

LOAN AGREEMENT

Public Wi Fi Antenna Installation

by and between

THE CITY OF SAN LEANDRO

and

TRUST OF SUNG H PASKEWITZ

100 Pelton Way

APN: 077 0545 032 01

Exhibits

- A Project - Description of Work
- B Insurance Requirements
- C Promissory Note

LOAN AGREEMENT

Public WiFi Antenna Installation

This Loan Agreement (this “**Agreement**”) is entered into effective as of _____, 2015 (the “**Effective Date**”) by and between TRUST OF SUNG H PASKEWITZ (the “**Owner**”) and the City of San Leandro, a public body corporate and politic (the “**City**”). City and Owner are hereinafter collectively referred to as the **Parties.**”

RECITALS

A. Owner is located at 100 Pelton Way in the City of San Leandro, known as Alameda County Assessor’s Parcel No. 077 0545 032 01 (the “**Property**”) and more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference. Owner owns the Property and the improvements located thereon (the “**Improvements**”).

B. The City and Owner engaged in negotiations to participate in a public-private partnership to construct and operate a free, public wireless Internet network in Downtown San Leandro and, to that end, have identified the Pelton Center sign as an optimal location for a wireless antenna to support this network.

C. Owner will agree to fund the installation of an antenna on the Property and City agrees to provide a loan (the “**Loan**”) pursuant to the terms and conditions set forth herein, and to provide technical assistance when necessary, for the purpose of supporting this public-private partnership development of a wireless Internet network as more particularly described in the attached Exhibit A (the “**Project**”).

D. The City has determined that development of a free, public wireless Internet network in Downtown San Leandro will serve the public interest by encouraging residents, employees and visitors to spend time in Downtown San Leandro and patronize local businesses.

E. Concurrently herewith Owner shall execute a promissory note (the “**Note**”) in the amount of the Loan. 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. City agrees to loan to Owner, and Owner agrees to borrow from and, subject to the provisions of Section 1.2.1, repay to City, no more than thirty eight thousand dollars (\$38,000). The Loan shall be evidenced by the Note which

shall be dated as of the Effective Date and executed by Owner substantially in the form attached hereto as Exhibit C. Provided that Owner has complied with all conditions set forth in Section 2.3, the Loan Proceeds shall be disbursed in accordance with Section 2.2 hereof. The Parties agree that the City shall disburse Loan Proceeds only for and to the extent necessary for the purposes set forth in Section 2.1.

1.2 INTEREST RATE; REPAYMENT; LOAN FORGIVENESS. The outstanding principal balance of the Note shall bear interest at the rate of three percent (3%) simple interest per annum. Provided that Owner is not in default under the Loan Documents, no payments shall be due on the Loan. 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 upon the occurrence of an Event of Default.

1.2.1 LOAN FORGIVENESS. One hundred and eighty (180) days after the Effective Date, the entire outstanding balance of the Loan, together with accrued interest, shall be forgiven, provided that no Event of Default has arisen under the Loan Documents.

1.3 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 but unpaid to the date of receipt of prepayment. Prepayments shall be applied first to accrued but unpaid interest and then to principal. In no event shall any amount due under the Note become subject to any rights of offset, deduction or counterclaim on the part of Owner.

ARTICLE II

USE AND DISBURSEMENT OF PROCEEDS

2.1 USE OF PROCEEDS. Owner shall use the proceeds of the Loan (“**Loan Proceeds**”) solely and exclusively to pay for costs billed to Owner by third-parties in connection with the construction of the Project (as described in Exhibit A) and such other costs related to the Project as City may approve in writing.

2.2 DISBURSEMENT OF PROCEEDS. Upon satisfaction of the conditions set forth in Section 2.3, and delivery of copies of bills and invoices from third parties City shall disburse Loan Proceeds to Owner .

2.3 CONDITIONS PRECEDENT TO DISBURSEMENT OF PROCEEDS.

City’s obligation to disburse the Loan Proceeds is conditioned upon the satisfaction of all of the following conditions:

(a) Owner’s delivery to City of each of the following documents, fully-executed and acknowledged as applicable: (i) the Note, (ii) copies of bills, invoices, etc. from third parties and (iii) this Agreement;

(b) Owner's delivery to the City of evidence of insurance coverage in accordance with the requirements set forth in Exhibit B attached hereto;

(e) No material adverse change as determined by City in its reasonable judgment shall have occurred in the condition of the Property or the Improvements since the date of this Agreement.

2.4 NO OBLIGATION TO DISBURSE PROCEEDS UPON DEFAULT.

Notwithstanding any other provision of this Agreement, the City shall have no obligation to disburse the Loan Proceeds upon the occurrence of an Event of Default under the Loan Documents.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Owner's Representations. Owner represents and warrants to City as follows, and Owner covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 3.1 not to be true, Owner shall immediately give written notice of such fact or condition to City. Owner acknowledges that City shall rely upon Owner's representations made herein notwithstanding any investigation made by or on behalf of City.

