



AGENDA
NEWMAN REDEVELOPMENT SUCCESSOR AGENCY
OVERSIGHT BOARD
REGULAR MEETING SEPTEMBER 13, 2012
CITY COUNCIL CHAMBERS, 3:30 P.M., 1200 MAIN STREET

1. **Call To Order.**
2. **Roll Call.**
3. **Items from the Public - Non-Agenda Items.**
4. **Approval Of Minutes From The August 9, 2012 Meeting.**
5. **Regular Business**
 - a. Adopt Resolution No. 2012- , A Resolution Of The Newman Redevelopment Successor Agency Oversight Board, Approving A Real Property Purchase And Sale Agreement And Joint Escrow Instructions For The Sale Of Property Located At 2161 L Street, Newman, California And Authorizing The Executive Director To Execute The Required Documents.
6. **Items From Board Members.**
7. **Items From The City Manager And Staff.**
8. **Adjournment.**



MINUTES
NEWMAN REDEVELOPMENT SUCCESSOR AGENCY
OVERSIGHT BOARD
REGULAR MEETING AUGUST 9, 2012
CITY COUNCIL CHAMBERS, 3:30 P.M., 1200 MAIN STREET

1. **Call To Order** – Board Member Hutchins 3:33 P.M.
2. **Roll Call - PRESENT:** Jim DeMartini, Hunewill, Lucas, Ocasio And Hutchins.
ABSENT: Anne DeMartini, Felt (Excused).
3. **Items from the Public - Non-Agenda Items – None.**

4. **Approval Of Minutes From The May 10, 2012 Meeting**

ACTION: On Motion By Ocasio Seconded By J. DeMartini And Unanimously Carried, The Minutes From The May 10, 2012 Meeting Were Approved.

5. **Regular Business**

- a. Adopt Resolution No. 2012-3, A Resolution Of The Newman Redevelopment Successor Agency Oversight Board Approving A Recognized Obligation Payment Schedule (ROPS) Pursuant To Health And Safety Code Section 34177(m).

Finance Director Humphries Reviewed The Recognized Obligation Payment Schedule (ROPS).

Hutchins Questioned Why There Was A Six Month Gap In The ROPS Dates.

Finance Director Humphries Noted That The Current Period Was Excluded And Due to Be Reported After The Period Had Concluded.

ACTION: On Motion By Lucas Seconded By Hunewill And Unanimously Carried, Resolution No. 2012-3, A Resolution Of The Newman Redevelopment Successor Agency Oversight Board Approving A Recognized Obligation Payment Schedule Pursuant To Health And Safety Code Section 34177(m), Was Adopted.

- b. Adopt Resolution No. 2012- , A Resolution Of The Newman Redevelopment Successor Agency Oversight Board Approving The Sale Of Real Property And Authorizing The Executive Director To Execute The Required Documents.

Hutchins Noted That This Property Is In Merced County And Questioned If The City Would Receive Tax Revenues From Said Property.

Executive Director Holland Explained That The City Has A Revenue Sharing Agreement In Place With Merced County. Holland Noted That A Resolution Was Not Needed At This Time After All But Instead Asked The Board To Agree To Accept The Terms Of The Sale And Authorized Staff To Draft A Purchase Agreement.

ACTION: On Motion By Lucas Seconded By Ocasio And Unanimously Carried, The Board Approved The Terms Of The Sale And Authorized Staff To Draft A Purchase Agreement.

6. Items From The City Manager And Staff.

Finance Director Humphries Reported That AB 1444 Had Passed, Allowing The City To Be Reimbursed For Administration Costs As Well As Prior RDA Funding Arrangements.

7. Adjournment.

ACTION: On Motion By Hutchins Seconded By Ocasio And Unanimously Carried, The Meeting Was Adjourned At 4:04 P.M.

Honorable Chairman and Members of the
Newman Successor Agency Oversight Board

**RESOLUTION NO. 2012- . APPROVING A REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS FOR THE SALE OF PROPERTY LOCATED AT 2161 L
STREET, NEWMAN, CALIFORNIA**

RECOMMENDATION:

It is recommended that the Oversight Board adopt Resolution No. 2012- approving a real property purchase and sale agreement and authorize the Executive Director to execute the required documents.

BACKGROUND:

Pursuant to AB1X26, the Successor Agency is charged to “Dispose of assets and properties for the former Redevelopment Agency as directed by this Oversight Board. The disposal is to be done expeditiously and in a manner aimed at maximizing value.” The proposed buyer was in discussion with the Redevelopment Agency prior to the passage of AB1X26 to purchase said the property. However, a deal was not completed prior to its passage and the deal has been delayed.

The proposed buyer still remains interested in moving forward. In an effort to expedite the process, I recommended the buyer pay to have an appraisal prepared (attached). The proposed price for the sale is based upon this report.

On August 28th, 2012, the Successor Agency adopted a Resolution approving the purchase agreement and sale of property. As of this date, staff is posting the agenda to comply with State standards regarding the disposal of former redevelopment assets.

ANALYSIS:

On July 10th, staff met with prospective buyer Ms. Carolyn Beach regarding the appraisal and structuring of a purchase agreement. Based upon this meeting, the proposed terms are outlined within the Purchase and Sale Agreement of the purchase:

Purchase price:	\$290,000 (Appraised value)
Appraisal fee:	- 1,800
Total purchase price	\$288,200
Down Payment	- 28,820
Agency loan amount	\$259,380
Interest rate on loan	3.500%
Monthly payments	\$3,999.22
Balloon Payment Yr. 3	\$140,481.96
Total interest collected	\$21,074.66

The preceding terms show a three year loan agreement in which the buyer will pay full appraised value; minus the price of the appraisal. The buyer will provide a down payment equal to 10% of the total purchase price. In return, the Agency agrees to finance the remaining amount (\$259,380). The loan amount will be amortized over six years; with the buyer agreeing to make monthly payments in the amount of \$3,999.22 with a balloon payment of \$140,481.96 after three years. At the end of three years, the buyer has included language that would allow the agency to accept the balloon payment or continue to receive monthly payments for an addition three years.

CEQA

The proposed Resolution does not commit the Oversight Board to any actions that may have a significant effect on the environment. As a result, this action does not constitute a project subject to the requirements of the California Environmental Quality Act.

FISCAL IMPACT:

There is no impact to the Oversight Board. Proceeds from the sale will be used to pay down the Agency's debt.

CONCLUSION:

Staff recommends that the Oversight Board adopt Resolution No. 2012- approving the sale of real property purchase and sale agreement and joint escrow instructions for the sale of property located at 2161 L Street.

ATTACHMENTS:

1. Resolution No. 2012-
2. Exhibit A – Purchase and Sale Agreement

Respectfully submitted,



Michael E. Holland
Executive Director

RESOLUTION NO. 2012-

RESOLUTION OF THE NEWMAN REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD, APPROVING A REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS FOR THE SALE OF PROPERTY LOCATED AT 2161 L STREET, NEWMAN, CALIFORNIA

WHEREAS, the Newman Redevelopment Agency (“Agency”) owned that certain real property consisting of approximately 3.36 acres of real property located at 2161 L Street in the City of Newman (Merced County APN 054-220-0001) (the “Site”), more specifically defined in Section 1 of this Agreement; and

WHEREAS, pursuant to AB 1X 26, which took effect June 29, 2011, and the decision of the California Supreme Court in *California Redevelopment Association et al., v. Ana Matosantos, et al.* (Case No. S194861), all redevelopment agencies were deemed dissolved on February 1, 2012; however, pursuant to the authority provided in Health and Safety Code Section 34173, as enacted by AB 1X 26, the City Council of the City of Newman (“City”) at its regular meeting of January 10, 2012, elected and determined that the City should become the “successor agency” to the former Newman Redevelopment Agency, and upon dissolution of the Agency under AB 1X 26, all authorities, rights, powers, duties and obligations previously vested with the former Agency, under the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.), were vested in the Successor Agency; and

WHEREAS, Health and Safety Code Section 34177, added by AB 1X 26, requires the Successor Agency to wind down the affairs of the former redevelopment agency, including disposing of assets and properties of the former agency, expeditiously and in a manner aimed at maximizing value; and

WHEREAS, Carolyn Beach (“Buyer”) is a co-owner of Westside Pallet, Inc., a pallet manufacturing facility located adjacent to the Site, and has submitted a proposal to the Successor Agency to acquire the Site for expansion of the business operations at Westside Pallet, at a price equal to the fair market value of the property; and

WHEREAS, sale of the Site and the development and use of the Site for expansion of an existing business will result in redevelopment and reuse of a currently vacant and underutilized parcel of land, expansion of an existing long-running commercial business within the City, increased employment opportunities within the City, and additional property taxes and sales taxes produced from the Site, which will result in future revenues for the benefit to the City and the other affected taxing agencies that will receive property taxes generated from the Site, as well as comply with the provisions of Health and Safety Code Section 34177 requiring the disposal of properties of the former agency, expeditiously and in a manner aimed at maximizing value; and

WHEREAS, the Successor Agency and Buyer have cooperated in the preparation of a Real Property Purchase and Sale Agreement and Joint Escrow Instructions (the “Purchase Agreement”) setting out the terms and conditions for the sale of the Site to Buyer;

NOW, THEREFORE, THE NEWMAN REDEVELOPMENT NEWMAN REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD OVERSIGHT BOARD TO THE FORMER NEWMAN REDEVELOPMENT AGENCY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1.

Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2.

Approval of Purchase Agreement. The Newman Redevelopment Newman Redevelopment Successor Agency Oversight Board hereby approves the Purchase Agreement in substantially the form currently on

file with the City Clerk, subject to any minor, clarifying or conforming changes as may be approved by counsel to the Newman Redevelopment Newman Redevelopment Successor Agency Oversight Board Oversight Board. Subject to approval by the Oversight Board and the State Department of Financing, pursuant to Health and Safety Code Sections 34181 and 34179, the Chairman of the Newman Redevelopment Newman Redevelopment Successor Agency Oversight Board Oversight Board, or his or her designee, is authorized and directed to execute the Purchase Agreement on behalf of the Newman Redevelopment Newman Redevelopment Successor Agency Oversight Board Oversight Board, and to take such further actions and execute such further documents as are necessary to carry out the obligations of the Newman Redevelopment Newman Redevelopment Successor Agency Oversight Board Oversight Board under the Purchase Agreement, including without limitation, execution and delivery of the Grant Deed, acceptance of the Note and Deed of Trust provided for under the Purchase Agreement.

Section 3.

Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Newman Redevelopment Newman Redevelopment Successor Agency Oversight Board Oversight Board declares that the Newman Redevelopment Newman Redevelopment Successor Agency Oversight Board Oversight Board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

Section 4.

Certification. The City Clerk of the City of Newman, acting on behalf of the Newman Redevelopment Newman Redevelopment Successor Agency Oversight Board Oversight Board as its Secretary, shall certify to the adoption of this Resolution.

Section 5.

Effective Date. This Resolution shall be effective immediately following its adoption.

Section 6.

