

City of Fontana's Empowerment Revolving Loan Fund Program
Administered by AmPac Tri-State CDC, Inc. dba AmPac Business Capital
Business Loan Agreement
[Borrower's Legal Name]- [Loan Product]- Loan #[Loan Number]

This **BUSINESS LOAN AGREEMENT** ("Agreement"), dated **[Date]**, is made between **[Borrower's Legal Name]**, a **[legal capacity]** ("Borrower"), whose principal address is **[Borrower's address]** and AmPac Tri-State CDC, Inc. dba AmPac Business Capital whose address is 3110 B Inland Empire Blvd. Ontario, CA 91764 ("Lender" or "AmPac"), with the following terms and conditions.

RECITALS

A. The City of Fontana has established a loan fund for its Empowerment Revolving Loan Fund Program ("Program") to provide entrepreneurs and small businesses within the City of Fontana with access to funding for the purposes of business growth.

B. AmPac Tri-State CDC, Inc. dba AmPac Business Capital ("AmPac") and the City of Fontana ("City") have entered into that certain Agreement for Services dated March 1, 2024 whereby AmPac will provide loan management services to administer, implement and manage the Program on behalf of the City.

C. AmPac will review, process and approve loan applications based on criteria established by the City for its Program, including, among other things, Borrower must be in business 2 or more years, the business is located in the City of Fontana, the business has twenty-five (25) or fewer employees, and the use of the funds must be for business growth of the Borrower's business.

D. For purposes of this Agreement, AmPac is serving as the "Lender" on behalf of the City to administer this Agreement with the Borrower.

E. Borrower has applied to Lender for a Business Loan for **[Use of Funds]**, as further described in the Borrower's loan application. Borrower understands and agrees that: **(A)** Lender is relying upon Borrower's representations, warranties, and Agreements as set forth herein and below; **(B)** the obligation to extend the requested Business Loan shall always be subject to the Lender's sole judgement and discretion; and **(C)** the terms of this Business Loan extended to Borrower by Lender shall remain subject to the terms and conditions of this Agreement.

F. Lender desires to provide to Borrower, and Borrower desires to borrow from Lender, a loan in the amount up to **[loan amount written out]** Dollars (**\$Numerical amount**), subject to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises set forth herein, the parties hereto agree as follows:

1. **DEFINITIONS:** The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically state to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meaning attributed to such terms in the Uniform Commercial Code. Accounting words

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and terms not otherwise defined in this Agreement shall have the meanings assigned to them in accordance with accepted accounting principles as in effect on the date of this Agreement:

Advance. The word "Advance" means a disbursement of Loan funds made, or to be made, to Borrower on Borrower's behalf on a line of credit or multiple Advances under the terms and conditions of this Agreement.

Agreement. The word "Agreement" means this Business Loan Agreement, as this Business Loan Agreement may be amended or modified from time to time, together with all exhibits, schedules and Program Documents referenced in the Table of Contents attached to this Business Loan Agreement. Lender may make modifications to this Agreement provided to the Borrower.

Borrower. The word "Borrower" means **[Borrower's Legal Name]** and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Collateral. The word "Collateral" means all property and assets granted as Collateral security for a Loan, whether real or personal property, whether granted in the form of a Security Interest, mortgage, Collateral mortgage, deed of trust, assignment, pledge, crop pledge, chattel mortgage, Collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

Default. The word "Default" means the Defaults set forth in this Agreement in the section titled "Default."

Environmental Laws. The words "Environmental Laws" mean any and all state, federal, and local statutes, regulations, and ordinances relating to the protection of human health or environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., Chapters 6.5 through 7.7 of Division 20 of the California Health and Safety Code, Section 25100, et seq., or other applicable state or federal laws, rules, or regulations adopted by pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of Default' set forth in this Agreement in the Default' section of this Agreement.

GAAP. The word "GAAP" means Generally Accepted Accounting Principles.

Grantor. The word "Grantor" means each and all the persons or entities granting a Security Interest in any Collateral for the Loan, including without limitation all Borrowers granting such Security Interest.