(a) LEGAL STATUS; AUTHORITY; OWNERSHIP. Owner is a legal entity, duly organized and in good standing under the laws of the State of California. Owner has the full right, power and authority to undertake the Project and to execute, deliver and perform all obligations of Owner under the Loan Documents. Owner's execution, performance and delivery of the Loan Documents have been duly authorized by all requisite actions. The persons executing this Agreement on behalf of Owner have been duly authorized to do so. This Agreement and the other Loan Documents constitute valid and binding obligations of Owner, enforceable in accordance with their respective terms. Owner has a valid ownership interest in the Property and operates the Business thereon.

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

(c) AUTHORIZATION. The Loan Documents and the transactions contemplated thereby have each been duly authorized by Owner, and when executed and delivered will each constitute a valid and binding obligation of Owner, enforceable in accordance with the respective terms thereof. The persons executing the Loan Documents on behalf of Owner have been duly authorized to do so. Owner has obtained all required consents for the Project, including without limitation the consent of the owner of the Property.

(d) NO LITIGATION OR OTHER PROCEEDING. There are no pending or to Owner's knowledge, threatened actions or proceedings before any court or administrative agency which may adversely affect the financial condition or operation of Owner or Owner's development of the Project and ownership of the Property and the Improvements.

(e) NO BANKRUPTCY. Owner is not the subject of a bankruptcy or insolvency proceeding.

(f) COMPLIANCE WITH LAWS. Owner is in compliance in all material respects with all local, state and federal laws, rules, regulations, orders and decrees which are applicable to the Business, the Property or to Owner in relation thereto ("**Applicable Law**") including without limitation, all environmental, health and safety and employment laws. Owner has received no notice from any governmental authority regarding any threatened or pending zoning, building, fire, or health code violation or violation of other governmental regulations concerning the Property that has not been corrected, and no condition on the Property violates any Applicable Law.

ARTICLE IV

AFFIRMATIVE COVENANTS

4.1 USE OF FUNDS; CONSTRUCTION SCHEDULE. Owner covenants that it shall use the Loan Proceeds solely for the purpose of financing the Project in accordance with Section 2.1.

4.2 ACCOUNTING RECORDS; PROPERTY INSPECTION. Owner shall maintain accurate books and records with respect to the completion of the Project and the use of the Loan Proceeds.

4.3 COMPLIANCE WITH LAWS. Owner shall comply with all federal, state and local laws, regulations, ordinances and rules applicable to the Property and the Project.

4.4 INSURANCE. Owner shall maintain and keep in force at Owner's expense, insurance coverage with respect to the Project and the Property in accordance with the requirements set forth in Exhibit B attached hereto and incorporated herein. Owner shall require all third-party contractors engaged in work on the Project to maintain a commercial liability policy in accordance with the requirements set forth in Exhibit B.

4.5 INDEMNIFICATION. Owner shall indemnify, defend (with counsel reasonably acceptable to City), and hold harmless the City and its respective elected and appointed officials, officers, agents, and employees (collectively "**Indemnitees**"),

from and against, and shall pay on demand, any and all losses, liabilities, damages, costs, claims, demands, penalties, fines, orders, judgments, injunctive or other relief, expenses and charges (including attorneys' fees and expenses of attorneys) (collectively "**Liabilities**") arising directly or indirectly in any manner in connection with or as a result of (a) any breach of Owner's covenants under the Loan Documents, (b) any failure of Owner'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 the Property, whether caused by the negligence or any other act or omission of Owner 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 the Property, the Project, the Loan, the Loan Documents, or any transaction contemplated thereby, or any failure of Owner to comply with all applicable state, federal and local laws and regulations, including without limitation, applicable provisions of the California Building Standards Code, the Prevailing Wage Laws, and the Americans with Disabilities Act in connection with the construction or operation of the Project, provided that no Indemnitee shall be entitled to indemnification under this Section 4.6 for matters caused by such Indemnitee's gross negligence or willful misconduct. The obligations of Owner under this Section shall survive the expiration or termination of this Agreement.

4.6 PREVAILING WAGES. Owner shall pay and shall cause Owner's contractor and subcontractors to pay prevailing wages in the construction of the Project as those wages are determined pursuant to Labor Code Section 1720 *et seq.* and the regulations adopted pursuant thereto ("**Prevailing Wage Laws**") and shall comply or shall cause the contractor and subcontractors to comply with all other applicable provisions of the Prevailing Wage Laws. Owner shall maintain or shall cause the contractor and subcontractors to maintain such records as are necessary to determine if prevailing wages have been paid as required pursuant to the Prevailing Wage Laws during the construction of the Project. Owner shall cause the contractor to post at the Property the applicable prevailing rates of per diem wages. Owner shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against all Liabilities which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code sections 1726 and 1781), the failure to comply with all applicable state and federal labor laws, regulations and standards in connection with the construction of the Project, including but not limited to the Prevailing Wage Laws, or any act or omission of Owner or Owner's contractors and subcontractors with respect to the payment or requirement of payment of prevailing wages, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not, and shall not, waive any rights against Owner which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City, of any

of the insurance policies described in this Agreement. The provisions of this Section shall survive the expiration or termination of this Agreement.