Review and Approval by Oversight Board. Following adoption of this Resolution, the Purchase Agreement shall be submitted to the Oversight Board for approval pursuant to Health and Safety Code Section 34181.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City of Newman Redevelopment Successor Agency Oversight Board to the Former Newman Redevelopment Agency on the 13th day of September, 2012, by the following vote:

AYES:
NOES:
ABSENT:

APPROVED:

Chairman of the Newman Redevelopment
Successor Agency Oversight Board

ATTEST:

Secretary of the Newman Redevelopment
Successor Agency Oversight Board

**REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS
(2161 L Street, Newman, CA)**

by and between the

**SUCCESSOR AGENCY TO THE FORMER
NEWMAN REDEVELOPMENT AGENCY**

and

WESTSIDE PALLET, INC.

[Dated as of _____, 2012, for reference purposes only]

**REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW
INSTRUCTIONS
(2161 L Street, Newman, CA)**

This REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (2161 L Street, Newman, CA) (“**Agreement**”) is dated as of _____, 2012, for reference purposes only, and is entered into by and between the SUCCESSOR AGENCY TO THE FORMER NEWMAN REDEVELOPMENT AGENCY (“**Seller**” or “**Successor Agency**”), and WESTSIDE PALLET, INC., a _____ (“**Buyer**”). Seller and Buyer enter into this Agreement with reference to the following recitals of fact (each, a “**Recital**”):

RECITALS

A. The Newman Redevelopment Agency (“Agency”) owned that certain real property consisting of approximately _____ acres of real property located at 2161 L Street in the City of Newman (APN _____) (the “**Site**”), more specifically defined in Section 1 of this Agreement.

B. Pursuant to AB 1X 26, which took effect June 29, 2011, and the decision of the California Supreme Court in *California Redevelopment Association et al., v. Ana Matosantos, et al.* (Case No. S194861), all redevelopment agencies were deemed dissolved on February 1, 2012. However, pursuant to the authority provided in Health and Safety Code Section 34173, as enacted by AB 1X 26, the City Council of the City of Newman (“City”) adopted Resolution No. _____ electing and determining that the City shall become the “successor agency” to the former Newman Redevelopment Agency, and upon dissolution of the Agency under AB 1X 26, all authorities, rights, powers, duties and obligations previously vested with the former Agency, under the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.), were vested in the Successor Agency.

C. Health and Safety Code Section 34177, added by AB 1X 26, requires the Successor Agency to wind down the affairs of the former redevelopment agency, including disposing of assets and properties of the former agency, expeditiously and in a manner aimed at maximizing value.

D. Buyer owns and operates a pallet manufacturing facility located adjacent to the Site, and has submitted a proposal to the Successor Agency to acquire the Site for expansion of Buyer’s business operations. Buyer is proposing to purchase the Site for a price equal to the fair market value of the property. In addition, development and use of the Site in accordance with this Agreement will result in redevelopment and reuse of a currently vacant and underutilized parcel of land, expansion of an existing long-running commercial business within the City, increased employment opportunities within the City, and additional property taxes and sales taxes produced from the Site, which will result in future revenues for the benefit to the City and the other affected taxing agencies that will receive property taxes generated from the Site.

E. Seller and Buyer desire to enter into this Agreement to provide for Buyer’s acquisition of the Site at its “as is” fair market value of the fee simple estate.

1.1.10 **Claim.** Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and, if an Indemnitor improperly fails to provide a defense for an Indemnitee, then Legal Costs of the Indemnitee) and any judgment.

1.1.11 **Close of Escrow.** The first date on which the Escrow Agent has filed the Seller Deed with the County for recording in the official records of the County.

1.1.12 **County.** The County of Stanislaus, California.

1.1.13 **Default.** An Escrow Default, a Monetary Default or a Non-Monetary Default.

1.1.14 **Deposit.** Five Thousand Dollars and No Cents (\$5,000.00).

1.1.15 **Due Diligence Completion Notice.** A written notice from Buyer delivered to both Seller and Escrow Agent, prior to the end of the Due Diligence Period, indicating Buyer's unconditional acceptance of the condition of the Site or indicating Buyer's rejection of the condition of the Site and refusal to accept a conveyance of title to the Site, describing in reasonable detail the actions that Buyer reasonably believes are indicated to allow Buyer to unconditionally accept the condition of the Site.

1.1.16 **Due Diligence Investigations.** Buyer's due diligence investigations of the Site to determine the suitability of the Site, including investigation of the environmental and geotechnical suitability of the Site, as deemed appropriate in the discretion of Buyer, all at the sole cost and expense of Buyer.

1.1.17 **Due Diligence Period.** The time period of sixty (60) continuous days commencing on the day immediately following the Escrow Opening Date.

1.1.18 **Environmental Claim.** Any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements or expenses, including Legal Costs and fees and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or Hazardous Substance Discharge.

1.1.19 **Environmental Laws.** All Federal, State, local (including City) laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any government authority, now in effect or enacted after the Effective Date, regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use or pertaining to occupational health or industrial hygiene or occupational or environmental conditions on, under or about the Site, as now or may at any later time be in effect, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") [42 USC Section 9601 *et seq.*]; the Resource Conservation and Recovery

Act of 1976 (“RCRA”) [42 USC Section 6901 *et seq.*]; the Clean Water Act, also known as the Federal Water Pollution Control Act (“FWPCA”) [33 USC Section 1251 *et seq.*]; the Toxic Substances Control Act (“TSCA”) [15 USC Section 2601 *et seq.*]; the Hazardous Materials Transportation Act (“HMTA”) [49 USC Section 1801 *et seq.*]; the Insecticide, Fungicide, Rodenticide Act [7 USC Section 6901 *et seq.*] the Clean Air Act [42 USC Section 7401 *et seq.*]; the Safe Drinking Water Act [42 USC Section 300f *et seq.*]; the Solid Waste Disposal Act [42 USC Section 6901 *et seq.*]; the Surface Mining Control and Reclamation Act [30 USC Section 101 *et seq.*] the Emergency Planning and Community Right to Know Act [42 USC Section 11001 *et seq.*]; the Occupational Safety and Health Act [29 USC Section 655 and 657]; the California Underground Storage of Hazardous Substances Act [California Health & Safety Code Section 25288 *et seq.*]; the California Hazardous Substances Account Act [California Health & Safety Code Section 25300 *et seq.*]; the California Safe Drinking Water and Toxic Enforcement Act [California Health & Safety Code Section 24249.5 *et seq.*]; or the Porter-Cologne Water Quality Act [California Water Code Section 13000 *et seq.*]; together with any regulations promulgated under the authorities referenced in this Section 1.1.25.

1.1.20 **Escrow.** An escrow, as defined in Civil Code Section 1057 and Financial Code Section 17003(a), that is conducted by the Escrow Agent with respect to the sale of the Site from Seller to Buyer pursuant to this Agreement.

1.1.21 **Escrow Agent.** [REDACTED], or such other Person mutually agreed upon in writing by both Seller and Buyer.

1.1.22 **Escrow Closing Date.** The date that is not later than sixty (60) calendar days following the Escrow Opening Date; or such other date mutually agreed upon in writing between the Parties for the Close of Escrow.

1.1.23 **Escrow Closing Statement.** A statement prepared by the Escrow Agent indicating, among other things, the Escrow Agent’s estimate of all funds to be deposited or received by Seller or Buyer, respectively, and all charges to be paid by Seller or Buyer, respectively, through the Escrow.

1.1.24 **Escrow Default.** The unexcused failure to submit any document or funds to the Escrow Agent as reasonably necessary to close the Escrow, pursuant to the terms and conditions of this Agreement.

1.1.25 **Escrow Opening Date.** The first date on which a copy of this Agreement, signed by both Seller and Buyer, is deposited with the Escrow Agent, as provided in Section 4.1.

1.1.26 **Event of Default.** The occurrence of any one or more of the following:

(a) **Monetary Default.** A Monetary Default that continues for fifteen (15) calendar days after Notice to the Party in Default, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such amount or the bond, surety or insurance not provided;

(b) *Escrow Closing Default.* An Escrow Default that continues for seven (7) calendar days after Notice to the Party in Default, specifying in reasonable detail the document or funds not submitted;

(c) *Non-Monetary Default.* Any Non-Monetary Default that is not cured within fifteen (15) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of such a Non-Monetary Default that cannot with reasonable diligence be cured within fifteen (15) days after the effective date of such Notice, an Event of Default shall occur, if the Party in Default does not do all of the following: (a) within fifteen (15) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such fifteen (15) day period; and (c) diligently prosecute such cure to completion within a reasonable time under the circumstances.

1.1.27 **FIRPTA Affidavit.** A certification that Seller is not a “foreign person” within the meaning of such term under Section 1445 of the United States Internal Revenue Code.

1.1.28 **Form 593.** A California Franchise Tax Board Form 593-C.

1.1.29 **Government Agency.** Any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever of any governmental unit (Federal, State, County, district, municipal, City or otherwise) whether now or later in existence.

1.1.30 **Hazardous Substance.** Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product and any “hazardous” or “toxic” material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a “hazardous substance” under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (b) designated as “hazardous substances” pursuant to 33 U.S.C. § 1321; (c) defined as a “hazardous waste” under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, *et seq.*, as amended; (d) defined as a “hazardous substance” or “hazardous waste” under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601, *et seq.*, or any so-called “superfund” or “superlien” law; (e) defined as a “pollutant” or “contaminant” under 42 U.S.C. § 9601(33); (f) defined as “hazardous waste” under 40 C.F.R. Part 260; (g) defined as a “hazardous chemical” under 29 C.F.R. Part 1910; (h) any matter within the definition of “hazardous substance” set forth in 15 U.S.C. § 1262; (i) any matter, waste or substance regulated under the Toxic Substances Control Act (“TSCA”) [15 U.S.C. Sections 2601, *et seq.*]; (j) any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, *et seq.*; (k) those substances listed in the United States Department of Transportation (DOT)Table [49 C.F.R. 172.101]; (l) any matter, waste or substances designated by the EPA, or any successor authority, as a hazardous substance [40 C.F.R. Part 302]; (m) defined as “hazardous waste” in Section 25117 of the California Health and Safety Code; (n) defined as a “hazardous substance” in Section 25316 of the California Health and Safety Code; (o) subject to any other Law regulating, relating to or imposing

obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (p) that is or becomes regulated or classified as hazardous or toxic under Law or in the regulations adopted pursuant to Law.

1.1.31 **Hazardous Substance Discharge.** Any deposit, discharge, generation, release or spill of a Hazardous Substance that occurs at, on, under, into or from the Site, or during transportation of any Hazardous Substance to or from the Site, whether or not caused by a Party.

1.1.32 **Indemnify.** Where this Agreement states that any Indemnitor shall “indemnify” any Indemnitee from, against, or for a particular Claim, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise). “**Indemnified**” shall have the correlative meaning.

1.1.33 **Indemnitee.** Any Person entitled to be Indemnified under the terms of this Agreement.

1.1.34 **Indemnitor.** A Party that agrees to Indemnify any other Person under the terms of this Agreement.

1.1.35 **Law.** Every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Government Agency applicable to the Site, in any way, including relating to any development, construction, use, maintenance, taxation, operation, occupancy of or environmental conditions affecting the Site or otherwise relating to this Agreement or any Party’s rights, obligations or remedies under this Agreement, or any Transfer of any of the foregoing, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, subject in all cases, however, to any applicable waiver, variance or exemption.

1.1.36 **Legal Costs.** In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys’ fees, court costs and expenses and consultant and expert witness fees and expenses.