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Hazardous Substances. The words "Hazardous Substances" mean material that, because of their quantity, concentration or physical, chemical, or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported, or otherwise managed. The words "Hazardous Substances" are used in their very broadest sense and include without limitation all hazardous or toxic substances, materials, or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Indebtedness. The word "Indebtedness" means the Indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other Indebtedness and costs and expenses for which the Borrower is responsible under this Agreement or under any of the Related Documents.

Lender. The word "Lender" means AmPac Tri-State CDC, Inc. dba AmPac Business Capital, its successors, and assigns.

Loan. The word "Loan" means all Business Loans and financial accommodations from Lender to Borrower whether now or hereafter existing, and however evidenced, including without limitation those Business Loans and financial accommodations described herein or described on any exhibit or schedule attached to this Agreement from time to time.

Note. The word "Note" means the Note executed by the Borrower in the principal amount of **[Loan Amount (\$0.00)]**, dated **[Date]**, together with all renewals of, extensions of, modifications of, refinancing of, consolidations of, and substitutions for the Note or credit Agreement.

Permitted Liens. The words "Permitted Liens" mean: **(1)** liens and Security Interests securing Indebtedness owed by the Borrower to Lender; **(2)** liens for taxes, assessments, or similar charges either not yet due or being contested in good faith; **(3)** liens of materialmen, mechanics, warehousemen, or carriers, or other like liens arising in the ordinary course of business and securing obligations which are not yet delinquent; **(4)** purchase money liens or purchase money Security Interests upon or in any property acquired or held by Borrower in the ordinary course of business to secure Indebtedness outstanding on the date of this Agreement or permitted to be incurred under the paragraph of the Agreement titled "Indebtedness and Liens"; liens and Security Interests which, as of the date of this Agreement, have been disclosed to and approved by the Lender in writing; and **(6)** those liens and Security Interests which in the aggregate constitute an immaterial and insignificant monetary amount with respect to the net value of Borrower's assets.

Related Documents. The words "Related Documents" mean all Promissory Notes, credit Agreements, Loan Agreements, environmental Agreements, guaranties, Security Agreements, mortgages, deeds of trust, security deeds, Collateral mortgages, and all other instruments, Agreements, and documents, whether now or hereafter existing, executed in connection with the Loan.

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Security Agreement. The words "Security Agreement" mean and include without limitation any Agreements, promises, covenants, arrangements, understandings, or other Agreements, whether created by law, contract, or otherwise, evidencing, governing, representing, or creating a Security Interest.

Security Interest. The words "Security Interest" mean, without limitation, any and all types of Collateral security, present and future, whether in the form of a lien, charge, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, Collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever whether created by law, contract, or otherwise.

2. **LOAN TERMS:** This Agreement shall be effective as of **[Date]** and shall remain in effect until such time Borrower has paid in full the Loan, including principal, accrued and capitalized interest, any costs, expenses, attorneys' fees, and other fees and charges due under this Loan, which shall be sixty (60) months from the date of the Note (the "**Maturity Date**"). The Maturity Date is the date by which the Borrower shall be required to pay the Loan in full, including principal, accrued and capitalized interests and any other costs, charges and fees.

2.1. Use of Funds:

2.1.1. **[Remaining Funds]** for **[Use of Proceeds]**

2.1.2. **[Fees]** for **Loan Processing & Packaging Fees**

2.1.3. **[Loan Amount]** Total Loan Amount

2.2. Loan Term:

2.2.1. **[# of Years]** Year Term.

2.3. Fixed Interest Rate:

2.3.1. **[Interest Rate]**%.

2.4. Maturity Date:

2.4.1. **[insert date]**

2.5. Prepayment: All or any portion of the Note and this Loan may be prepaid on any business day without penalty in an amount equal to the principal amount remaining hereunder and interest accrued thereon to the date of such prepayment. Borrower shall provide notice to Lender of such prepayment with five (5) days' notice of the payment thereof.

