

LOAN AGREEMENT

This Loan Agreement (this "**Agreement**") is entered into effective as of Feb. 1, 2017 ("**Effective Date**") by and between the **San Leandro Improvement Association**, a California non-profit organization ("**Borrower**") and the **City of San Leandro**, a charter city formed under the laws of the State of California ("**Lender**"). Lender and Borrower are hereinafter collectively referred to as the "**Parties.**"

RECITALS

A. Borrower has requested, and Lender has agreed to provide, a loan ("**Loan**") pursuant to the terms and conditions hereof for the purpose of providing Lender funding for Downtown San Leandro capital improvements. Lender is amenable to such a loan, subject to specific provisions that provide Lender assurance that the Loan will be paid before all of Borrower's other debts and obligations from assessments due and owing to Borrower established under the California Property and Business Improvement District Law of 1994 ("**PBID Law**") (California Streets & Highways Code section 36600 *et seq.*); and

B. Concurrently herewith, Borrower shall execute a promissory note ("**Note**") in the amount of the Loan, which shall define the amounts owed, manner of repayment, and consequences of default. This Agreement and the Note are collectively hereinafter referred to as the "**Loan Documents.**"

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

ARTICLE I

LOAN TERMS

1.1 LOAN AND NOTE. Lender agrees to loan to Borrower, and Borrower agrees to borrow from and repay to Lender, the sum of Two Hundred Eighty-Five Thousand Dollars (\$285,000.00) upon the terms and conditions and for the purposes set forth in this Agreement. The Loan shall be evidenced by the Note, which shall be dated as of the Effective Date and executed by Borrower substantially in the form attached hereto as Exhibit A. Provided that Borrower has complied with all conditions precedent to disbursement of the Loan set forth in Section 2.3, the Loan Proceeds shall be disbursed in accordance with Section 2.2 hereof. Lender shall disburse Loan Proceeds only for the purposes set forth in Section 2.1.

1.2 INTEREST RATE; PAYMENT DATES; MATURITY DATE. Interest shall accrue on the outstanding principal balance of the Loan at a rate of three percent (3.0%) simple interest per annum. Annual payments shall be due and payable in accordance with the terms set forth in the Note. The entire outstanding principal balance of the Loan together with accrued interest and all other sums due under the Loan Documents shall be payable in full on the tenth (10th) anniversary of the Effective Date (the "**Maturity Date**"). Notwithstanding the foregoing,

the Lender shall have the right to accelerate the Maturity Date and declare all sums payable under the Note immediately due and payable upon Lender's declaration of an Event of Default.

1.3 SECURITY. As security for repayment of the Note, Borrower is prohibited from taking any legal or equitable action in a court of competent jurisdiction against Lender's rights and actions to accelerate collection of payments due upon Lender's declaration of default. This includes Lender's right, without exception, to collect loan payments due or in arrears from assessments due and payable to Borrower pursuant to the PBID Law, and to collect any and all delinquent loan payments before payment to any of Borrower's secured and unsecured creditors. This Loan creates a secured obligation of Borrower, that is not subordinate to any of Borrower's current or future debts or obligations.

1.4 PREPAYMENT; ACCELERATION.

(a) Prepayment. The Note or any portion of the outstanding principal balance due under the Note may be prepaid at any time and from time to time, without penalty or premium. Any prepayment of principal must be accompanied by interest accrued (if any) but unpaid to the date of receipt of prepayment. Prepayments shall be applied first to accrued but unpaid interest (if any) and then to principal.

ARTICLE II

USE AND DISBURSEMENT OF PROCEEDS

2.1 USE OF PROCEEDS. Borrower shall use the proceeds of the Loan ("**Loan Proceeds**") solely and exclusively for capital improvements within the jurisdiction and boundaries of the San Leandro Improvement Association. The Association shall make its best efforts to ensure that the projects listed below do not exceed the amounts listed herein.

Landmark Sign	\$170,000
Bocce	\$90,000
Pressure Washer Trailer and Equipment	\$10,000
Additional Public Amenities (Tables, Chairs, Umbrellas, Concrete Planters)	\$15,000
<hr/> Total Loan	<hr/> \$285,000

2.2 DISBURSEMENT OF PROCEEDS. Provided that Borrower has satisfied all of the conditions set forth in Section 2.3, the Loan Proceeds shall be disbursed to Borrower within sixty (60) days of the Effective Date.