1.1.37 **Monetary Default.** Any failure by either Party to pay or deposit, when and as this Agreement requires, any amount of money, bond, surety or evidence of any insurance coverage required to be provided under this Agreement, whether to or with a Party or a Third Person.

1.1.38 **Non-Monetary Default.** The occurrence of any of the following, except to the extent constituting a Monetary Default or an Escrow Default: (a) any failure of a Party to perform any of such Party’s obligations under this Agreement; (b) any failure of a Party to comply with any material restriction or prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Agreement by a Party.

1.1.51 **Seller.** Successor Agency to the Former Newman Redevelopment Agency, designated under Health and Safety Code Section 34173, and any assignee of or successor to the rights, powers or responsibilities of the Seller.

1.1.52 **Seller Deed.** A grant deed conveying Seller's interest in the Site from Seller to Buyer, at the Close of Escrow, substantially in the form of **Exhibit B** attached to this Agreement.

1.1.53 **Seller Parties.** Collectively, the Seller, and the Seller's officials, employees, agents and attorneys.

1.1.54 **Site.** That real property, as shown in the attached **Exhibit A**, to be conveyed by the Seller to Buyer.

1.1.55 **Third Person.** Any Person that is not a Party, an affiliate of a Party or an official, officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

1.1.56 **Title Company.** [REDACTED] Title Company, or such other Person mutually agreed upon in writing by both Seller and Buyer.

1.1.57 **Title Notice.** A written notice from Buyer to Seller indicating Buyer's acceptance of the state of the title to the Site, as described in the Preliminary Report for the proposed Buyer Title Policy, or Buyer's disapproval or conditional approval of specific matters shown in Schedule B of such Preliminary Report as exceptions to coverage under the proposed Buyer Title Policy for the Site, describing in suitable detail the actions that Buyer reasonably believes are indicated to obtain Buyer's unconditional approval of the state of the title to the Site.

1.1.58 **Title Notice Response.** The written response of Seller to the Title Notice, in which Seller either elects to: (a) cause the removal from the Preliminary Report of any matters disapproved or conditionally approved in the Title Notice; (b) obtain title or other insurance or endorsement in a form reasonably satisfactory to Buyer insuring against any matters disapproved or conditionally approved in the Title Notice; or (c) not take either action described in clause "(a)" or "(b)" of this Section 1.1.58.

1.1.59 **Title Notice Waiver.** A written notice from Buyer to Seller waiving Buyer's previous disapproval or conditional approval in the Title Notice of specific matters shown in the Preliminary Report as exceptions to coverage under the proposed Buyer Title Policy.

1.1.60 **Unavoidable Delay.** A delay in either Party performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond the Party's reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, litigation, governmental action or inaction, regional natural disasters or inability to obtain required materials. Unavoidable Delay shall not include delay caused by a Party's financial condition or insolvency.

2. **EFFECTIVE DATE.** This Agreement shall become effective on the first date on which all of the following have occurred: (“**Effective Date**”): (a) Seller has received three (3) counterpart originals of this Agreement signed by the authorized representative(s) of Buyer; and (b) this Agreement has been approved and executed by Seller’s governing body; (c) this Agreement has been approved by the Oversight Board for the Successor Agency; and (d) this Agreement has been approved by the Department of Finance or the Department of Finance has failed to request a review of this Agreement as provided for in Health and Safety Code Section 34181.

3. **PURCHASE AND SALE OF SITE**

3.1 Purchase and Sale of Site. In accordance with and subject to all the terms, covenants and conditions of this Agreement, Seller agrees to sell, and Buyer agrees to purchase, the Site. The purchase price for the Site shall be TWO HUNDRED NINETY THOUSAND DOLLARS (\$290,000.00) (the "**Purchase Price**"). The Purchase Price shall be paid by Buyer, as follows:

3.1.1 Buyer has previously paid an Appraisal Fee in the amount of ONE THOUSAND EIGHT HUNDRED DOLLARS (\$1,800.00) (the “**Appraisal Fee**”), which amount shall be credited toward the Purchase Price;

3.1.2 Buyer shall pay a cash down payment in the amount of TWENTY-EIGHT THOUSAND EIGHT HUNDRED TWENTY DOLLARS (\$28,820.00) (“**Cash Down Payment**”), which shall consist of the Deposit required under Section 3.3.1, and the remaining balance to be paid in cash upon Close of Escrow; and

3.1.3 Buyer shall execute a promissory note (the "**Purchase Note**") in favor of the Seller in the amount of TWO HUNDRED FIFTY-NINE THOUSAND THREE HUNDRED EIGHTY DOLLARS (\$259,380.00), which equals the remaining balance of the Purchase Price to be paid by Buyer. The Purchase Note shall be secured by a deed of trust (the "**Purchase Deed of Trust**") which shall be recorded against the Site.

As a condition to and concurrently with the close of escrow for conveyance of the Site to the buyer, the Buyer shall execute and deliver the Purchase Note and the Purchase Deed of Trust into Escrow in forms substantially as set forth in **Exhibits C and D**, respectively, hereto. The Purchase Note shall require the Buyer to repay the Successor Agency over a **three (3) year** term, with simple interest to accrue at Three and One-Half Percent (3.5%) per annum. **[NEED TO DISCUSS – EXTENSION OF PAYMENTS BEYOND 3 YEARS MAY REQUIRE ADDITIONAL OB APPROVALS, AND ALL OB APPROVALS ARE SUBJECT TO REVIEW BY DOF]**

3.2 Escrow. Seller shall sell and convey fee title to the Site to Buyer and Buyer shall purchase and acquire fee title to the Site from Seller, subject to the Permitted Exceptions and the terms and conditions of this Agreement. For the purposes of exchanging funds and documents to complete the sale of the Site from Seller to Buyer and the purchase of the Site by Buyer from Seller, pursuant to the terms and conditions of this Agreement, Seller and Buyer agree to open

the Escrow with the Escrow Agent. The provisions of Section 4 are the joint escrow instructions of the Parties to the Escrow Agent for conducting the Escrow.

3.3 **Consideration.** Buyer shall purchase the Site from Seller for the Purchase Price . Buyer shall deposit the Purchase Price into the Escrow, as follows:

3.3.1 **Deposit.** Upon the Escrow Opening Date, Buyer shall deposit the Deposit into the Escrow. The Deposit shall be non-refundable unless this Agreement is thereafter terminated due to a Seller default, the failure of a Buyer's condition to Close of Escrow, a termination of this Agreement not due to Buyer's default, or as otherwise expressly provided in this Agreement. The Deposit shall be held in Escrow until the Close of Escrow and shall be applied to the Cash Down Payment portion of the Purchase Price to be paid into Escrow as provided under Section 3.1.

3.3.2 **At Close of Escrow.** At least two (2) business days preceding the Escrow Closing Date, Buyer shall deposit into the Escrow the Purchase Note, the Purchase Deed of Trust, and the Cash Down Payment, less the amount of the Deposit.

3.4 **Buyer's Approval of Title to Site.**

3.4.1 **Title Notice.** Within fifteen (5) days after the Escrow Opening Date, Seller shall request the Preliminary Report from the Title Company and that the Title Company deliver a copy of the Preliminary Report to Buyer. Within five (5) days following Buyer's receipt of the Preliminary Report, Buyer shall send the Title Notice to both Seller and Escrow Agent.

3.4.2 **Failure to Deliver Title Notice.** If Buyer fails to send the Title Notice to both Seller and Escrow Agent within the time period provided in Section 3.4.1, Buyer will be deemed to disapprove the status of title to the Site and refuse to accept conveyance of the Site and either Buyer or Seller shall have the right to cancel the Escrow and terminate this Agreement by Notice, in their respective sole and absolute discretion.

3.4.3 **Title Notice Response.** Within five (5) days following Seller's receipt of the Title Notice (if any), Seller shall send the Title Notice Response to both Buyer and Escrow Agent. If the Title Notice does not disapprove or conditionally approve any matter in the Preliminary Report for the proposed Buyer Title Policy or Buyer fails to deliver the Title Notice, Seller shall not be required to send the Title Notice Response. If Seller does not send the Title Notice Response, if necessary, within the time period provided in this Section 3.4.3, Seller shall be deemed to elect not to take any action in reference to the Title Notice. If Seller elects in the Title Notice Response to take any action in reference to the Title Notice, Seller shall complete such action, prior to the Escrow Closing Date or as otherwise specified in the Title Notice Response.

3.4.4 **Title Notice Waiver.** If Seller elects or is deemed to have elected not to address one or more matters set forth in the Title Notice to Buyer's reasonable satisfaction, then within five (5) days after the earlier of: (a) Buyer's receipt of Seller's Title Notice Response; or (b) the last date for Seller to deliver its Title Notice Response pursuant to Section 3.4.3, Buyer shall either: (i) refuse to accept the title to and conveyance of the Site, or (ii) waive Buyer's

disapproval or conditional approval of all such matters set forth in the Title Notice by sending the Title Notice Waiver to both Seller and Escrow Agent. Failure by Buyer to timely send the Title Notice Waiver, where the Title Notice Response or Seller's failure to deliver the Title Notice Response results in Seller's election not to address one or more matters set forth in the Title Notice to Buyer's reasonable satisfaction, will be deemed Buyer's continued refusal to accept the title to and conveyance of the Site, in which case either Buyer or Seller shall have the right to cancel the Escrow and terminate this Agreement by Notice, in their respective sole and absolute discretion.

3.4.5 Disapproval of Encumbrances Securing Seller Obligations. Notwithstanding any other provision of this Agreement, Buyer disapproves any and all encumbrances against the Site securing monetary (other than non-delinquent property taxes) obligations of Seller.

3.4.6 No Termination Liability. Any termination of this Agreement or cancellation of the Escrow pursuant to this Section 3.4.6 shall be without liability to the other Party or any other Person. Termination shall be accomplished by delivery of a Notice of termination to both the other Party and the Escrow Agent. Following issuance of a Notice of termination of this Agreement pursuant to a right provided under this Agreement, the Parties and the Escrow Agent shall proceed pursuant to Section 4.12. Once a Notice of termination is given pursuant to this Section 3.4.6, delivery of a Title Notice or Title Notice Waiver shall have no force or effect and this Agreement shall terminate in accordance with the Notice of termination.

3.5 Due Diligence Investigations.

3.5.1 Time and Expense. Buyer shall complete all Due Diligence Investigations within the Due Diligence Period and shall conduct all Due Diligence Investigations at Buyer's sole cost and expense.

3.5.2 Right to Enter. Seller hereby grants a license to Buyer and Buyer's consultants, contractors and agents to enter the Site for the sole purpose of conducting the Due Diligence Investigations at Buyer's sole cost and expense, subject to all of the terms and conditions of this Agreement. The license given in this Section 3.5 to enter the Site to conduct Due Diligence Investigations shall terminate regarding Buyer on the earlier of: (i) termination of this Agreement; or (ii) the Close of Escrow. Any Due Diligence Investigations by Buyer shall not unreasonably disrupt any existing use or occupancy of the Site. Buyer's exercise of any license provided pursuant to this Section 3.5 after expiration of the Due Diligence Period shall not extend the Due Diligence Period.