Initials: _____
[Signer(s) Legal Name(s), and Title(s)]

Date: **[Date]**

3. **LOAN ADVANCE:** This Loan includes and contemplates Advances as Borrower

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requests them provided undisbursed funds remain on the Loan. Lender in its sole discretion will determine the sufficiency of the documentation supporting the requested Advance. Once the entire principal amount of this Loan is Advanced, no other draws will be permitted or are contemplated as part of this Loan.

4. **LEGAL EFFECT:** This Agreement including any additional exhibit, attachment, or document Borrower may additionally provide constitutes a legal, valid, and binding obligation. Said obligations are enforceable against Borrower in accordance with local, state, and federal law any respective terms and conditions.

5. **REPRESENTATIONS AND WARRANTIES:** Borrower represents and warrants to Lender, as of the date of this Agreement, of each disbursement, of any renewal, extension, or modification of any Loan, and all times any Indebtedness exists, that:

5.1. **Litigation And Claims:** No litigation, claim, investigation, administrative proceeding, or similar action (including those for unpaid taxes) against Borrower is pending or threatened, and no other event has occurred which may adversely affect Borrower's financial condition or properties, other than litigation, claims, or other events, if any, that have been disclosed to and acknowledged by Lender in writing.

5.2. **Notice Of Claims And Litigations:** Borrower shall inform Lender in writing of all existing or threatened litigation, claims, investigations, administrative proceedings, or similar actions affecting Borrower or any Guarantor which could materially affect their financial condition.

5.3. **Hazardous Substances:** Except as disclosed and acknowledged by Lender in writing, Borrower represents and warrants that: (1) Borrower has no knowledge of (A) any violation of Environmental Laws; (B) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous substance on the Collateral by any prior owners or occupants of any of the Collateral; or any litigation or claims of any kind relating to such matters. Any inspections or tests made by Lender shall be at Borrower's expense and for Lender's purposes only. Borrower hereby releases and waives any future claims against Lender for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs and (2) agrees in to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly suffer as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of hazardous waste on the Collateral. The provisions of this section of the Agreement shall survive the payment of the debt and termination, expiration or otherwise satisfaction of this Agreement and shall not be affected by Lender's acquisition of any interest in Collateral, whether by foreclosure or other means.

5.4. **Taxes:** All of Borrower's tax returns, required to be filed, have been filed, and all taxes, assessments, or other charges resulting therefrom have been paid in full. Notwithstanding the foregoing, Borrower may have disclosed certain contested disclosed certain contested amounts that have been contested in good faith and for which adequate reserves have been set aside.

5.5. **Lien Priority:** Unless otherwise disclosed in writing to Lender, Borrower has not granted any Security Interest or affected the Lender's ability to perfect its priority lien position on Collateral.

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5.6. Financial Information: All financial statements supplied to Lender accurately and truly represent the financial condition of the Borrower on the applicable date. Moreover, Borrower is explicitly stating that as of the date of signing this Agreement there has been no material adverse change in Borrower's financial condition. Borrower agrees to provide Lender financial statements on an annual basis. Each Loan party shall permit any representative that agent or Lender authorizes, including its attorneys and accountants, to inspect the Collateral and examine and make copies and abstracts of the books of account and records of such Loan party at reasonable times and upon reasonable notice during normal business hours; provided, however, that so long as no Event of Default" has occurred and is continuing, such examinations shall be limited to no more often than once per fiscal year. In addition, any such representative shall have the right to meet with management and officers such Loan party to discuss such books of account and records. In addition, agent or Lender shall be entitled at reasonable times and intervals to consult with and advise the management and officers of Loan parties concerning significant business issues affecting the Loan parties. Such consultations shall not unreasonably interfere with Loan parties' business operations. The parties intend that the rights granted agent and Lender shall constitute "management rights" within the meaning of 29 C.F.R. Section 2510.3-101 (d)(3)(ii), but that any advice, recommendations or participation by agent or Lender with respect to any business issues shall not be deemed to give agent or Lender, nor be deemed an exercise by agent of Lender of, control over a Loan party's management or policies.

5.7. Authorization: Borrower's executing, delivery, and performance of the terms and conditions contained within this Agreement and all Related Documents have been duly authorized by all necessary action of the Borrower and do not conflict with or violate any prior existing or contemporaneously created governing the ability of Borrower to enter into such an Agreement.