2.3 CONDITIONS PRECEDENT TO DISBURSEMENT OF PROCEEDS.

Lender's obligation to fund the Loan and disburse the proceeds thereof is conditioned upon the satisfaction of all of the following conditions:

(a) Borrower's execution and delivery to Lender of this Agreement and the Note;

(b) Borrower's delivery to Lender of each of the following: (i) certificate of good standing, certified by the Secretary of State indicating that Borrower is in good standing and authorized to do business in the State of California, and (ii) a certified resolution indicating that Borrower has authorized this transaction and that the persons executing the Loan Documents on behalf of Borrower have been duly authorized to do so.

(c) No material adverse change as determined by Lender in its reasonable judgment shall have occurred in the financial or other condition of Borrower since the date of this Agreement.

2.4 NO OBLIGATION TO DISBURSE PROCEEDS UPON DEFAULT.

Notwithstanding any other provision of this Agreement, the Lender shall have no obligation to disburse or authorize the disbursement of any portion of the Loan Proceeds following:

- (i) the failure of any of Borrower's representations and warranties set forth in this Agreement to be true and correct in all material respects;
- (ii) the termination of this Agreement by mutual agreement of the Parties;
- (iii) the conditions to disbursement of the Loan set forth in Section 2.3 have not been satisfied within seven (7) days following the Effective Date, unless an extension of such date is approved by Lender in writing; or
- (iv) Lender's declaration of any Event of Default hereunder.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Borrower makes the following representations, warranties and covenants and acknowledges that Lender is relying thereupon in making the Loan:

(a) LEGAL STATUS; AUTHORITY; OWNERSHIP. Borrower is a non-profit entity duly organized and in good standing under the laws of the State of California. The persons executing this agreement on behalf of Borrower have been duly authorized to do so. Borrower has all requisite power and authority to execute, deliver and perform its obligations under the Loan Documents.

(b) NO VIOLATION. The execution of the Loan Documents and Borrower's performance thereunder do not and will not result in a breach of or constitute a default under any agreement, indenture or other instrument to which Borrower is a party or by which Borrower may be bound.

(c) AUTHORIZATION. The Loan Documents and the transactions contemplated thereby have each been duly authorized by Borrower, and when executed and delivered will each constitute a valid and binding obligation of Borrower, enforceable in accordance with the respective terms thereof.

(d) LITIGATION. There are no pending or to Borrower's knowledge, threatened actions or proceedings before any court or administrative agency which may adversely affect the financial condition or operation of Borrower or Borrower's interest in the Property.

(e) COMPLIANCE WITH LAWS. Borrower is in compliance in all material respects with all local, state and federal laws, rules, regulations, orders and decrees which are applicable to Borrower in relation thereto ("Applicable Law") including without limitation, all environmental, health and safety and employment laws.

(f) DISCLOSURE. No representation or warranty made by Borrower in this Agreement or in the Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein not misleading. There is no fact known to Borrower which has or might reasonably be anticipated to have a material adverse effect on the business, assets, financial condition of Borrower which has not been disclosed to Lender in writing.

ARTICLE IV

AFFIRMATIVE COVENANTS

4.1 USE OF FUNDS. Borrower covenants that it shall use the Loan Proceeds solely for the purposes set forth in Section 2.1.

4.2 PUNCTUAL PAYMENT. Borrower covenants to punctually pay the principal balance of the Note and interest (if any) accrued thereon at the times and place and in the manner specified in the Note.

4.3 ACCOUNTING RECORDS; PROPERTY INSPECTION. Borrower covenants to maintain accurate books and records relating to the Loan in accordance with standard accounting principles consistently applied, and to permit the Lender, during business hours and upon reasonable notice to inspect, audit and examine such books and records to ensure compliance with this Agreement. Any audit deemed in the Lender's sole and exclusive discretion to be necessary shall be paid for in full by the Borrower.

4.4 COMPLIANCE WITH LAWS. Borrower covenants to comply with all federal, state and local laws, regulations, ordinances and rules applicable to it and in the performance of its functions. Violations of any laws, regulations, ordinances and rules that affect any provisions of the Loan Documents is an event of default.

