall comply and cause the subject property to comply with all Hazardous Materials Laws.

(iii) Trustor shall immediately notify Beneficiary in writing of: (i) the discovery of any Hazardous Materials on, under or about the subject property; (ii) any knowledge by Trustor that the subject property does not comply with any Hazardous Materials Laws; and (iii) any Hazardous Materials Claims.

(iv) In response to the presence of any Hazardous Materials on, under or about the subject property, Trustor shall immediately take, at Trustor's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.

(c) Inspection By Beneficiary. Upon reasonable prior notice to Trustor, Beneficiary, its employees and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding) enter and inspect the subject property for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Material into, onto, beneath or from the subject property.

(d) Hazardous Materials Indemnity. Trustor hereby agrees to defend, indemnify and hold harmless Beneficiary, its employees, agents, successors and assigns from and against any and all losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including, without limitation, attorneys' fees and expenses) which Beneficiary may incur as a direct or indirect consequence of the use, generation, manufacture, storage, disposal, threatened disposal, transportation or presence of Hazardous Materials in, on, under or about the subject property. Trustor shall immediately pay to Beneficiary upon demand any amounts owing under this indemnity, together with interest at the rate of ten percent (10%) per annum. Trustor's duty and obligations to defend, indemnify and hold harmless Beneficiary shall survive the release, reconveyance or partial reconveyance of this Deed of Trust.

(e) Legal Effect of Section. Trustor and Beneficiary agree that: (i) this Paragraph 1 is intended as Beneficiary's written request for information (and Trustor's response) concerning the environmental condition of the real property security as required by California Code of Civil Procedure §726.5; and (ii) each provision in this Paragraph (together with any indemnity applicable to a breach of any such provision) with respect to the environmental condition of the real property security is intended by Beneficiary and Trustor to be an "environmental provision"

for purposes of California Code of Civil Procedure §736, and as such it is expressly understood that Trustor's duty to indemnify Beneficiary hereunder shall survive: (y) any judicial or non-judicial foreclosure under this Deed of Trust, or transfer of the subject property in lieu thereof, and (z) the release and reconveyance or cancellation of this Deed of Trust.

\_\_\_\_\_  
Trustor's Initials

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