

**RECORDATION REQUESTED BY:**

**WHEN RECORDED MAIL TO:**  
**Pacific Western Bank**  
**275 North Brea Boulevard**  
**Brea, CA 92821**  
**Attention: Jennifer Riddle**

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## **SUBORDINATION OF DEED OF TRUST**

**NOTICE: THIS SUBORDINATION OF DEED OF TRUST RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

THIS SUBORDINATION OF DEED OF TRUST dated \_\_\_\_\_, 2022, is made and executed between the County of Humboldt, a duly organized political subdivision of the State of California ("Beneficiary"); Samoa Pacific Group LLC, ("Trustor") and Pacific Western Bank, a California state-charter bank ("Lender").

WITNESSETH

WHEREAS, Trustor has executed a deed of trust dated April 4, 2022 in favor of Lender which deed of trust was recorded on April 22, 2022 in Humboldt County, California as Instrument No. 2022-007849 (the "Lender's Lien") covering the real property as described in Exhibit A (the "Property") attached hereto and made a part hereof to secure a note in favor of Lender dated April 4, 2022 in the original principal amount of \$12,000,000.00 (the "Superior Indebtedness"); and

WHEREAS, Trustor has executed a deed of trust dated May 6, 2014 in favor of Beneficiary which deed of trust was recorded on May 30, 2014 in Humboldt County, State of California as Instrument No. 2014-009496-6 ("Subordinate Deed of Trust") covering the Property and the surrounding properties described as Parcel One and Parcel Two of Parcel Map No. 3606, Book 36 of Parcel Maps, Pages 31- 35 to secure the obligations of the Trustor under "The County of Humboldt Brownfields Cleanup Revolving Loan Fund Loan Agreement" in the original principal amount of \$950,000.00 dated May 6, 2014; First Amendment to "The County of Humboldt Brownfields Cleanup Revolving Loan Fund Loan Agreement" in the additional amount of \$370,000.00 dated October 12, 2016; and Second Amendment to "The County of Humboldt Brownfields Cleanup Revolving Loan Fund Loan Agreement" in the additional amount of \$1,000,000.00 dated April 11, 2018, for a total amount of \$2,320,000.00; and

WHEREAS, it is a condition precedent to certain Financial Accommodations (as described below) that said Lender's Lien shall unconditionally be and remain at all times a lien or charge upon the Property, prior and superior to the lien or charge of the Subordinate Deed of Trust; and

WHEREAS, Lender is willing to extend said Financial Accommodations (as described below) provided the Lender's Lien is a lien or charge upon the Property prior and superior to the lien or charge of the Subordinate Deed of Trust and provided that Beneficiary will specifically and unconditionally subordinate the lien or charge of the Subordinate Deed of Trust to the lien or charge of the Lender's Lien; and

WHEREAS, it is to the mutual benefit of the parties hereto that Lender extend said Financial Accommodations (as described below) to Borrower; and Beneficiary is willing that the Lender's Lien shall constitute a lien or charge upon said Property which is unconditionally prior and superior to the Subordinate Deed of Trust.

## AGREEMENT

NOW THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce Lender to extend the Financial Accommodations (as described below), it is hereby declared, understood and agreed as follows:

1. That the Subordinate Deed of Trust and the Subordinate Indebtedness secured by the Subordinate Deed of Trust is and shall be unconditionally subordinated in all respects to Lender's Lien and the Superior Indebtedness, and it is agreed that Lender's Lien shall be and remain, at all times, prior and superior to the lien of the Subordinate Deed of Trust. Beneficiary also subordinates to Lender's Lien all other Security Interests in the Real Property currently held by Beneficiary.

2. That Lender would not extend said Financial Accommodations (as described below) without this subordination agreement.

3. That this agreement shall be the whole and only agreement with regard to the subordination of the lien or charge of the Subordinate Deed of Trust to the lien or charge of the Lender's Lien and shall supersede and cancel, but only insofar as would affect the priority between the deeds of trust heretofore specifically described, any prior agreements as to such subordination including, but not limited to, those provisions, if any, contained in the Subordinate Deed of Trust, which provide for the subordination of the lien or charge thereof to another deed or deeds of trust or to another mortgage or mortgages.

4. Borrower, Trustor and Beneficiary each want Lender to provide financial accommodations ("Financial Accommodations") to Borrower in the form of (A) new credit or loan advances, (B) an extension of time to pay or other compromises regarding all or part of Borrower's present indebtedness to Lender, or (C) other benefits to Borrower. Borrower and Beneficiary each represent and acknowledge to Lender that Beneficiary will benefit as a result of these Financial Accommodations from Lender to Borrower, and Beneficiary acknowledges receipt of valuable consideration for entering into this Subordination.