3.5.3 Limitations. Buyer shall not conduct any intrusive or destructive testing of any portion of the Site, other than low volume soil samples, without Seller's prior written consent. Buyer shall pay all of Buyer's vendors, inspectors, surveyors, consultants or agents engaged in any inspection or testing of the Site, such that no mechanics liens or similar liens for work performed are imposed upon the Site by any such Persons. Following the conduct of any Due Diligence Investigations on the Site, Buyer shall restore the Site to substantially the Site's condition prior to the conduct of such Due Diligence Investigations. Buyer shall Indemnify Seller against any and all costs or damages arising from or relating to Buyer's Due Diligence

Investigations regarding the Site. Buyer shall provide Seller with evidence of liability insurance reasonably acceptable to Seller and naming Seller as an additional insured under such policy of insurance by endorsement prior to the commencement of any Due Diligence Investigations on the Site.

3.5.4 Due Diligence Completion Notice. Buyer shall deliver a Due Diligence Completion Notice to both Seller and Escrow Agent prior to the end of the Due Diligence Period. If Buyer does not unconditionally accept the condition of the Site by delivery of its Due Diligence Completion Notice indicating such acceptance, prior to the end of the Due Diligence Period, Buyer shall be deemed to have rejected the condition of the Site and refused to accept conveyance of title to the Site. If the condition of the Site is rejected or deemed rejected by Buyer, then either Seller or Buyer shall have the right to cancel the Escrow and terminate this Agreement, in their respective sole and absolute discretion, without liability to the other Party or any other Person, by delivery of a Notice of termination to the other Party and Escrow Agent, in which case the Parties and Escrow Agent shall proceed pursuant to Section 4.12.

3.6 “AS-IS” Acquisition. The Close of Escrow shall evidence Buyer’s unconditional and irrevocable acceptance of the Site in the Site’s AS IS, WHERE IS, SUBJECT TO ALL FAULTS CONDITION, AS OF THE CLOSE OF ESCROW, WITHOUT WARRANTY as to character, quality, performance, condition, title, physical condition, soil conditions, the presence or absence of fill, shoring or bluff stability or support, subsurface or lateral support, zoning, land use restrictions, the availability or location of utilities or services, the location of any public infrastructure on or off of the Site (active, inactive or abandoned), the suitability of the Site or the existence or absence of Hazardous Substances affecting the Site and with full knowledge of the physical condition of the Site, the nature of Seller’s interest in and use of the Site, all laws applicable to the Site and any and all conditions, covenants, restrictions, encumbrances and all matters of record relating to the Site. The Close of Escrow shall further constitute Buyer’s representation and warranty to Seller that: (a) Buyer has had ample opportunity to inspect and evaluate the Site and the feasibility of the uses and activities Buyer is entitled to conduct on the Site; (b) Buyer is relying entirely on Buyer’s experience, expertise and Buyer’s own inspection of the Site in the Site’s current state in proceeding with acquisition of the Site; (c) Buyer accepts the Site in the Site’s present condition; (d) to the extent that Buyer’s own expertise with respect to any matter regarding the Site is insufficient to enable Buyer to reach an informed conclusion regarding such matter, Buyer has engaged the services of Persons qualified to advise Buyer with respect to such matters; (e) Buyer has received assurances acceptable to Buyer by means independent of Seller or Seller’s agents of the truth of all facts material to Buyer’s acquisition of the Site pursuant to this Agreement; and (f) the Site is being acquired by Buyer as a result of Buyer’s own knowledge, inspection and investigation of the Site and not as a result of any representation made by Seller or Seller’s agents relating to the condition of the Site, unless such statement or representation is expressly and specifically set forth in this Agreement. Seller hereby expressly and specifically disclaims any express or implied warranties regarding the Site.

3.7 Reservations. The approval of this Agreement by the Seller shall not be binding on the City Council of the City or any other commission, committee, board or body of the City regarding any other Approvals required by such bodies. No action by the Seller with reference to this Agreement or any related documents shall be deemed to constitute issuance or waiver of any required Approvals regarding the Site or Buyer.

4. **JOINT ESCROW INSTRUCTIONS**

4.1 **Opening of Escrow; Escrow Instructions.** The purchase and sale of the Site shall take place through the Escrow to be conducted by Escrow Agent. Escrow shall be deemed opened when a fully signed copy of this Agreement has been delivered to Escrow Agent. Escrow Agent shall confirm the Escrow Opening Date in writing to each of the Parties, with a copy of the Escrow Agent Consent signed by the authorized representative(s) of the Escrow Agent.

4.2 **Escrow Instructions.** This Section 4 constitutes the joint escrow instructions of the Parties to Escrow Agent for conduct of the Escrow for the purchase and sale of the Site, as contemplated by this Agreement. Buyer and Seller shall sign such further escrow instructions consistent with the provisions of this Agreement as may be reasonably requested by Escrow Agent. In the event of any conflict between the provisions of this Agreement and any further escrow instructions requested by Escrow Agent, the provisions of this Agreement shall control.

4.3 **Escrow Agent.** Seller and Buyer authorize Escrow Agent to:

4.3.1 **Charges.** Pay and charge Seller and Buyer for their respective shares of the applicable fees, taxes, charges and costs payable by either Seller or Buyer regarding the Escrow;

4.3.2 **Settlement/Closing Statements.** Release each Party's Escrow Closing Statement to the other Party;

4.3.3 **Document Recording.** File any documents delivered for recording through the Escrow with the office of the Recorder of the County for recordation in the official records of the County, pursuant to the joint instructions of the Parties; and

4.3.4 **Counterpart Documents.** Utilize documents signed by Seller or Buyer in counterparts, including attaching separate signature pages to one version of the same document.

4.4 **Buyer's Conditions Precedent to Close of Escrow.** Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by Buyer, Buyer's obligation to purchase the Site from Seller on or before the Escrow Closing Date shall be conditioned upon the satisfaction or waiver (waivers must be in writing and signed by Buyer) of each of the following conditions precedent on or before the Escrow Closing Date:

4.4.1 **Title Policy.** Title Company has agreed to issue the Buyer Title Policy to Buyer upon payment of Title Company's premium for such policy;

4.4.2 **CEQA Documents.** Adoption, approval or certification of the CEQA Documents by each applicable Government Agency;

4.4.3 **Seller Escrow Deposits.** Seller deposits all of the items into Escrow required by Section 4.7;

4.4.4 **Settlement/Closing Statement.** Buyer approves Buyer's Escrow Closing Statement; and

4.4.5 **Seller Pre-Closing Obligations.** Seller performs all of Seller's material obligations required to be performed by Seller pursuant to this Agreement prior to the Close of Escrow.

4.5 Seller's Conditions Precedent to Close of Escrow. Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by Seller, Seller's obligation to sell the Site to Buyer on the Escrow Closing Date shall be conditioned upon the satisfaction or waiver (waivers must be in writing and signed by Seller) of each of the following conditions precedent on or before the Escrow Closing Date:

4.5.1 **Title.** Buyer accepts the state of the title of the Site, in accordance with Section 3.4;

4.5.2 **Due Diligence.** Buyer timely delivers its Due Diligence Completion Notice to both Seller and Escrow Agent stating Buyer's unconditional acceptance of the condition of the Site, in accordance with Section 3.5;

4.5.3 **CEQA Documents.** Adoption, approval or certification of the CEQA Documents by each applicable Government Agency;

4.5.4 **Buyer Escrow Deposits.** Buyer deposits all of the items into Escrow required by Section 4.6;

4.5.5 **Settlement/Closing Statement.** Seller approves the Seller's Escrow Closing Statement;

4.5.6 **Title Policy.** Title Company has agreed to issue the Buyer Title Policy to Buyer upon payment of Title Company's premium for such policy;

4.5.7 **Buyer Pre-Closing Obligations.** Buyer performs all of Buyer's material obligations required to be performed by Buyer pursuant to this Agreement prior to the Close of Escrow.

4.6 Buyer's Escrow Deposits. Buyer shall deposit the following items into Escrow and, concurrently, provide a copy of each document submitted into Escrow to Seller, at least two (2) Business Days prior to the Escrow Closing Date:

4.6.1 **Purchase Price.** The Purchase Note, Purchase Deed of Trust, and the Cash Down Payment, less the amount of the Deposit;

4.6.2 **Closing Funds.** All other amounts required to be deposited into Escrow by Buyer under the terms of this Agreement to close the Escrow;

4.6.3 **Certificate of Seller Deed Acceptance.** The Certificate of Acceptance attached to the Seller Deed signed by Buyer in recordable form;

4.6.4 **Escrow Closing Statement.** The Buyer's Escrow Closing Statement signed by the authorized representative(s) of Buyer;

4.6.5 **Other Reasonable Items.** Any other documents or funds required to be delivered by Buyer under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company in order to close the Escrow or comply with applicable Law that have not previously been delivered by Buyer.

4.7 **Seller's Escrow Deposits.** Seller shall deposit the following documents into Escrow and, concurrently, provide a copy of each document deposited into Escrow to Buyer, at least two (2) Business Days prior to the Escrow Closing Date:

4.7.1 **Seller Deed.** The Seller Deed signed by the authorized representative(s) of Seller in recordable form;

4.7.2 **Escrow Closing Statement.** The Seller's Escrow Closing Statement signed by the authorized representative(s) of Seller;

4.7.3 **FIRPTA Affidavit.** A FIRPTA affidavit signed by the authorized representative(s) of Seller, in the form provided by the Escrow Agent;

4.7.4 **Form 593.** A Form 593 signed by the authorized representative(s) of Seller; and

4.7.5 **Other Reasonable Items.** Any other documents or funds required to be delivered by Seller under the terms of this Agreement or as otherwise reasonably requested by Escrow Agent or Title Company in order to close the Escrow or comply with applicable Law that have not been previously delivered by Seller.

4.8 **Closing Procedure.** When each of Buyer's Escrow deposits, as set forth in Section 4.6, and each of Seller's Escrow deposits, as set forth in Section 4.7, are deposited into Escrow, Escrow Agent shall request confirmation in writing from both Buyer and Seller that each of their respective conditions precedent to the Close of Escrow, as set forth in Sections 4.4 or 4.5, respectively, are satisfied or waived. Upon Escrow Agent's receipt of written confirmation from both Buyer and Seller that each of their respective conditions precedent to the Close of Escrow are satisfied or waived, Escrow Agent shall close the Escrow by doing all of the following:

4.8.1 **Recording and Distribution of Documents.** Escrow Agent shall cause the Seller Deed, immediately followed by the Purchase Deed of Trust, to be filed with the Recorder of the County for recording in the official records of the County regarding the Site. At Close of Escrow, Escrow Agent shall deliver the original Purchase Note to Buyer, and shall deliver conformed copies of the Seller Deed and the Purchase Deed of Trust filed for recording in the official records of the County through the Escrow to Seller, Buyer and any other Person designated in the written joint escrow instructions of the Parties to receive an original or conformed copy of such document. Each conformed copy of a document filed for recording by Escrow Agent pursuant to this Agreement shall show all recording information;

4.8.2 **Funds.** Distribute all funds held by Escrow Agent pursuant to the Escrow Closing Statements approved in writing by Seller and Buyer;

4.8.3 **FIRPTA Affidavit.** File the FIRPTA Affidavit with the United States Internal Revenue Service;

4.8.4 **Form 593.** File the Form 593 with the California Franchise Tax Board; and

4.8.5 **Title Policy.** Obtain from the Title Company and deliver to Buyer, with a copy to the Seller, the Buyer Title Policy issued by the Title Company.