5.8. Binding Effect: Borrower agrees and acknowledges that this Agreement, and all Related Documents are binding upon the signers, their successors, representatives, and assigns, and legally enforceable in accordance with their respective terms and conditions.

6. **BORROWER'S COVENANTS:** Borrower agrees and makes further covenants with Lender, for the Term of this Agreement:

6.1. Repayment. Borrower acknowledges that the source of funds for this Loan are from public funds provided by the City of Fontana under its Program and as such must be paid per the terms of this Agreement and the Note. The City of Fontana is a third party beneficiary to this Agreement and enjoys all the rights and benefits of the Lender under this Agreement. The Borrower covenants to pay all the payments, accrued and capitalized interests and any as applicable fees, costs and charges in full on or before the Maturity Date.

6.2. Organization: Borrower is duly organized, validly existing, and in good standing under the virtue of the laws of the State of California. Borrower is duly authorized to conduct business in all states in which Borrower is doing so. Specifically, Borrower is, and always shall be, duly qualified as a foreign entity where necessary to conduct business. Borrower has the full power and authority to own its properties and to transact business in which it presently does so or proposes to operate from. Borrower will notify Lender prior to any change in the location of Borrower's state of organization or any change in Borrower's name.

6.3. Assumed Business Names: Borrower has filed or recorded all documents or

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filings required by law relating to all assumed business names used by Borrower. Excluding the name of Borrower, the following is a complete list of all assumed business names under which the Borrower does business:

Borrower: [Borrower's dba and Legal Name]

6.4. Additional Information: Provide such information and supporting documentation as may be required by Lender from time to time.

6.5. Other Agreements: Comply with all terms and conditions of all other Agreements, now existing or later entered, and provide written notice to Lender of any Default' in connection with any such Agreements.

6.6. Responsibilities: Perform and satisfy, in a timely fashion, all terms and conditions in this Agreement, in Related Documents, and in all other Agreements between Borrower and Lender.

6.7. Government Requirements: Comply with all laws, ordinances, and regulations now or hereafter created applicable to Borrower's properties, business, and operations. Borrower may contest such regulatory regulation so long as it is done in good faith, Lender is notified in writing and Lender's interest in Collateral is not jeopardized.

6.8. Entity And Inspection: Permit Lender's employees or agents, at reasonable times to inspect any Collateral for the Loan.

6.9. Additional Assurance: Make, executed, and deliver to Lender such Promissory Notes, mortgages, deeds of trust, Security Agreements, assignments, financing statements, instruments, documents, and other Agreements as Lender may request to secure the Loans and perfect its interest in the Collateral.

7. **INSURANCE:** Borrower for the entire Term of this Agreement, must procure and maintain fire and other risk insurance, public liability insurance, and such other insurance as Lender may require with respect to Borrower's properties and operations, in form and amounts, coverage and with providers acceptable to Lender. Borrower will deliver to Lender, upon request, the policies, or certificates of insurance in a form satisfactory to Lender. All such policies shall include an endorsement providing coverage in favor of Lender that cannot be impaired in any way by an act or omission of Borrower or any other person. Financials records and statements. Maintain its books and records in accordance with GAAP, applied on a consistent basis, and permit Lender to examine and audit Borrower's books and records at all reasonable times. Further Borrower shall provide Lender with financial statements and other supporting documentation as may be requested.

8. **INDEMNIFICATION.** Borrower agrees to defend, indemnify and hold City of Fontana, and its officials, officers, employees, agents, contractors, including Lender, free and harmless from and against any and all claims, liabilities, penalties, damages, judgments, costs, expenses, fees and interest arising from or related to any act or omission of Borrower in performing its obligations hereunder and arising out of or incident to any failure or alleged failure to comply with all applicable laws, rules or regulations, or in operating its Business, and including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. Borrower assumes all risk of liability arising from any decision not to comply with applicable laws, rules or regulations.

9.

