

**AGREEMENT TO ASSUME COUNTY OF HUMBOLDT BROWNFIELDS CLEANUP  
REVOLVING FUND LOAN AGREEMENT**

This Agreement (this “Assumption Agreement”) is made effective as of \_\_\_\_\_, 2023, by and between the COUNTY OF HUMBOLDT, a political subdivision of the State of California, hereinafter referred to as the “Lender” or the “County”, and the HUMBOLDT BAY HARBOR, RECREATION, AND CONSERVATION DISTRICT, a California special district, hereinafter referred to as the “Borrower” or the “District”, and the SAMOA PACIFIC GROUP LLC, a California limited liability company, hereinafter referred to as “SPG”. The Lender, Borrower, and SPG may be referred to individually as a “Party” or collectively as the “Parties”.

**RECITALS**

This Assumption Agreement is made and entered into by the Parties on the basis of the following recitals of material facts and considerations:

WHEREAS, the County of Humboldt is the recipient of Brownfields Cleanup Revolving Loan Funds (BCRLF) from the United States Environmental Protection Agency (EPA) and authorized to make certain loans from these funds (Loan Funds); and

WHEREAS, these funds are to be used to undertake cleanup of brownfields sites by making low interest loans to parties willing to undertake cleanup of these sites; and

WHEREAS, the County and District have been working cooperatively for decades to revitalize the Samoa Peninsula and the other Coastal Dependent Industrial properties around Humboldt Bay for the benefit of the community; and

WHEREAS, these long term multi-pronged cooperative efforts of the Board of Supervisors, the County Planning & Building Department, County Economic Development, and County Administration Department(s) and the District have resulted in attracting world class indoor recirculating aquaculture, offshore wind developers, and other industries that intend to or have made significant investments into the Samoa Peninsula; and

WHEREAS, as part of these efforts, the County Board of Supervisors adopted the Samoa Peninsula Enhanced Infrastructure Finance District (EFID) which, over its life, is projected to collect approximately \$52,000,000 of property tax increment from these investments, allowing EFID to allocate the increased revenues to a variety of projects that will benefit the community and surrounding areas; and

WHEREAS, reference is made to that certain Humboldt Bay Offshore Wind & Heavy Lift Terminal Conceptual Master Plan dated May 7, 2022 (the “Master Plan”). As set forth in the Master Plan, the District is in the planning phase of a heavy lift terminal development project on the Samoa Peninsula to support the offshore wind energy generation program managed by the Bureau of Ocean Energy Management (BOEM) (the “Port Development”).

WHEREAS, as part of the Port Development, the subject real property will require environmental remediation, as preliminarily identified in that Phase I Environmental Site Assessment dated April 22, 2022, and which remediation needs will be further studied as part of a Phase II Environmental Site Assessment to be conducted under the management of the U.S. Environmental Protection Agency (EPA). As a condition of the development of the Port Project, the regulatory agencies (including the County and the North Coast Regional Water Quality Control Board) will require certain environmental remediation work be completed as part of the Port Project; and

WHEREAS, in furtherance of these investments, on November 29, 2022, the Board of Supervisors adopted Resolution 22-140 recognizing that the County of Humboldt has been an active partner in the Redwood Region Climate and Community Resilience Hub (CORE Hub) and the broader North Coast Offshore Wind Community Benefits Network (Network), and has proactively communicated and coordinated with the District, commercial fisheries, and other regional communities and stakeholders, to work toward a broad vision and roadmap for offshore wind development in our region; and

WHEREAS, the District and the County desire to partner together to help facilitate these important community investments by, among other things, facilitating the remediation of the subject properties, work force development and training, and other community benefits as part of the revitalization of the Samoa Peninsula; and

WHEREAS, on May 6, 2014, the County, as lender, entered into that written County of Humboldt Brownfields Cleanup Revolving Loan Fund Loan Agreement (the “Original Loan Agreement”) with the Samoa Pacific Group LLC, a California limited liability company, as borrower, by which SPG received Brownfields Cleanup Revolving Loan Funds (“BCRLF”) from the County in the amount of nine hundred fifty thousand dollars (\$950,000.00), and executed a Promissory Note dated [REDACTED], 2014 (the “2014 Promissory Note”, which was secured by Deed of Trust recorded on May 30, 2014, as Recording No. 2014-009496 in the records of the Humboldt County Recorder (the “2014 Deed of Trust”), in favor of the County; and

WHEREAS, on October 12, 2016, the County and SPG entered into the First Amendment to the Original Loan Agreement (the “First Amendment to the Original Loan Agreement”), through which SPG received additional BCRLF Loan Funds from the County in the amount of three hundred seventy thousand dollars (\$370,000.00), for a total amount not to exceed one million three hundred twenty thousand dollars (\$1,320,000.00), and executed a Promissory Note dated October 12, 2016 (the “2016 Promissory Note”), which was secured by that Notice of Advance under the 2014 Deed of Trust that was recorded on May 10, 2018, as Recording No. 2018-008707, in the records of the Humboldt County Recorder; and