**SUBORDINATION.** The Subordinate Deed of Trust and the Subordinate Indebtedness secured by the Subordinate Deed of Trust is and shall be subordinated in all respects to Lender's Lien and the Superior Indebtedness, and it is agreed that Lender's Lien shall be and remain, at all times, prior and superior to the lien of the Subordinate Deed of Trust. Beneficiary also subordinates to Lender's Lien all other Security Interests in the Real Property currently held by Beneficiary.

**BENEFICIARY'S REPRESENTATIONS AND WARRANTIES.** Beneficiary represents and warrants to Lender that: (A) no representations or agreements of any kind have been made to Beneficiary which would limit or qualify in any way the terms of this Subordination; (B) this Subordination is executed at Borrower's request and not at the request of Lender; and (C) Lender has made no representation to Beneficiary as to the creditworthiness of Borrower.

**BENEFICIARY WAIVERS.** Beneficiary waives any right to require Lender: (A) to make, extend, renew, or modify any loan to Borrower or to grant any other financial accommodations to Borrower whatsoever; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of any Superior Indebtedness secured by Lender's Lien, or notice of any action or nonaction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the Superior Indebtedness, or in connection with the creation of new or additional indebtedness; (C) to resort for payment or to proceed directly or at once against any person, including Borrower; (D) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; (E) to pursue any other remedy within Lender's power; or (F) to commit any act or omission of any kind, at any time, with respect to any matter whatsoever.

**LENDER'S RIGHTS.** Lender may take or omit any and all actions with respect to Lender's Lien without affecting whatsoever any of Lender's rights under this Subordination. In particular, without limitation, Lender may, without notice of any kind to Beneficiary, (A) make one or more additional secured or unsecured loans to Borrower; (B) repeatedly alter, compromise, renew, extend, accelerate, or otherwise change the time for payment or other terms of the Superior Indebtedness or any part of it, including increases and decreases of the rate of interest on the Superior Indebtedness; extensions may be repeated and may be for longer than the original loan term; (C) take and hold collateral for the payment of the Superior Indebtedness, and exchange, enforce, waive, and release any such collateral, with or without the substitution of new collateral; (D) release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or guarantors on any terms or manner Lender chooses; (E) determine how, when and what application of payments and credits, shall be made on the Superior Indebtedness; (F) apply such security and direct the order or manner of sale of the security, as Lender in its discretion may determine; and (G) transfer this Subordination to another party.

**DEFAULT BY BORROWER.** If Borrower becomes insolvent or bankrupt, this Subordination shall remain in full force and effect.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Subordination:

**Amendments.** This Subordination, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Subordination. No alteration of or amendment to this Subordination shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Subordination, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. In exchange for Beneficiary entering into this Agreement, Lender expressly agrees not to seek recovery for any sums which Lender may incur under this Section against Beneficiary.

**Authority.** The person who signs this Subordination as or on behalf of Beneficiary represents and warrants that he or she has authority to execute this Subordination and to subordinate the Subordinated Indebtedness and the Beneficiary's security interests in Borrower's property, if any.

**Caption Headings.** Caption headings in this Subordination are for convenience purposes only and are not to be used to interpret or define the provisions of this Subordination.

**Governing Law.** This Subordination will be governed by, construed and enforced in accordance with federal law and the laws of the State of California. This Subordination has been accepted by Lender in the State of California.

**Choice of Venue.** If there is a lawsuit, Beneficiary agrees upon Lender's request to submit to the jurisdiction of the courts of Humboldt County, State of California.

**Successors.** This Subordination shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Subordination, and the covenants of Beneficiary and Borrower herein in favor of Lender shall extend to, include, and be enforceable by any transferee or endorsee to whom Lender may transfer any or all of the Superior Indebtedness.

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

**COUNTERPARTS PROVISION.** This document may be executed in several counterparts, each of which shall constitute an original, but of which together shall constitute as one and the same document.

**NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.**

**EACH PARTY TO THIS SUBORDINATION ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS SUBORDINATION, AND EACH PARTY AGREES TO ITS TERMS. THIS SUBORDINATION IS DATED APRIL 4, 2022.**

**"BENEFICIARY"**

**County of Humboldt, a duly organized political subdivision of the State of California**

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

**Title: \_\_\_\_\_**

**"TRUSTOR"**

**Samoa Pacific Group LLC**

**By: \_\_\_\_\_  
Daniel J. Johnson, Special Agent of Samoa Pacific Group LLC,  
a California limited liability company**

**"LENDER"**

**PACIFIC WESTERN BANK**

**By: \_\_\_\_\_  
Jennifer Riddle, Senior Vice President**

**CERTIFICATE OF ACKNOWLEDGMENT**

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

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2022, 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.**

\_\_\_\_\_  
(Seal)

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