4.9 Close of Escrow. The Close of Escrow shall occur on or before the Escrow Closing Date. The Parties may mutually agree to change the Escrow Closing Date by joint written instruction to Escrow Agent. The City Manager, acting on behalf of the Seller, is authorized to agree to one or more extensions of the Escrow Closing Date on behalf of Seller up to a maximum time period extension of two (2) months in the aggregate, in the City Manager's sole and absolute discretion. If for any reason (other than a Default or Event of Default by such Party) the Close of Escrow has not occurred on or before the Escrow Closing Date, then any Party not then in Default under this Agreement may cancel the Escrow and terminate this Agreement, without liability to the other Party or any other Person for such cancellation and termination, by delivering Notice of termination to both the other Party and Escrow Agent. Following any such Notice of termination of this Agreement and cancellation of the Escrow, the Parties and Escrow Agent shall proceed pursuant to Section 4.12. Without limiting the right of either Party to cancel the Escrow and terminate this Agreement, pursuant to this Section 4.9, if the Escrow does not close on or before the Escrow Closing Date and neither Party has exercised its contractual right to cancel the Escrow and terminate this Agreement under this Section 4.9 before the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and conditions of this Agreement, then the Escrow shall close as soon as reasonably possible following the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close in accordance with the terms and conditions of this Agreement.

4.10 Escrow Costs. Escrow Agent shall notify Buyer and Seller of the costs to be borne by each of them at the Close of Escrow by delivering an Escrow Closing Statement to both Seller and Buyer at least four (4) Business Days prior to the Escrow Closing Date. Seller shall pay one-half (1/2) of the Escrow Agent charges for the conduct of the Escrow, all documentary transfer taxes regarding the conveyance of the Site through the Escrow and the full amount of the premium charged by the Title Company for a standard CLTA owner's title insurance policy towards the cost of the premium for the Buyer Title Policy, exclusive of any endorsements or other supplements to the coverage of the Buyer Title Policy that may be requested by Buyer. Buyer shall pay one-half (1/2) of the Escrow Agent charges for the conduct of the Escrow, the amount of the premium for the Buyer Title Policy exceeding the amount paid by Seller toward the cost of the Buyer Title Policy, the premium costs of any and all endorsements to the Buyer Title Policy requested by Buyer, all recording fees and the full amount of any and all other charges, fees and taxes levied by each and every Government Agency relative to the conveyance of the Site through the Escrow.

4.11 Escrow Cancellation Charges. If the Escrow fails to close due to Seller's Default under this Agreement, Seller shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively. If the Escrow fails to close due to Buyer's Default under this Agreement, Buyer shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively. If the Escrow fails to close for any reason other than the Default of either Buyer or Seller, Buyer and Seller shall each pay one-half (1/2) of any ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively.

4.12 Escrow Cancellation. If this Agreement is terminated pursuant to a contractual right granted to a Party in this Agreement to terminate this Agreement (other than due to an Event of Default by the other Party), the Parties shall do all of the following:

4.12.1 **Cancellation Instructions**. The Parties shall, within three (3) Business Days following Escrow Agent's written request, sign any reasonable Escrow cancellation instructions requested by Escrow Agent;

4.12.2 **Return of Funds and Documents**. Within ten (10) Business Days following receipt by the Parties of a settlement statement of Escrow and title order cancellation charges from Escrow Agent (if any) or within twenty (20) days following Notice of termination, whichever is earlier: (a) Buyer or Escrow Agent shall return to Seller all documents previously delivered by Seller to Buyer or Escrow Agent, respectively, regarding the Site or the Escrow; (b) Seller or Escrow Agent shall return to Buyer all documents previously delivered by Buyer to Seller or Escrow Agent, respectively, regarding the Site or the Escrow; (c) Escrow Agent shall, unless otherwise expressly provided in this Agreement, return to Buyer all funds deposited in Escrow, less Buyer's share of customary and reasonable Escrow and title order cancellation charges (if any) in accordance with Section 4.11; and (d) Escrow Agent shall, unless otherwise expressly provided in this Agreement, return to Seller all funds deposited in Escrow, less Seller's share of customary and reasonable Escrow and title order cancellation charges (if any) in accordance with Section 4.11.

4.13 Report to IRS. After the Close of Escrow and prior to the last date on which such report is required to be filed with the Internal Revenue Service under applicable Federal law, if such report is required pursuant to Internal Revenue Code Section 6045(e), Escrow Agent shall report the gross proceeds of the purchase and sale of the Site to the Internal Revenue Service on Form 1099-B, W-9 or such other form(s) as may be specified by the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e). Concurrently with the filing of such reporting form with the Internal Revenue Service, Escrow Agent shall deliver a copy of the filed form to both Seller and Buyer.

4.14 Condemnation. If any material portion of the Site, or any interest in any portion of the Site, is taken by condemnation prior to Close of Escrow by any condemning authority other than Seller, including, without limitation, the filing of any notice of intended condemnation or proceedings in the nature of eminent domain, commenced by any governmental authority, other than Seller, Seller shall immediately give Buyer notice of such occurrence, and Buyer shall have the option, exercisable within ten (10) business days after receipt of such notice from

Seller, to either: (i) terminate this Agreement; or (ii) continue with this Agreement in accordance with its terms, in which event Seller shall assign to Buyer any right of Seller to receive any condemnation award attributable to the Site.

5. REMEDIES AND INDEMNITY

5.1 Legal Actions. Either Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this Agreement or recover damages.

5.2 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this Agreement are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by such Party, at the same or different times, of any other rights or remedies for the same Default or the same rights or remedies for any other Default by the other Party.

5.3 Indemnification.

5.3.1 **Seller Indemnity Obligations.** Seller shall Indemnify Buyer against any Claim to the extent such Claim arises from any wrongful intentional act or negligence of the Seller Parties related to this Agreement, but only to the extent that Seller may be held liable under applicable law for such wrongful intentional act or negligence and exclusive of any violation of law (including the State Constitution) relating to Seller's approval, entry into or performance of this Agreement. Nothing in this Agreement is intended nor shall be interpreted to waive any limitation on Seller's liability, any exemption from liability in favor of Seller, any claim presentment requirement for bringing an action regarding any liability of Seller or any limitations period applicable to liability of Seller, all as set forth in Government Code Section 800 *et seq.*, Section 900 *et seq.*, or in any other law, or require Seller to Indemnify any Person beyond such limitations on Seller's liability.

5.3.2 **Buyer Indemnity Obligations.** Buyer shall Indemnify the Seller Parties against any Claim related to this Agreement to the extent such Claim arises from: (a) any act, omission or negligence of the Buyer; (b) any agreements that Buyer (or anyone claiming by or through Buyer) makes with a Third Person regarding the Site; (c) any workers compensation claim or determination relating to any employee of Buyer or its contractors; or (d) any Environmental Claim attributable to any action or omission by Buyer.

5.3.3 **Independent of Insurance Obligations.** Buyer's indemnification obligations under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying Buyer's insurance or other obligations under this Agreement. Buyer's obligation to Indemnify the Seller Parties under this Agreement is independent of Buyer's insurance and other obligations under this Agreement. Buyer's compliance with Buyer's insurance obligations and other obligations under this Agreement shall not in any way restrict, limit or modify Buyer's indemnification obligations under this Agreement and are independent of Buyer's indemnification and other obligations under this Agreement.

5.3.4 **Survival of Indemnification and Defense Obligations.** The indemnity and defense obligations of the Parties under this Agreement shall survive the expiration or earlier

termination of this Agreement, until any and all actual or prospective Claims regarding any matter subject to an indemnity obligation under this Agreement are fully, finally, absolutely and completely barred by applicable statutes of limitations.

5.3.5 Indemnification Procedures. Wherever this Agreement requires any Indemnitor to Indemnify any Indemnitee:

(a) *Prompt Notice.* The Indemnitee shall promptly Notify the Indemnitor of any Claim.

(b) *Selection of Counsel.* The Indemnitor shall select counsel reasonably acceptable to the Indemnitee. Counsel to Indemnitor's insurance carrier that is providing coverage for a Claim shall be deemed reasonably satisfactory, except in the event of a potential or actual conflict of interest for such counsel regarding such representation or such counsel is reasonably determined by Indemnitee to be incompetent regarding such representation. Even though the Indemnitor shall defend the Claim, Indemnitee may, at Indemnitee's option and Indemnitee's own expense (except where Indemnitor provides a defense to Indemnitee under a reservation of rights, a conflict of interest between Indemnitor and Indemnitee exists that requires them to be represented by separate legal counsel or Indemnitor's legal counsel is reasonably determined by Indemnitee to be incompetent regarding such representation, in any such case, Indemnitor shall pay the Legal Costs of Indemnitee's separate legal counsel), engage separate counsel to advise Indemnitee regarding the Claim and Indemnitee's defense. The Indemnitee's separate counsel may attend all proceedings and meetings. The Indemnitor's counsel shall actively consult with the Indemnitee's separate counsel.

(c) *Cooperation.* The Indemnitee shall reasonably cooperate with the Indemnitor's defense of the Indemnitee.

(d) *Settlement.* The Indemnitor may only settle a Claim with the consent of the Indemnitee. Any settlement shall procure a complete release of the Indemnitee from the subject Claims, shall not require the Indemnitee to make any payment to the claimant and shall provide that neither the Indemnitee, nor the Indemnitor on behalf of the Indemnitee, admits any liability.

6. GENERAL PROVISIONS

6.1 Incorporation of Recitals. The Recitals of fact set forth preceding this Agreement are true and correct and are incorporated into this Agreement in their entirety by this reference.

6.2 Maintenance of the Site. The Buyer covenants that it shall maintain, or cause to be maintained, the Site and any improvements to be constructed thereon, in a manner consistent with the provisions set forth therefor in the Newman Municipal Code, and shall keep the Site reasonably free from any accumulation of debris or waste materials.

If, at any time, Buyer fails to maintain and operate the Site in accordance with this Agreement, the Successor Agency shall have the right to take necessary corrective action pursuant to the provisions set forth in the Purchase Note.

6.5 Warranty Against Payment of Consideration for Agreement. Buyer represents and warrants to Seller that: (a) Buyer has not employed or retained any Person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees of Buyer and Third Persons to whom fees are paid for professional services related to the documentation of this Agreement; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Buyer or any of Buyer's agents, employees or representatives to any elected or appointed official or employee of the Seller in an attempt to secure this Agreement or favorable terms or conditions for this Agreement. Breach of the representations or warranties of this Section 6.5 shall entitle Seller to terminate this Agreement and cancel the Escrow (if open) upon seven (7) days Notice to Buyer and, if the Escrow is open, to Escrow Agent. Upon any such termination of this Agreement, Buyer shall immediately refund any payments made to or on behalf of Buyer by Seller pursuant to this Agreement or otherwise related to the Site, any Approval or any CEQA Document, prior to the date of such termination.

6.6 Calculation of Time Periods. Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to Business Days in this Agreement shall mean consecutive Business Days.