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10. **GUARANTIES:** In the event that a Guaranty was required as a condition to approval of the Loan, the following is the Guarantor for the Borrower:

[IF APPLICABLE - Guarantor(s) Legal Name(s)] [If not applicable: Note "None"]

11. **LENDER'S OBLIGATION:** Lender shall provide funds and disbursed pursuant to the terms provided herein at the time of closing should no condition of Borrower's application amend during final review.

12. **LENDER'S EXPENSES:** All outstanding Lender expenses incurred through and after the closing date, when due (or, if no stated due date, within five (5) business days after demand by Lender).

13. **LENDER EXPENDITURES:** Where any action by Borrower would materially affect Lender's interest in the Collateral or where Borrowers should fail to comply with any provision of this Agreement or any Related Documents, Lender may take any action necessary to preserve the Collateral. The cost of any action by Lender to preserve the Collateral, not paid by Borrower, shall incur interest at the stated rate until paid by Borrower. These expenses will become a part of the Borrower's Indebtedness.

14. **BORROWER'S NEGATIVE COVENANTS:** The Borrower is prohibited from the following actions without the Lender's prior consent, during the Term of this Agreement:

14.1. Continuity of Operations. **(1)** Perform business activities different than what Borrower is presently engaged in, or **(2)** Shut down operations, merge, transfer, acquire or consolidate with another entity, sell Collateral.

14.2. Agreements. Enter into any Agreement where performance under that or this Agreement would cause a violation or breach under either Agreement.

15. **UNFORESEEN CIRCUMSTANCES:** No commitment by Lender under this Agreement or any other shall create any further obligation if any of the following occur: Borrower or any Guarantor is in "Default" under the terms of this Agreement or any of the Related Documents; Borrower or any Guarantor dies, becomes incompetent, files for bankruptcy protection, or is adjudged a bankrupt; there is a material adverse changes in Borrower's financial condition, that of any Guarantor, or in the value of the Collateral; or any Guarantor attempts to limit or revoke Guarantor's Guaranty of the Loan with Lender.

16. **DEFAULT:** In the event of a Default by the Borrower, Lender shall have all rights and remedies provided in the Related Documents or available at law, in equity, or otherwise. Lender's rights are cumulative, except as may be prohibited by law. Lender may exercise its rights singularly or concurrently as its sole option. **[Use Language if Borrower has more than 1 loan with AmPac: "Default occurs where Borrower does not meet any and all existing loan obligations and commitments including but not limited to the aforementioned loan or any loan commitment Borrower has with Lender. Where Default occurs, Lender shall have all rights and remedies provided in the Related Documents or available at law, in equity, or otherwise. Lender's rights are cumulative, except as may be prohibited by law. Lender may exercise its rights singularly or concurrently as its sole option. Where a Default occurs on any existing loan commitments between Borrower and Lender, all obligations under existing loan commitments are immediately due regardless of the prior loan obligation."]**

17. **REMEDIES IN DEFAULT:** The Lender may elect in its sole discretion to pursue and

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elect methods to recoup expenditures or to take action to fulfil an obligation of Borrower or of any Grantor. Such action shall not affect Lender's right to declare a Default' and to exercise its rights and remedies.

18. LENDER'S RIGHTS AND REMEDIES: Upon the occurrence and during the continuance of an Event of Default, Lender may, without notice or demand do any or all of the following:

18.1. Declare all obligations immediately due and payable (but in an Event of Default described in Event of Default occurs all obligations are immediately due and payable without any action by Lender);

18.2. Stop advancing money or extending credit for Borrower's benefit under this Agreement or under any other Agreement between any Loan party and Lender;

18.3. Verify the amount of demand payment of and performance under, and collect any accounts and general intangibles, settle, or adjust disputes and claims directly with account debtors for amounts on terms and in any order that Lender consider advisable, and notify any person owing a Loan party money of Lender's Security Interest in such funds;

18.4. Make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its Security Interest in the Collateral. Loan parties shall assemble the Collateral if Lender requests and make it available as Lender designates. Lender may enter premises where the Collateral is located, take, and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any lien which is prior or superior to its Security Interest and pay all expenses incurred. Each Loan party grants Lender a license to enter and occupy any of its premises, without charge, to exercise any of Lender's rights or remedies.