4.5 INDEMNIFICATION. Borrower shall indemnify, defend (with counsel approved by Lender), and hold harmless Lender and its officers, agents, employees, consultants and

contractors (collectively, the **Indemnitees**"), from and against, and shall pay on demand, any and all losses, liabilities, damages, costs, claims, demands, penalties, deficiencies, fines, orders, judgments, actions, suits, judicial or administrative proceedings, injunctive or other relief, expenses and charges (including attorneys' fees and court costs) (collectively "**Claims**") arising directly or indirectly in any manner in connection with or as a result of (a) any breach of Borrower's covenants under the Loan Documents, (b) any failure of Borrower's representations and warranties to be true and correct in all material respects when made, (c) injury or death to persons or damage to property or other loss occurring on property within the boundaries or jurisdiction of Borrower, whether caused by the negligence or any other act or omission of Borrower or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any other condition or otherwise, or (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of Borrower's actions or activities, the Loan, the Loan Documents, or any transaction contemplated thereby, or any failure of Borrower to comply with all applicable state, federal and local laws and regulations, provided that no Indemnitee shall be entitled to indemnification under this Section for matters caused by such Indemnitee's gross negligence or willful misconduct. The obligations of Borrower under this Section shall survive the expiration or termination of this Agreement and the making and repayment of the Loan.

4.6 TAXES AND OTHER LIABILITIES. Borrower shall pay and discharge when due any and all indebtedness, obligations, assessments, taxes, including federal and state payroll and income taxes which are the obligations of Borrower except those that Borrower may in good faith contest or as to which a bona fide dispute may arise, provided provision is made to the satisfaction of Lender for eventual payment thereof in the event that it is found that the same is an obligation of Borrower.

ARTICLE V

EVENTS OF DEFAULT

The occurrence and declaration by Lender of any one or more of the following events shall constitute default hereunder ("**Event of Default**"):

(a) If Borrower fails to pay when due the principal and interest payable under the Note and such failure continues for five (5) days after Lender notifies Borrower thereof in writing.

(b) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Borrower (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

(c) If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower or substantially all of Borrower's assets, (iii) orders the liquidation of Borrower, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against Borrower or any of the improvements described in Section 2.1, and in each case the order or decree is not released, vacated, dismissed or fully bonded within sixty (60) days after its issuance.

(d) If the Borrower violates any law, rule, ordinance, or regulation and fails to cure or take action to cure such default within five (5) calendar days.

(e) If any representation or warranty contained in the Loan Documents or any certificate furnished in connection with the foregoing or in connection with any request for disbursement of Loan Proceeds proves to have been false or misleading in any material adverse respect when made.

(f) If the Borrower defaults in the performance of any term, provision, covenant or agreement (other than an obligation enumerated in this Article V) contained in this Agreement or in any other Loan Document, and unless such document specifies a shorter cure period for such default, the default continues for five (5) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which Lender shall have given written notice of the default to Borrower (or such longer time as Lender may agree upon in writing), provided that in each case Borrower commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith.

ARTICLE VI

REMEDIES

6.1 REMEDIES AND RIGHTS UPON DEFAULT. Upon the occurrence of an Event of Default, Lender shall have all remedies available to it under law or equity, including, but not limited to the following, and Lender may, at its election, without notice to or demand upon Borrower, except for notices or demands required by law or expressly required pursuant to the Loan Documents, exercise one or more of the following remedies:

- a) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable;
- b) Seek specific performance to enforce the terms of the Loan Documents;
- c) Execute all documents and take all actions necessary to insure that Borrower is paid any and all assessments or payments due to Lender first to satisfy the Note;
- d) Pursue any and all other remedies available under law or equity to enforce the terms of the Loan Documents and Lender's rights thereunder.

6.2 REMEDIES CUMULATIVE. Each of the remedies provided herein is cumulative and not exclusive of, and shall not prejudice any other remedy provided in any other Loan Document. Lender may exercise from time to time any rights and remedies available to it under applicable law, in addition to, and not in lieu of, any rights and remedies expressly granted in this Agreement or in any other instrument or notice, demand or legal process of any kind.

ARTICLE VII

MISCELLANEOUS

7.1 NOTICES. All notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:

- (a) personal delivery, in which case notice shall be deemed delivered upon receipt;
- (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;
- (c) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or
- (d) facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

Lender: City of San Leandro
City Hall
835 E. 14th Street
San Leandro, CA 94577
Attn: City Manager

Borrower: San Leandro Improvement Association
384 W. Estudillo Avenue
San Leandro, CA 94577
Attn: Executive Director

7.2 COUNTERPARTS. This Agreement may be executed in multiple counterparts each of which shall be an original and all of which taken together shall constitute one and the same instrument.

7.3 SEVERABILITY. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the

remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties are materially altered or abridged by such invalidation, voiding or unenforceability.

7.4 LEGAL ACTIONS; ATTORNEYS' FEES. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the Party prevailing in any such action shall be entitled to recover against the other Party all reasonable attorneys' fees and costs incurred in such action.

7.5 CAPTIONS; INTERPRETATION. The captions of the Sections and Articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. Time is of the essence in the performance of this Agreement.