ARTICLE V

EVENTS OF DEFAULT

The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

- (a) Owner removes the Improvements from the Property.
- (b) Owner fails to maintain insurance as required pursuant to the Loan Documents, and Owner fails to cure such default within 15 days.
- (c) Any representation or warranty contained in this Agreement or any certificate furnished in connection with the Loan 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.
- (d) Owner 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 ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which City shall have given written notice of the default to Owner (or such longer time as City may agree upon in writing), provided that in each case Owner commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith.
- (e) If an Event of Default shall have been declared under any other Loan Document, subject to the expiration of any applicable cure period set forth in such documents.

ARTICLE VI

REMEDIES

6.1 REMEDIES AND RIGHTS UPON DEFAULT. Upon the occurrence of an Event of Default and the expiration of any applicable cure period, City shall have all remedies available to it under law or equity, including, but not limited to the following, and City may, at its election, without notice to or demand upon Owner, 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) Pursue any and all other remedies available under law to enforce the terms of the Loan Documents and City'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. The City 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.** Except as otherwise specified in this Agreement, 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.

City: City of San Leandro
835 East 14th Street
San Leandro CA 94577
Attn: Jeff Kay

Owner: TRUST OF SUNG H PASKEWITZ
110 Pelton Way
San Leandro, CA 94577
Attn: Sung Paskewitz

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 laws of the State of California without regard to principles of conflicts of laws. The Parties agree that any action to enforce or interpret this Agreement shall be litigated exclusively in courts having jurisdiction in Alameda County. Owner 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 City 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 Owner 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 Owner in any case shall entitle the Owner to any other or further notice or demand in similar or other circumstances. No amendment to this Agreement shall be effective unless and until such amendment 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, City's obligation to make the Loan is personal to Owner, and shall not be assignable by Owner by operation of law or otherwise absent the express written consent of City, 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. Exhibits A through C attached hereto are incorporated herein by reference as though fully set forth herein.

7.14 PUBLIC AGENCY STATUS. Owner recognizes and agrees that City is not a commercial lending institution, but a public agency exercising its authority to protect the public health, safety and welfare. Any duties or obligations which a commercial lending institution may have to Owner shall not apply to this transaction except as set forth herein and in the Loan Documents.

7.15 ACTION BY THE CITY. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, or consent by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the City governing board.

7.16 NON-LIABILITY OF CITY OFFICIALS, EMPLOYEES AND AGENTS. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest to any of the foregoing in the event of any default or breach by the City, or for any amount of money which may become due to Owner or Owner's successor in interest or for any obligation of City under this Agreement.

SIGNATURES ON NEXT PAGE

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

OWNER:

TRUST OF SUNG H PASKEWITZ

Print Name

CITY:

CITY OF SAN LEANDRO

Chris Zapata, City Manager

Attest:

Marian Handa, City Clerk

Approved as to budget authority:

David Baum, Finance Director

Approved as to form:

Richard Pio Roda, City Attorney

Account Number

Exhibit A

PROJECT

Scope of work per attached:

Maximum City Reimbursement:

\$38,000

Exhibit B

INSURANCE REQUIREMENTS

Unless City agrees otherwise in writing, Owner shall, at Owner's sole cost and expense, throughout the term of the Note dated as of the date hereof and executed by Owner for the benefit of City (the "**Note**") shall keep and maintain the following policies of insurance. Capitalized terms used without definition in this Exhibit B shall have the meaning ascribed to such terms in the Loan Agreement of which this Exhibit is a part.

A. Property Insurance. Insurance for the risks of direct physical loss, with minimum coverage being the perils insured under the standard Causes of Loss - Special form (ISO Form CP 10 30) or its equivalent, covering all Improvements located on or in, or constituting a part of, the Property, in an amount equal to one hundred percent (100%) of the full replacement cost of all such property.

B. Liability Insurance. Commercial general liability insurance on an "occurrence basis" covering all claims with respect to injury or damage to persons or property occurring on, in or about the Property or the Improvements. Commencing upon the Effective Date of the Loan Agreement and at all times prior to repayment of all sums payable under the Note, the limits of liability under this Paragraph B shall be not less than One Million Dollars (\$1,000,000) combined single limit per occurrence.