18.5. Apply to the obligations any amount held by Lender owing to or for the credit or the account of the Loan party;

18.6. Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Lender is hereby granted a non-exclusive, royalty-free license or other right to us, without charge, a Loan part's labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, and advertising for sale, and selling any Collateral and, in connection with Lender's exercise of its rights under this section, a Loan party's rights under all licenses and all franchise Agreements inure to Lender's benefit;

18.7. Place a "hold" on any account maintained with Lender and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any account control Agreement or similar Agreements providing control of any Collateral;

18.8. Demand and receive possession of any Borrower's books; and

18.9. Exercise all rights and remedies available to Lender under the Loan documents or at law or equity, including all remedies provided under the code (including disposal of the Collateral pursuant to the terms thereof).

19. CONFLICT OF INTEREST.

19.1. Borrower has disclosed to the Lender whether it has made any campaign

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contributions of more than \$250 to any member of the City Council for the City of Ontario ("City") or other City elected officer, within the earlier of: (1) the date of the submission of Borrower's application for the Project, or (2) twelve (12) months before the date this Agreement was approved by the City Council. Borrower acknowledges that under Government Code section 84308, Borrower is prohibited from making campaign contributions of more than \$250 to any member of the City Council or City elected officer for twelve (12) months after the Lender's consideration of the Agreement. In the event of a proposed amendment to this Agreement, Borrower will provide the Lender a written statement disclosing any campaign contribution(s) of more than \$250 to any member of the City Council or other City elected officer within the preceding twelve (12) months of the date of the proposed amendment. Campaign contributions include those made by any agent/person/entity on behalf of the Borrower or by a parent, subsidiary or otherwise related business entity of Borrower.

19.2. Except for approved eligible administrative or personnel costs, no person described in Section 19.3 below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. Borrower shall exercise due diligence to ensure that the prohibition in this Section is followed.

19.3. The conflict of interest provisions of this Section apply to any person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of the City, or any person related within the third (3rd) degree of such person.

19.4. In accordance with California Government Code Section 1090 and the Political Reform Act, California Government Code section 87100 et seq., no person who is a director, officer, partner, trustee or employee or consultant of Borrower, or immediate family member of any of the preceding, may make or participate in a decision, made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Borrower. Interpretation of this Section is governed by the definitions and provisions used in the Political Reform Act, California Government Code Section 87100 et seq., its implementing regulations manual and codes, and California Government Code Section 1090.

20. **NON-DISCRIMINATION.** Borrower, for itself and its successors and assigns, agrees that, in performing the construction of the Project, it shall not discriminate against any employee or applicant for employment because of race, color, sexual orientation and/or gender identity, creed, religion, ancestry, political affiliation or opinion, national origin, sex, physical condition, medical condition, pregnancy or pregnancy-related condition, or condition of physical or mental disability or other handicap, age, marital status, or status with regard to public assistance. Borrower will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation and selection for training,

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including apprenticeship. Borrower agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

21. **ARBITRATION:** Borrower and Lender agree that all disputes, claims, controversies, between them whether individual, joint, or class in nature, arising from this Agreement or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any Collateral shall constitute a waiver of this arbitration Agreement or be prohibited by this arbitration Agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Articles 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any Collateral, including any claim to rescind, reform, or otherwise modify any Agreement relating to the Collateral, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Borrower and Lender agree that in the event of an action for judicial foreclosure pursuant to California Code of Civil Procedure Section 726, or any similar provision in any other state, the commencement of such an action will not constitute a waiver of the right to arbitrate and the court shall refer to arbitration as much of such action, including counterclaims, as lawfully may be referred to arbitration. Judgement upon any award rendered by any arbitrator may be entered in any court having authority. Nothing in this Agreement shall preclude any party from seeking equitable relief from a court of competent authority. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

22. **GOVERNING LAW:** This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of California without regard to its conflict of law provisions. The Lender in the State of California have accepted this Agreement.

23. **VENUE:** Borrower agrees to submit to the authority of the courts of San Bernardino County, State of California.