7.6 FURTHER ASSURANCES. The Parties agree to execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

7.7 PARTIES NOT CO-VENTURERS. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

7.8 GOVERNING LAW; VENUE. This Agreement shall in all respects be construed and enforced in accordance with the laws of the State of California without regard to principles of conflicts of laws. The Parties consent to the jurisdiction of the superior courts in Alameda County, and the federal courts in the Northern District of California. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

7.9 WAIVER; MODIFICATION AND AMENDMENT. No failure or delay on the part of the Lender in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No modification or waiver of any provision of this Agreement, nor any consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances. No amendment to or modification of this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed by the Parties.

7.10 ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding the foregoing, Lender's obligation to make the Loan is personal to Borrower, and shall not be assignable by

Borrower by operation of law or otherwise absent the express written consent of Lender, and any such assignment by operation of law or otherwise shall be void.

7.11 NO THIRD PARTY BENEFICIARIES. There shall be no third party beneficiaries to this Agreement.

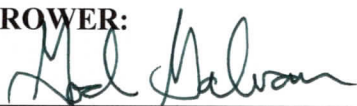
7.12 ENTIRE AGREEMENT; EXHIBITS. This Agreement, together with the other Loan Documents, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written agreements and negotiations between the Parties with respect thereto. Exhibit A attached hereto is incorporated herein by reference as though fully set forth herein.

7.13 SURVIVAL. All representations made by Borrower herein and the provisions of Sections 4.5 hereof shall survive the expiration or termination of this Agreement and the making and repayment of the Loan. The representations of Borrower made herein have been or will be relied upon by the Lender, notwithstanding any investigation made by the Lender or on its behalf.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have each caused this Agreement to be duly executed as of the date first written above.


BORROWER:

By: 

Print Name: GORDON GALVAN

Title: PRESIDENT

LENDER:

By: 

Print Name: Chris Zapata

Title: City Manager

APPROVED AS TO FORM:

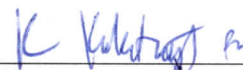

City Attorney

Exhibit A

PROMISSORY NOTE

SECURED PROMISSORY NOTE

\$285,000.00

San Leandro, California
_____, 2017

FOR VALUE RECEIVED, San Leandro Improvement Association, a California non-profit organization ("**Borrower**") promises to pay to the City of San Leandro, a charter city formed under the laws of the State of California ("**Lender**"), in lawful money of the United States of America, the principal sum of TWO HUNDRED EIGHTY-FIVE THOUSAND DOLLARS (\$285,000.00), or so much thereof as may be advanced by Lender pursuant to the Loan Agreement referred to below, together with interest on the outstanding principal balance in accordance with the terms and conditions described herein.

This Secured Promissory Note (this "**Note**") has been executed and delivered pursuant to a Loan Agreement dated as of the date hereof by and between Borrower and Lender (the "**Loan Agreement**"), and is subject to the terms and conditions of the Loan Agreement, which are by this reference incorporated herein and made a part hereof. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Loan Agreement.

This Note is secured by Borrower's assessments. Lender has the right to collect Borrower's assessments due, owing, or payable before any and all of Borrower's secured and unsecured creditors.

1. INTEREST RATE; REPAYMENT. Interest shall accrue on the outstanding principal balance of this Note at the rate of three percent (3.0%) simple interest per annum, commencing upon the date of disbursement thereof. Interest shall be calculated on the basis of a year of three hundred sixty five (365) days, and charged for the actual number of days elapsed.
2. PAYMENT DATES; MATURITY DATE. Commencing upon December 1, 2017 (the "**First Payment Date**"), and on the fifth (5th) day of each calendar year thereafter, Borrower shall make annual payments of combined principal and interest until the entire indebtedness evidenced hereby is fully paid, except that all remaining indebtedness, if not sooner paid, shall be due and payable upon the Maturity Date (defined below). The amount of the annual payments to be paid beginning on the First Payment Date will be an amount equal to the payment necessary to fully amortize the principal amount of this Note, together with interest at the interest rate specified in Section 1 above over a 120-month period. The entire outstanding principal balance of this Note, together with accrued interest and all other sums accrued hereunder shall be payable in full on the tenth (10th) anniversary of the date of this Note (the "**Maturity Date**"). Payments shall be credited first to any unpaid late charges and other costs and fees then due, then to accrued

interest, and then to principal. In no event shall any amount due under this Note become subject to any rights, offset, deduction or counterclaim on the part of Borrower.