E. General Insurance Provisions. All policies of insurance provided for in this Exhibit shall be provided under valid and enforceable policies, in such forms and amounts as hereinbefore specified, issued by insurers licensed to do business in the State of California (or approved to do business in California and listed on the California Department of Insurance list of Eligible Surplus Lines Insurers or successor listing) and having a rating of A/VII or better in Best Insurance Guide or, if Best Insurance Guide is no longer in existence, a comparable rating from a comparable rating service. Prior to the closing of the Loan, and thereafter, not less than thirty (30) days prior to the expiration date of each policy furnished pursuant to this Exhibit, Owner shall deliver to City certificates evidencing the insurance required to be carried by Owner under this Exhibit.

F. Modification to Requirements. The risk manager of the City may approve a variation in those insurance requirements upon a determination that the coverages, scope, limits and forms of such insurance are either not commercially available or that the City's interests are otherwise fully protected.

Exhibit C

FORM OF PROMISSORY NOTE

(Attached)

PROMISSORY NOTE

\$ 38,000

San Leandro, California
_____, 2015

FOR VALUE RECEIVED, TRUST OF SUNG H PASKEWITZ (“**Owner**”) promises to pay to the City of San Leandro, a public body, corporate and politic (“**City**”), in lawful money of the United States of America, the principal sum of not more than thirty eight thousand dollars (\$38,000), or so much thereof as may be advanced by City pursuant to the Loan Agreement referred to below, in accordance with the terms and conditions described herein.

This Promissory Note (this “**Note**”) has been executed and delivered pursuant to a Loan Agreement dated as of the date hereof by and between Owner and City (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.

1. INTEREST RATE; REPAYMENT; LOAN FORGIVENESS. The outstanding principal balance of this Note shall bear interest at the rate of three percent (3%) simple interest per annum. Provided that Owner is not in default under the Loan Documents, no payments shall be due on this Note.

1.1 LOAN FORGIVENESS. On the 180th day after the Effective Date of this Note, the entire outstanding balance of this Note, together with accrued interest, shall be forgiven, provided that no Event of Default has arisen under the Loan Documents.

1.2 DUE ON DEFAULT. The entire unpaid principal balance and all sums accrued hereunder shall be immediately due and payable upon the occurrence of an Event of Default under the Loan Documents, subject to the expiration of any applicable cure period.

1.3 PREPAYMENT. Owner 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. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, if any, and then to principal. In no event shall any amount due under this Note become subject to any rights of offset, deduction or counterclaim on the part of Owner.

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

2. DEFAULTS.

2.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

- (a) Owner removes the Improvements from the Property.
- (b)
- (c) Owner fails to maintain insurance as required pursuant to the Loan Documents, and Owner fails to cure such default within 15 days.
- (d) Any representation or warranty contained in this Agreement or any certificate furnished in connection with the Loan 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.
- (e) Owner defaults in the performance of any term, provision, covenant or agreement (other than an obligation enumerated in this Section 2 contained in this Note or in any other Loan Document, and unless such document specifies a shorter cure period for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which City shall have given written notice of the default to Owner (or such longer time as City may agree upon in writing), provided that in each case Owner commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith.
- (f) If an Event of Default shall have been declared under any other Loan Document, subject to the expiration of any applicable cure period set forth in such documents.

2.2 REMEDIES. Upon the occurrence of an Event of Default hereunder, City may, at its option (i) by written notice to Owner, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon and all sums due hereunder, immediately due and payable regardless of any prior forbearance, (ii) exercise any and all rights and remedies available to it under applicable law, and (iii) exercise any and all rights and remedies available to City under this Note and the other Loan Documents. Owner shall pay all reasonable costs and expenses incurred by or on behalf of City including, without limitation, reasonable attorneys' fees, incurred in connection with City's enforcement of this Note and the exercise of any or all of its rights and remedies hereunder.

3. MISCELLANEOUS.

3.1. WAIVER. The rights and remedies of City under this Note shall be cumulative and not alternative. No waiver by City of any right or remedy under this Note shall be effective unless in a writing signed by City. 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 City 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 City arising out of this Note can be discharged by City, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing, signed by City; (b) no waiver that may be given by City will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on Owner will be deemed to be a waiver of any obligation of Owner or of the right of City to take further action without notice or demand as provided in this Note. Owner 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.

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

3.3. 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.

3.4. GOVERNING LAW; VENUE. This Note shall be governed by the laws of the State of California without regard to principles of conflicts of laws. All persons and entities in any manner obligated under this Note agree that any action to enforce or interpret this Note shall be litigated exclusively in courts having jurisdiction in Alameda County. 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.

3.5. PARTIES IN INTEREST. This Note shall bind Owner and its successors and assigns and shall accrue to the benefit of City and its successors and assigns.

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

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

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

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

OWNER

TRUST OF SUNG H PASKEWITZ

Print Name: _____

2411821.1