24. **NOTICES:** Any notice required to be given under this Agreement shall be given in writing, and shall be effective when delivered, when received by tele-facsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's

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current address. Unless otherwise provided or required by law, if there is more than one Borrower, any notice given by Lender to any Borrower is deemed to be notice given to all Borrowers. Notices shall be sent as follows:

If to Borrower:

[name]

Attn:

[address]

[address]

If to Lender:

AmPac

Attn:

With a copy to:

City of Fontana

Attn:

25. **SEVERABILITY:** If a court of competent authority finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, which finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid, and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity, or enforceability of any other provision of this Agreement.

26. **ATTORNEYS' FEES AND EXPENSES:** Borrower agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorney fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Borrower's obligation is created whether there is a lawsuit. Borrower also shall pay all court costs and such additional fees as may be directed by the court.

27. **FINAL AGREEMENT:** This Agreement, together with any Related Documents constitutes the entire understanding and Agreement of the parties as to the matters set forth herein. Only a written amendment signed by the party or parties to be bound will be binding.

28. **CAPTION HEADINGS:** Caption headings in this Agreement are for convenience purposes only and are not to be used to define or interpret this Agreement.

29. **CONSENT TO LOAN PARTICIPATION:** Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Loan to one or more purchasers, whether related or unrelated to Lender. Lender may provide, without any limitation, to anyone or more purchaser, or potential purchaser, any information or knowledge about Borrower or the Loan, and Borrower waives any rights to privacy with respect to such matters. Borrower additionally waives all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interest will be considered as absolute owners of such

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interests in the Loan and have all the rights under the participation Agreement or Agreements governing the sale of such participation interests.

30. **WAIVER BY BORROWER:** Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligation under the Loan irrespective of the failure or insolvency of any holder of any interest in the Loan. Borrower further agrees that the purchaser of any such participation interests may enforce its interests irrespective of any personal claims or defenses that Borrower may have against Lender.

31. **NO WAIVER BY LENDER:** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice the or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Borrower, or between Lender and Grantor, shall constitute a waiver of any Lender's rights or of any of Borrower's or any Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

32. **SUBSIDIARIES AND AFFILIATES OF BORROWER:** To the extent the context of any provisions of this Agreement makes it appropriate, including without limitation any representation, warranty or covenant, the word "Borrower" as used in this Agreement shall include all of Borrower's subsidiaries and affiliates. Notwithstanding the foregoing however, under no circumstances shall this Agreement be construed to require Lender to make any Loan or other financial accommodation to any of Borrower's subsidiaries or affiliates.

33. **SUCCESSOR AND ASSIGNS:** All covenants and Agreements by or on behalf of Borrower contained in this Agreement or any Related Documents shall bind Borrower's successors and assigns and shall inure to the benefit of Lender and its successors and assigns. Borrower shall not, however, have the right to assign Borrower's rights under this Agreement or any interest therein, without the prior written consent of Lender.

34. **SURVIVAL OF REPRESENTATIONS AND WARRANTIES:** Borrower understands and agrees that in extending unforeseen circumstances, Lender is relying on all representations, warranties, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Agreement or the Related Documents. Borrower further agrees that regardless of any investigation made by Lender, all such representations, warranties, and covenants will survive the extension of continuing in nature, shall be deemed made and then dated by Borrower at the time each Loan Advance is made, and shall remain in full force and effect until such time as Borrower's Indebtedness shall be paid in full, or until this Agreement shall be terminated in the manner provided above, whichever is the last to occur.

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TIME IS OF THE ESSENCE: TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS BUSINESS LOAN AGREEMENT. BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS BUSINESS LOAN AGREEMENT BORROWER AGREES TO ITS TERMS.

(Signature provisions on following page)

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IN WITNESS WHEREOF, the Borrower and Lender have executed this Business Loan Agreement as of the date provided below.

THIS BUSINESS LOAN AGREEMENT IS DATED: [DATE].

BORROWER:

[Borrower's Legal Name]

[Signer(s) Legal Name(s), and Title(s)]

LENDER:

AmPac Tri-State CDC, Inc. dba AmPac Business Capital

Hilda J. Kennedy, Executive Director