6.7 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Agreement shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this Agreement, refers to such document, as modified from time to time (excepting any modification that violates this Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this Agreement includes the word "and." Every reference to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

6.8 Governing Law. The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this Agreement, without application of conflicts or choice of laws principles or statutes. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in and relates to real property located in the County of Stanislaus, State of California. All legal actions arising from this Agreement shall be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

6.9 Unavoidable Delay; Extension of Time of Performance.

6.9.1 **Notice.** Subject to any specific provisions of this Agreement stating that they are not subject to Unavoidable Delay or otherwise limiting or restricting the effects of an Unavoidable Delay, performance by either Party under this Agreement shall not be deemed or considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within three (3) days after such Party knows of any such Unavoidable Delay; and (b) within three (3) days after such Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise commercially reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

6.9.2 **Assumption of Economic Risks.** EACH PARTY EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS AGREEMENT SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EACH AND EVERY ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS AGREEMENT. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND OR CONDITIONS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS AGREEMENT. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.

Initials of Authorized
Seller Representative(s)

Initials of Buyer

6.10 Tax Consequences. Buyer acknowledges and agrees that Buyer shall bear any and all responsibility, liability, costs or expenses connected in any way with any tax consequences experienced by Buyer related to this Agreement.

6.11 Real Estate Commissions.

6.11.1 **Seller Warranty.** Seller: (a) represents and warrants that Seller did not engage or deal with any broker or finder in connection with this Agreement, and no Person is entitled to any commission or finder's fee regarding this Agreement on account of any agreement or arrangement made by Seller; and (b) shall Indemnify Buyer against any breach of the representation and warranty set forth in clause "(a)" of this Section 6.11.1.

6.11.2 **Buyer Warranty.** Buyer: (a) represents and warrants that Buyer did not engage or deal with any broker or finder in connection with this Agreement, and no Person is entitled to any commission or finder's fee regarding this Agreement on account of any agreement or arrangement made by Buyer; and (b) shall Indemnify Seller against any breach of the representation and warranty set forth in clause "(a)" of this Section 6.11.2.

6.12 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

6.13 Buyer Assumption of Risks of Legal Challenges. Buyer assumes the risk of delays or damages that may result to Buyer from each and every Third Person legal action related to Seller's approval of this Agreement or any associated Approvals, even in the event that an error, omission or abuse of discretion by Seller is determined to have occurred. If a Third Person files a legal action regarding Seller's approval of this Agreement or any associated Approval (exclusive of legal actions alleging violation of Government Code Section 1090 by officials of Seller), Buyer shall have the option to either: (1) cancel the Escrow and terminate this Agreement, in which case the Parties and the Escrow Agent shall proceed in accordance with Section 4.12; or (2) Indemnify Seller against such Third Person legal action, including all Legal Costs, monetary awards, sanctions and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action; provided, however, that option "(1)" under this Section 6.13 shall only be available to Buyer prior to the Close of Escrow. Should Buyer fail to Notify Seller of Buyer's election pursuant to this Section 6.13 at least fifteen (15) days before response to the legal action is required by Seller, prior to the Close of Escrow, Buyer shall be deemed to have elected to cancel the Escrow and terminate this Agreement pursuant to this Section 5.13 and, following the Close of Escrow, Buyer shall be deemed to have elected to Indemnify Seller against such Third Person legal action pursuant to this Section 6.13, all without further Notice to or action by either Party. Seller shall reasonably cooperate with Buyer in defense of Seller in any legal action subject to this Section 6.13, subject to Buyer completely performing Buyer's indemnity obligations for such legal action. Should Buyer elect or be deemed to elect to Indemnify Seller regarding a legal action subject to this Section 6.13, but fail to or stop providing such indemnification of Seller, then Seller shall have the right to terminate this Agreement or cancel the Escrow (or both) by Notice to Buyer and, if the Escrow is open, to the Escrow Agent. Nothing contained in this Section 6.13 is intended to be nor shall be deemed or construed to be an express or implied admission that Seller may be liable to Buyer or any other Person for damages or other relief regarding any alleged or established failure of Seller to comply with any law. Any legal action that is subject to this

Section 6.13 (including any appeal periods and the pendency of any appeals) shall constitute an Unavoidable Delay and the time periods for performance by either Party under this Agreement may be extended pursuant to the provisions of this Agreement regarding Unavoidable Delay.

6.14 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

6.15 Time Declared to be of the Essence. As to the performance of any obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence.

6.16 Entire Agreement. This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all prior or contemporaneous negotiations or previous agreements between the Parties, whether written or oral, with respect to all or any portion of the Site.

6.17 Waivers and Amendments. All waivers of the provisions of this Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver. All amendments to this Agreement must be in writing and signed by the authorized representative(s) of both Seller and Buyer.

6.18 No Implied Waiver. Failure to insist on any one occasion upon strict compliance with any term, covenant, condition, restriction or agreement contained in this Agreement shall not be deemed a waiver of such term, covenant, condition, restriction or agreement, nor shall any waiver or relinquishment of any rights or powers under this Agreement, at any one time or more times, be deemed a waiver or relinquishment of such right or power at any other time or times.

6.19 City Manager Implementation. Seller shall implement this Agreement through the City Manager, acting on behalf of the Seller. The City Manager or his/her designee is hereby authorized by Seller to enter into agreements and sign documents referenced in this Agreement or reasonably required to implement this Agreement on behalf of Seller, issue approvals, interpretations or waivers and enter into certain amendments to this Agreement on behalf of Seller, to the extent that any such action(s) does/do not increase the monetary obligations of Seller. All other actions shall require the consideration and approval of the Seller's governing body, unless expressly provided otherwise by action of the Seller's governing body. Nothing in this Section 6.19 shall restrict the submission to the Seller's governing body of any matter within the City Manager's authority under this Section 6.19, in the City Manager's sole and absolute discretion, to obtain the Seller's governing body's express and specific authorization on such matter. The specific intent of this Section 6.19 is to authorize certain actions on behalf of Seller by the City Manager, but not to require that such actions be taken by the City Manager including, without limitation, any extension(s) granted pursuant to Section 6.19, without consideration by the Seller's governing body.

6.20 Survival of Agreement. All of the provisions of this Agreement shall be applicable to any dispute between the Parties arising from this Agreement, whether prior to or following expiration or termination of this Agreement, until any such dispute is finally and

completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods and all terms and conditions of this Agreement relating to dispute resolution, indemnity or limitations on damages or remedies shall survive any expiration or termination of this Agreement.

6.21 Counterparts. This Agreement shall be signed in three (3) triplicate originals, each of which is deemed to be an original. This Agreement includes twenty-six (26) pages and two (2) exhibits (each exhibit is incorporated into this Agreement by reference) that constitute the entire understanding and Agreement of the Parties regarding the subject matter of this Agreement.

6.22 Facsimile or Electronic Signatures. Signatures delivered by facsimile or electronic mail shall be binding as originals upon the Party so signing and delivering; provided, however, that original signature(s) of each Party shall be required for each document to be recorded.

[Signatures on following page]

**SIGNATURE PAGE
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW
INSTRUCTIONS
(2161 L Street, Newman, CA)**

IN WITNESS WHEREOF, the Parties have signed and entered into this Agreement by and through the signatures of their respective authorized representative(s) as follow:

SELLER:

BUYER:

SUCCESSOR AGENCY TO THE FORMER
NEWMAN REDEVELOPMENT AGENCY

WESTSIDE PALLET, INC.,
A _____

By: _____
Chairman

By: _____
Name: Carolyn Beach
Its: Vice President, Operations

ESCROW AGENT CONSENT

[INSERT NAME OF TITLE INSURANCE COMPANY] accepts that certain Real Property Purchase and Sale Agreement and Joint Escrow Instructions (2161 L Street, Newman, CA) dated _____, 2012, by and between the Successor Agency to the former Newman Redevelopment Agency, and Westside Pallet, Inc., a _____, and agrees to act as “Escrow Agent” pursuant to such agreement and agrees to be bound by all provisions of such agreement applicable to it as the Escrow Agent.

ESCROW AGENT:

**[INSERT NAME OF TITLE
INSURANCE COMPANY]**

By: _____

Name: _____

Its: _____

Dated: _____

**EXHIBIT A
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW
INSTRUCTIONS
(2161 L Street, Newman, CA)**

Description / Map of the Site

**EXHIBIT B
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW
INSTRUCTIONS
(2161 L Street, Newman, CA)**

Seller Deed

[Attached behind this cover page]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

APN: _____

SPACE ABOVE FOR RECORDER'S USE ONLY

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

SUCCESSOR AGENCY TO THE FORMER NEWMAN REDEVELOPMENT AGENCY (“**Transferor**”), does hereby grant to **WESTSIDE PALLET, INC.**, a _____ (“**Transferee**”), all right, title and interest of Transferor in that certain real property in the City of Newman, County of Stanislaus, State of California, specifically described in Exhibit “1” attached to this Grant Deed (“**Site**”) and made a part of this Grant Deed by this reference.

The Newman Redevelopment Agency (“**Agency**”) previously owned the Site. Pursuant to AB 1X 26, which took effect June 29, 2011, and the decision of the California Supreme Court in *California Redevelopment Association et al., v. Ana Matosantos, et al.* (Case No. S194861), all redevelopment agencies were deemed dissolved on February 1, 2012. However, pursuant to the authority provided in Health and Safety Code Section 34173, as enacted by AB 1X 26, the City Council of the City of Newman (“**City**”) adopted Resolution No. _____ electing and determining that the City shall become the “successor agency” to the former Newman Redevelopment Agency, and upon dissolution of the Agency under AB 1X 26, all authorities, rights, powers, duties and obligations previously vested with the former Agency, under the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.), were vested in the Successor Agency.

Health and Safety Code Section 34177, added by AB 1X 26, requires the Successor Agency to wind down the affairs of the former redevelopment agency, including disposing of assets and properties of the former agency, expeditiously and in a manner aimed at maximizing value.

The Site is conveyed to Transferee pursuant to the terms and conditions of that certain Real Property Purchase and Sale Agreement and Joint Escrow Instructions between Transferor and Transferee, dated _____, 2012.

Transferee covenants and agrees for itself, its successors, its assigns and every successor-in-interest to all or any portion of the Site, that there shall be no discrimination against or

segregation of any person, or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site nor shall Transferee, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of purchasers, tenants, lessees, sub-tenants, sub-lessees or vendees of the Site. The covenant shall be a covenant running with the land and binding on successive owners of all or any portion of the Site, in perpetuity.

The covenants contained herein shall run with the land and shall inure to the benefit of and be binding upon the Transferor and Transferee and their respective assigns, heirs and voluntary and involuntary successors in interest.

Dated: _____

**SUCCESSOR AGENCY TO THE FORMER
NEWMAN REDEVELOPMENT AGENCY**

By: _____

Chairman

**EXHIBIT "1"
TO
GRANT DEED**

Site Legal Description

That certain property situated in the City of Newman, County of Stanislaus, State of California described as follows:

CERTIFICATE OF ACCEPTANCE OF GRANT DEED

This is to certify that the interest in real property conveyed by the foregoing Grant Deed from the SUCCESSOR AGENCY TO THE FORMER NEWMAN REDEVELOPMENT AGENCY, to WESTSIDE PALLET, INC., a _____, is hereby accepted by the undersigned officer on behalf of Grantee, through his signature below, and Grantee consents to recordation thereof by its duly authorized officer.

WESTSIDE PALLET, INC.