3. DUE ON DEFAULT. The entire unpaid principal balance and all sums accrued hereunder shall be immediately due and payable upon Borrower's Default (as defined in Article V of the Loan Agreement) or upon Lender's declaration of an Event of Default under the Loan Documents, subject to the expiration of any applicable cure period. Without limiting the generality of the foregoing, this Note shall not be assumable without Lender's prior written consent, which consent may be granted or denied in Lender's sole discretion.

4. PREPAYMENT. Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note provided that each such repayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such repayment. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal.

5. MANNER OF PAYMENT. All payments on this Note shall be made to Lender at 835 East 14th Street, San Leandro, CA 94577 or such other place as Lender shall designate to Borrower in writing, or by wire transfer of immediately available funds to an account designated by Lender in writing.

6. EVENTS OF DEFAULT. The declaration by Lender of any one or more of the following events shall constitute an event of default hereunder ("Event of Default"):

(g) If Borrower fails to pay when due the principal and interest payable under the Note and such failure continues for five (5) days after Lender notifies Borrower thereof in writing.

(h) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Borrower (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

(i) If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower or substantially all of Borrower's assets, (iii) or orders the liquidation of Borrower.

(j) If the Borrower violates any law, rule, ordinance, or regulation and fails to cure or take action to cure such default within five (5) calendar days.

(k) If any representation or warranty contained in the Loan Documents or any certificate furnished in connection with the foregoing or in connection with any request for disbursement of Loan Proceeds proves to have been false or misleading in any material adverse respect when made.

If the Borrower defaults in the performance of any term, provision, covenant or agreement (other than an obligation enumerated in this Section 6), and unless such document specifies a shorter cure period for such default, the default continues for five (5) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which Lender shall have given written notice of the default to Borrower (or such longer time as Lender may agree upon in writing), provided that in each case Borrower commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith.

7. REMEDIES. Upon the occurrence of an Event of Default, Lender shall have all remedies available to it under law or equity, including, but not limited to the following, and Lender may, at its election, without notice to or demand upon Borrower, except for notices or demands required by law or expressly required pursuant to the Loan Documents, exercise one or more of the following remedies:

- a) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable;
- b) Seek specific performance to enforce the terms of the Loan Documents and this Note;
- c) Execute all documents and take all actions necessary to insure that Borrower is paid any and all assessments or payments due to Lender first to satisfy the Note;
- d) Pursue any and all other remedies available under law or equity to enforce the terms of the Loan Documents, the Note and Lender's rights thereunder.

8. DEFAULT RATE. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate of ten percent (10%) per annum (the "**Default Rate**"); provided however, if any payment due hereunder is not paid when due, the Default Rate shall apply commencing upon the due date for such payment. When Borrower is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again be the rate specified in Section 1 of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent Lender from exercising any of its other rights or remedies reserved.

9. MISCELLANEOUS

9.1 WAIVER. The rights and remedies of Lender under this Note shall be cumulative and not alternative. No waiver by Lender of any right or remedy under this Note shall be effective unless in a writing signed by Lender. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by Lender will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law (a) no claim or right of Lender arising out of this Note can be discharged by Lender, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing, signed by Lender; (b) no waiver that may be given by Lender will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on Borrower will be deemed to be a waiver of any obligation of Borrower or of the right of Lender to take further action without notice or demand as provided in this Note. Borrower hereby waives presentment, demand, protest, notices of dishonor and of protest and all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice.

9.2 NOTICES. Any notice required or permitted to be given hereunder shall be given in accordance with Section 7.1 of the Loan Agreement.

9.3 SEVERABILITY. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

9.4 GOVERNING LAW; VENUE. This Note shall in all respects be construed and enforced in accordance with the laws of the State of California without regard to principles of conflicts of laws. The Parties consent to the jurisdiction of the superior courts in Alameda County, and the federal courts in the Northern District of California. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

9.5 PARTIES IN INTEREST. This Note shall bind Borrower and its successors and assigns and shall accrue to the benefit of Lender and its successors and assigns.

9.6 SECTION HEADINGS, CONSTRUCTION. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation.

9.7 RELATIONSHIP OF THE PARTIES. The relationship of Borrower and Lender under this Note is solely that of borrower and lender, and the loan evidenced by this Note will in no manner make Lender the partner or joint venturer of Borrower.

9.8 TIME IS OF THE ESSENCE. Time is of the essence with respect to every provision of this Note.

9.9 JOINT AND SEVERAL OBLIGATION. If Borrower consists of two or more individuals, the obligations of such individuals hereunder shall be joint and several.

SIGNATURES ON FOLLOWING PAGE.

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

BORROWER

By: 

Print Name: GORDON GALVAN

Title: PRESIDENT

2281773.1