A _____

By: _____

Its: _____

STATE OF CALIFORNIA
COUNTY OF _____

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

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

STATE OF CALIFORNIA
COUNTY OF _____

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

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

**EXHIBIT C
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW
INSTRUCTIONS
(2161 L Street, Newman, CA)**

Purchase Note

[Attached behind this cover page]

PURCHASE NOTE

_____, 2012

\$259,380.00

Newman, California

FOR VALUE RECEIVED, WESTSIDE PALLET, INC., a _____ (the "Maker"), having an address of 2138 L Street, Newman, California 95360, promises to pay the SUCCESSOR AGENCY TO THE FORMER NEWMAN REDEVELOPMENT AGENCY ("Holder"), the principal sum not to exceed TWO HUNDRED FIFTY-NINE THOUSAND THREE HUNDRED EIGHTY DOLLARS (\$259,380.00), together with simple interest at the rate of Three and One-Half Percent (3.5%) per annum, pursuant to the terms and conditions set forth below.

1. This Note is made pursuant to Section 3.1 of that certain Real Property Purchase and Sale Agreement and Joint Escrow Instructions (2161 L Street, Newman, CA) (the "Purchase Agreement") between Maker (as the Buyer) and Holder (as the Seller or Successor Agency) dated _____, 2012. Pursuant to the Purchase Agreement, the Holder has conveyed certain real property (the "Site") to the Maker for use in expansion of Maker's existing pallet manufacturing business located adjacent to the Site. This is a purchase money note to evidence a portion of the Purchase Price paid by Maker for the Site pursuant to the Purchase Agreement. All capitalized terms not defined in this Note shall have the meaning set forth in the Purchase Agreement.

2. Payment of this Note is secured by a deed of trust, together with an Addendum thereto (collectively, the "Deed of Trust") from Maker to Holder recorded upon the Site.

3. So long as Maker is not in default under the Purchase Agreement or this Note, and subject to the limitations in this Note, the principal and accrued interest shall be due and payable in equal monthly payments of THREE THOUSAND NINE HUNDRED NINETY-NINE AND 22/100 DOLLARS (\$3,999.22) for a period of **three (3) years [SEE NOTE UNDER SECTION 3.1 RE TERM OF NOTE]**, at which time the entire remaining unpaid principal and all accrued and unpaid interest shall be due and payable in full. The first monthly payment shall be due and payable on January 15, 2013, and each subsequent monthly payment shall be due and payable on the 15th day of each month thereafter; the entire unpaid principal balance, including all accrued and unpaid interest shall be due and payable in full on December 15, 2015. Notwithstanding the foregoing, the entire outstanding principal and all accrued and unpaid interest shall be due and payable in full immediately upon the sale, lease or other transfer of the Site by Maker.

4. Any payments due hereunder shall be made in lawful money of the United States to the Successor Agency to the Former Newman Redevelopment Agency, 938 Fresno Street, Newman, CA 95360. The place of payment may be changed from time to time as the Holder may from time to time designate in writing.

5. Maker hereby covenants and agrees that it shall maintain, or cause to be maintained; the Site in a manner consistent with the provisions set forth therefor in the Newman

Municipal Code, and shall keep the entire Site reasonably free from any accumulation of debris or waste materials prior to and after construction.

If, at any time, Maker fails to maintain the Site, and has either failed to commence to cure such condition or to diligently prosecute to completion the condition or the condition is not corrected after expiration of thirty (30) days from the date of written notice from Holder to Maker, Holder may perform the necessary corrective maintenance, and Maker shall pay such costs as are reasonably incurred for such maintenance. The Holder shall have the right to place a lien on the property should Maker not reimburse Holder for such costs within sixty (60) days following Holder's written demand to Maker for reimbursement of such costs. Maker, on behalf of itself its heirs, successors and assigns, hereby grants to Holder and its officers, employees and agents, an irrevocable license to enter upon the Site to perform such maintenance during normal business hours after receipt of written notice from Holder as hereinabove described and Maker's failure to cure or remedy such failure within forty-five (45) days of such notice. Any such entry shall be made only after reasonable notice to Maker, and Holder shall indemnify and hold Maker harmless from any claims or liabilities pertaining to any such entry by Holder.

Failure by Maker to maintain the Site in the condition provided in this Section 5 may, in Holder's reasonable discretion, constitute a default under this Note and the related Deed of Trust.

The foregoing covenants shall remain in effect until all amounts due Holder hereunder are paid in full.

6. The occurrence of any of the following shall constitute an event of default under this Note: (i) Maker fails to pay any amount due hereunder within fifteen (15) days of its due date; (ii) Any default by Maker under this Note, the Deed of Trust or the Purchase Agreement after the expiration of applicable notice and cure periods; (iii) Any default by Maker under any other document affecting the Site, after the expiration of any applicable notice or cure periods provided therein; (iv) The sale, transfer or other conveyance of all or any part of the Site, or any interest in it, without Holder's prior written consent.

Upon the occurrence of any event of default, or at any time thereafter, at the option of the Holder hereof and without notice, the entire unpaid principal and interest owing on this Note shall become immediately due and payable. This option may be exercised at any time following any such event, and the acceptance of one or more installments thereafter shall not constitute a waiver of Holder's option. Holder's failure to exercise such option shall not constitute a waiver of such option with respect to any subsequent event. Holder's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

7. At all times when Maker is in default hereunder by reason of Maker's failure to pay principal due under this Note or any amounts due under any loan documents securing this Note, the interest rate on the sums as to which Maker is in default (including principal, if Holder has elected to declare it immediately due and payable), shall be the lower of the highest rate then

allowed by law or two percent (2%) over the prime interest rate announced by Wells Fargo Bank, N.A., as of the date of the default.

8. Maker and any endorsers hereof and all others who may become liable for all or any part of this obligation, severally waive presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment of this Note, and expressly consent to any extension of the time of payment hereof or of any installment hereof, to the release of any party liable for this obligation, and any such extension or release may be made without notice to any of said parties and without any way affecting or discharging this liability.

9. Maker agrees to pay immediately upon demand all costs and expenses of Holder including reasonable attorneys' fees, (i) if after default this Note be placed in the hands of an attorney or attorneys for collection, (ii) if after a default hereunder or under the Deed of Trust, the Purchase Agreement or under any loan document referred to herein Holder finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against Maker, any guarantor or any other party liable therefore or to the protection of its rights under this Note, the Deed of Trust, the Purchase Agreement or other loan document, or (iii) if Holder seeks to have the Site abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of the Note or prohibiting the enforcement of the Deed of Trust or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court.

10. If Holder shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental agency, affecting the property or the title thereto or the interest of the Holder under the Deed of Trust, including, without limitation, any form of condemnation or eminent domain proceeding, Holder shall be reimbursed by maker immediately upon demand for all costs, charges and attorneys' fees incurred by Holder in any such case, and the same shall be secured by the Deed of Trust as a further charge and lien upon the Site.

11. Any notices provided for in this Note shall be given by mailing such notice by certified mail, return receipt requested, at the address stated in this Note or at such other address as either party may designate in written notice. Copies of any notice of default given by Holder to Maker under this Note shall also be sent to Fortuna Redevelopment Agency at the following address:

Successor Agency to the Former
Newman Redevelopment Agency
628 Fresno Street
Newman, CA 95360
Attn: Newman City Manager

12. This Note shall be binding upon Maker, its successors and assigns.

13. This Note shall be construed in accordance with and be governed by the laws of the State of California.

14. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

WESTSIDE PALLET, INC.

a _____

By: _____

Name: _____

Its: _____

**EXHIBIT D
TO
REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW
INSTRUCTIONS
(2161 L Street, Newman, CA)**

Purchase Deed of Trust

_____ TITLE COMPANY (OR OTHER TITLE COMPANY
APPROVED BY SUCCESSOR AGENCY) STANDARD FORM OF DEED OF TRUST
TO BE USED WITH THE ATTACHED "ADDENDUM TO DEED OF TRUST"
ATTACHED THERETO.]

ADDENDUM TO DEED OF TRUST
(Purchase Note)

This Addendum to Deed of Trust is part of the Deed of Trust dated _____ to which it is attached between WESTSIDE PALLET, INC., a _____, as Trustor, and the SUCCESSOR AGENCY TO THE FORMER NEWMAN REDEVELOPMENT AGENCY, as Beneficiary. The Deed of Trust, together with this Addendum to Deed of Trust, are executed and delivered pursuant to and in furtherance of that certain Real Property Purchase and Sale Agreement and Joint Escrow Instructions (2161 L Street, Newman, CA), dated _____, 2012, between Trustor (as the Buyer) and Beneficiary (as the Seller or Successor Agency) (the "Purchase Agreement"), which provides in part for Beneficiary to convey certain real property (the "Property" or "Site") to Trustor, all as more fully set forth in the Purchase Agreement. All capitalized terms not defined herein shall have the meaning set forth in the Purchase Agreement.

Pursuant to the Purchase Agreement, Trustor executed and delivered to Beneficiary a promissory note (the "Note"), in the principal amount of TWO HUNDRED FIFTY-NINE THOUSAND EIGHT HUNDRED EIGHTY THOUSAND DOLLARS (\$259,380.00) evidencing a portion of the Purchase Price paid by Trustor for the Site. The following provisions are made a part of the Deed of Trust:

1. No Discrimination. The Trustor covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Trustor itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property.

2. Hazardous Substances.

(a) As used in this Section 2, the following terms shall have the following meanings:

(i) "Environmental Laws" means all statutes, ordinances, orders, rules, regulations, plans, policies or decrees and the like now or hereafter in effect relating to (A) Hazardous Substance Activity or Hazardous Substances; (B) the generation, use, storage, transportation or disposal of Hazardous Substances, or solid waste; or (C) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health, safety or welfare, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 *et seq.*) ("CERCLA"); the Hazardous Material Transportation Act (49 U.S.C. Section 180 *et seq.*); the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136

et seq.); the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 *et seq.*); the Clean Air Act (42 U.S.C. Section 740 *et seq.*); the Federal Water Pollution Control Act (33 U.S.C. Section 1251 *et seq.*); the Occupational Safety and Health Act (29 U.S.C. Section 651 *et seq.*); the Safe Drinking Water Act (42 U.S.C. Section 300f *et seq.*); the Porter-Cologne Water Quality Control Act (California Water Code Section 13020 *et seq.*); the Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health & Safety Code Section 25249.5 *et seq.*); the Hazardous Substance Account Act (California Health & Safety Code Section 25300 *et seq.*); the Hazardous Waste Control Act (California Health & Safety Code Section 25100 *et seq.*); The California Environmental Quality Act (California Public Resources Code Section 2100 *et seq.*); and the rules, regulations and ordinances of the City or County of San Francisco or any applicable federal, state and local agencies or bureaus, as amended from time to time.

(ii) "Foreclosure Transfer" means the transfer of title to all or any part of the Property or the Trust Estate at a foreclosure sale under the Deed of Trust, either pursuant to judicial decree or the power of sale contained in the Deed of Trust, or by deed in lieu of such foreclosure.

(iii) "Hazardous Substances" means (A) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "acutely hazardous waste," "radioactive waste," "infectious waste," "biohazardous waste," "toxic substance," "pollutant," "toxic pollutant," "contaminant" as well as any other formulation not mentioned herein intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "EP toxicity" or "TCLP toxicity"; (B) petroleum, natural gas, natural gas liquids, liquified natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) and ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources; (C) "hazardous substance" as defined in Section 2782.6(d) of the California Civil Code; (D) "waste" as defined in Section 13050(d) of the California Water Code; (E) asbestos in any form; (F) urea formaldehyde foam insulation; (G) polychlorinated biphenyls (PCBs); (H) radon; and (I) any other chemical, material, or substance that, because of its quantity, concentration, or physical or chemical characteristics, exposure to which is limited or regulated for health and safety reasons by any governmental authority, or which poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment.

(iv) "Hazardous Substance Activity" means any actual, proposed, or threatened use, storage, holding, existence, location, release (including, without

limitation, any spilling, leaking, leaching, pumping, pouring, emitting, emptying, dumping, disposing into the environment, and the continuing migration into or through soil, surface water, groundwater or any body of water or the air), discharge, deposit, placement, generation, processing, construction, treatment, abatement, removal, disposal, disposition, handling, or transportation of any Hazardous Substance from, under, in, into, or on the Property, including without limitation, the movement or migration of any Hazardous Substances from surrounding property, surface water, groundwater or any body of water, or the air under, in, into or onto the Property and any residual Hazardous Substances contamination in, on, or under the Property.

(v) "Losses" means all charges, losses, liabilities, damages (whether actual, consequential, punitive, or otherwise denominated), costs, fees, demands, claims for personal injury or real or personal property damage), actions, administrative proceedings (including informal proceedings), judgments, causes of action, assessments, fines, penalties, costs, and expenses of any kind or character, foreseeable and unforeseeable, liquidated and contingent, proximate and remote, including, without limitation, the following: (A) the reasonable fees and expenses of outside legal counsel; (B) the reasonable fees and expenses of accountants, third-party consultants, and other independent contractors retained by an Beneficiary; (C) costs, including capital, operating and maintenance costs, incurred in connection with any investigation or monitoring of site conditions or any clean-up, remedial, removal or restoration work required or performed by any federal, state or local governmental agency or political subdivision or performed by any non-governmental entity or person that is required by Environmental Laws or administrative ruling or directive because of the presence, suspected presence, release or suspected release of Hazardous Substances in violation of Environmental Laws in the air, soil, surface water or groundwater at the Property; (D) any and all diminution in value of the Property, loss of use or damage to the Property, or loss of profits or loss of business opportunity; and (E) reasonable costs and expenses of enforcing this Section 6.09.

(vi) "Environmental Losses" means Losses rising out of or as a result of: (A) the occurrence of any Hazardous Substance Activity; (B) any violation of any applicable Environmental laws relating to the Property or to the ownership, use, occupancy or operation thereof; (C) any investigation, inquiry, order, hearing, action, or other proceeding by or before any governmental agency in connection with any Hazardous Substance Activity; 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 directly or indirectly relates to, arises from or is based on any of the matters described in clauses (A), (B), or (C), or any allegation of any such matters.

(b) Trustor represents and warrants to Beneficiary that Trustor has conducted as appropriate inquiry and investigation, and, to the best of Trustor's knowledge, based on such inquiry and investigation, no portion of the Property is being used or has ever been used at any

previous time, for the disposal, storage, treatment, processing or other handling of Hazardous Substances, nor have any Hazardous Substances migrated onto or from the Property. Neither the Property nor Trustor is in violation of or subject to any existing, pending or threatened investigation by any governmental authority under any Environmental Law. Trustor's intended use of the Property will not result in the disposal or release of any Hazardous Substances on, under, about or to the Property or the migration of any Hazardous Substances from the Property. The foregoing representations and warranties shall be continuing and shall be true and correct for the period from the date hereof to the release of this Deed of Trust (whether by payment of the indebtedness secured hereby or foreclosure or action in lieu thereof), and these representations and warranties shall survive such release.

(c) Trustor represents and warrants to Beneficiary that Trustor has complied with all recommendations by any engineers retained by Trustor and all requirements of any applicable department of environmental resources, environmental protection agency or similar governmental agency, and there are no recommendations by said engineers or requirements ordered by said agency or any other governmental body for environmental investigation or cleanup with respect to the Property.

(d) On and after the date hereof, Trustor shall not: (a) allow any Hazardous Substances to be installed, used, introduced, stored, treated, disposed of, generated, manufactured, discharged, dumped, transported or brought in, upon or over the Property in violation of applicable law; (b) allow any soil or ground water contamination or pollution with any Hazardous Substances on the Property in violation of applicable law; (c) allow any Hazardous Substances to migrate from the Property in violation of applicable law; (d) allow any Hazardous Substances to migrate onto the Property from any adjacent properties in violation of applicable law; or (e) allow or cause the Property to be in violation of, or to trigger a duly initiated and prosecuted investigation of the Property by any governmental authority under applicable limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules or timetables contained in any local, state and/or federal laws, regulations, codes, ordinances, plans, administrative or judicial orders, decrees, judgments, notices or demand letters issued, entered, promulgated or approved thereunder relating to the environment, land use, water and air quality and Hazardous Substances ("Environmental Requirements").

(e) If the presence of any Hazardous Substances on the Property caused or permitted by Trustor results in any contamination of the Property, Trustor shall promptly take all actions, at its sole expense, as are necessary to return the Property to the condition existing prior to the introduction of any such Hazardous Substances to the Property; provided that Beneficiary's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Property.

(f) At any time after the occurrence and during the continuance of any default under this Section 2, Beneficiary shall have the following rights and remedies, in addition to any other rights and remedies Beneficiary has under this Deed of Trust:

(i) As provided in California Code of Civil Procedure Section 564, Beneficiary or its employees, acting by themselves or through a court appointed

receiver may do any of the following: (i) enter upon, possess, manage, operate, dispose of, and contract to dispose of the Property or any part thereof; (ii) take custody of all accounts; (iii) negotiate with governmental authorities with respect to the Property's environmental compliance and remedial measures; (iv) take any action necessary to enforce compliance with environmental provisions, including spending Rent Payments to abate any environmental problem; (v) make, terminate, enforce or modify leases of part or all of the Property; (vi) contract for goods and services, hire agents, employees, and counsel, make repairs, alterations, and improvements to the Property necessary in Beneficiary's judgment to protect or enhance the security hereof; and/or (vii) take any and all other actions which may be necessary or desirable to comply with Trustor's obligations hereunder and under the Loan Documents. All sums realized by the receiver or Beneficiary under this subparagraph, less all costs and expenses incurred by either of them under this subparagraph, including attorneys' fees, and less such sums as Beneficiary or the receiver deems appropriate as a reserve to meet future expenses under this subparagraph, shall be applied on any indebtedness secured hereby in such order as Beneficiary shall determine. Neither application of said sums to said indebtedness, nor any other action taken by Beneficiary or the receiver under this subparagraph shall cure or waive any default or notice of default hereunder, or nullify the effect of any such notice of default. Beneficiary, or any employee or agent of Beneficiary, or a receiver appointed by a court, may take any action or proceeding hereunder without regard to the adequacy of the security for the indebtedness secured hereunder, the existence of a declaration that the indebtedness secured hereby has been declared immediately due and payable, or the filing of a notice of default.

(ii) With or without notice, and without releasing Trustor from any obligation hereunder, to cure any default of Trustor or in connection with any such default, Beneficiary or its agents, acting by themselves or through a court-appointed receiver, may enter upon the Property or any part thereof and perform such acts and things as Beneficiary deems necessary or desirable to inspect, investigate, assess, and protect the security hereof, including of any of Beneficiary's other rights: (i) to obtain a court order to enforce Beneficiary's right to enter and inspect the Property under California Civil Code Section 2929.5 (in respect of which the decision of Beneficiary as to whether there exists a release or threatened release of hazardous substance, as defined therein, onto the Property shall be deemed reasonable and conclusive as between the parties hereto); and (ii) to have a receiver appointed under California Code of Civil Procedure Section 564 to enforce Beneficiary's right to enter and inspect the Property for hazardous substances as defined therein. All costs and expenses incurred by Beneficiary with respect to the audits, tests, inspections, and examinations which Beneficiary or its agents or employees may conduct, including the fees of engineers, laboratories, contractors, consultants, and attorneys, shall be paid by Trustor. All costs and expenses incurred by Trustee and Beneficiary pursuant to this subparagraph (including court costs, consultant fees and attorney fees, whether incurred in litigation or not and whether before or after judgment) shall

bear interest at the Note Rate, from the date they are incurred until said sums have been paid.

(iii) Beneficiary may seek a judgment that Trustor has breached its covenants, representations and/or warranties with respect to the environmental matters set forth above in this Section 2, by commencing and maintaining an action or actions in any court of competent jurisdiction for breach of contract pursuant to California Code of Civil Procedure Section 736, whether commenced prior to foreclosure of the Property or after foreclosure of the Property, and to seek the recovery of any and all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out-of-pocket costs or expenses actually incurred by Beneficiary or advanced by Beneficiary (collectively, the "Environmental Costs") relating to the cleanup, remediation or other response action required by applicable law or which Beneficiary believes necessary to protect the Property, it being conclusively presumed between Beneficiary and Trustor that all such Environmental Costs incurred or advanced by Beneficiary relating to the cleanup, remediation, or other response action respecting the Property were made by Beneficiary in good faith. All Environmental Costs incurred by Beneficiary under this subparagraph (including court costs, consultant fees and attorney fees, whether incurred in litigation or not and whether before or after judgment) shall bear interest at the Note Rate, from the date of expenditure until said sums have been paid. Beneficiary shall be entitled to bid, at any sale of the Property held hereunder, the amount of said costs, expenses and interest in addition to the amount of the other obligations hereby secured as a credit bid, the equivalent of cash.

(iv) As provided in California Code of Civil Procedure Section 726.5, Beneficiary may waive its lien against the Property or any portion thereof, to the extent such property is found to be environmentally impaired as defined therein, and to exercise any and all rights and remedies of an unsecured creditor against Trustor and all of Trustor's assets and property for the recovery of any deficiency and Environmental Costs, including seeking an attachment order under California Code of Civil Procedure Section 483.010. Beneficiary and Trustor each represents and warrants for itself that it has no actual knowledge of any release of any Hazardous Substance (as defined in Section 726.5) on, to or under the Property. As between Beneficiary and Trustor, for purposes of California Code of Civil Procedure Section 726.5, Trustor shall have the burden of proving that Trustor or any related party (or any affiliate or agent of Trustor or any related party) did not cause or contribute to, and was not in any way negligent in permitting, any release or threatened release of the Hazardous Substance.

(v) Trustor acknowledges and agrees that notwithstanding any term or provision contained herein or in the Loan Documents, the Environmental Costs and all judgments and awards entered against Trustor pursuant to Section 2(f)(iv) above shall be exceptions to any nonrecourse or exculpatory provision of the Loan Documents, and Trustor shall be fully and personally liable for the

Environmental Costs and such judgments and awards and such liability shall not be limited to the original principal amount of the obligations secured by this Deed of Trust, and Trustor's obligations shall survive the foreclosure, deed in lieu of foreclosure, release, reconveyance, or any other transfer of the Property or this Deed of Trust.

(g) Trustor hereby agrees to indemnify, defend and hold harmless Beneficiary from and against any and all Environmental Losses.

_____, 2012

WESTSIDE PALLET, INC.

a _____

By: _____

Name: _____

Its: _____

"TRUSTOR"

SUCCESSOR AGENCY TO THE FORMER
NEWMAN REDEVELOPMENT AGENCY

By: _____
Chairman

"BENEFICIARY"