WHEREAS, on April 11, 2018, the County and SPG entered into the Second Amendment to the Original Loan Agreement (the “Second Amendment to the Original Loan Agreement”), through which SPG received additional BCRLF Loan Funds from the County in the amount of one million dollars (\$1,000,000.00), for a total amount not to exceed two million three hundred twenty thousand dollars (\$2,320,000.00), and executed a Promissory Note dated April 11, 2018 (the “2018 Promissory Note”), which was secured by that Notice of Advance under the 2014 Deed of Trust

that was recorded on May 10, 2018, as Recording No. 2018-008706, in the records of the Humboldt County Recorder;

WHEREAS, the Original Loan Agreement, the First Amendment to the Original Loan Agreement, and the Second Amendment to the Original Loan Agreement are collectively referred to herein as the “BCRLF Loan Agreement”;

WHEREAS, collectively, the BCRLF Loan Funds provided under the 2014 Promissory Note in the amount of nine hundred fifty thousand dollars (\$950,000.00), the BCRLF Loan Funds provided under the 2016 Promissory Note in the additional amount of three hundred seventy thousand dollars (\$370,000.00), and the BCRLF Loan Funds provided under the 2018 Promissory Note in the additional amount of one million dollars (\$1,000,000.00), for a total amount of two million three hundred twenty thousand dollars (\$2,320,000.00), is referred to herein as the “Debt”;

WHEREAS, the 2014 Deed of Trust along with Notices of Advances referred to above are collectively referred to herein as the “Deed of Trust”;

WHEREAS, the Deed of Trust affects that real property located on the Samoa Peninsula, as more particularly described in Exhibit A to the 2014 Deed of Trust;

WHEREAS, pursuant to the BCRLF Loan Agreement SPG was obligated to use the borrowed funds constituting the Debt to perform certain remediation work (the “Remediation Work”) on the certain real property owned by SPG, as more particularly set forth in the BCRLF Loan Agreement, and to complete the Remediation Work on or before June 20, 2023;

WHEREAS, pursuant to the BCRLF Loan Agreement, the Debt bears interest at the rate of zero percent (0%), until March 31, 2024, on which date SPG is obligated to pay to the County all outstanding and unpaid principal and interest;

WHEREAS, as of the Effective Date of this Assumption Agreement, the Parties agree that the outstanding principal on the Debt is two million three hundred twenty thousand dollars (\$2,320,000.00) and the accrued interest on the Debt is zero dollars;

WHEREAS, as of the Effective Date of this Assumption Agreement, all some Remediation Work has been satisfactorily completed by SPG in accordance with the BCRLF Loan Agreement;

WHEREAS, by way of that written Agreement for the Purchase of and Sale of Real Property dated May     , 2022 (“Purchase Agreement”), by and between SPG and the District, the District agreed to purchase and SPG agreed to sell an approximate 35-acre parcel of real property on the Samoa Peninsula, commonly referred to as Humboldt County Assessor Parcel No. 401-031-083 and more particularly described in the Purchase Agreement (the “Port Property”), for the price of the million dollars (\$3,000,000.00);

WHEREAS, the Deed of Trust affects the Port Property, among other real property owned by SPG on the Samoa Peninsula;

WHEREAS, by way of that written Addendum to Agreement for the Purchase and Sale of Real Property, SPG and the District agreed that, subject to the County’s approval, the District is given

the option to assume SPG's obligation to repay the Debt to the County in exchange for a credit against the purchase price equal to the Debt it assumes; provided, however, that (i) SPG is relieved from any obligation to pay back any portion of the Debt assumed by the District; (ii) the County releases and reconveys back to SPG the security interest created by the Deed of Trust; and (iii) that the District is not obligated to assume and SPG shall not be released from any unfulfilled obligations under the BCRLF Loan Agreement relating to the Remediation Work or any liabilities arising therefrom, except repayment of the assumed Debt;

WHEREAS, SPG and the District have opened an escrow with Humboldt Land Title Company (Escrow No. FHBT-0022200597-RC) (the "Escrow") to facilitate the acquisition of the Port Property by the District;

WHEREAS, District desires to assume SPG's obligation to repay the Debt to the County Loan Funds from Lender for the purpose of facilitating cleanup of the Port Property; and

WHEREAS, cleanup of the Port Property will involve abatement of the contaminants preliminarily identified in that Phase I Environmental Site Assessment dated April 22, 2022 which will be further studied as part of a Phase II Environmental Site Assessment to be conducted under the management of the U.S. Environmental Protection Agency (EPA); and

WHEREAS, the cleanup work will be described in a workplan that will require approval by regulatory agencies including the EPA and Regional Water Quality Control Board ("Approved Workplan"); and

WHEREAS, the Property is not listed, or proposed for listing on the National Priorities List of the U. S. Environmental Protection Agency (EPA); and

WHEREAS, the District is not a generator or transporter of the contamination at the Project Site; and

WHEREAS, the District is not and has never been subject to any penalties resulting from environmental non-compliance at or on the Project Site nor is the District, or its Project contractors or subcontractors currently suspended, debarred, or otherwise declared ineligible for participation in this federal program or from the receipt of these funds; and

WHEREAS, the District agreed to purchase the property after the time of disposal or placement of hazardous substances and has not caused, contributed to, permitted, or exacerbated the release of a hazardous substance on, or emanating from the Port Property; and

WHEREAS, by way of this Assumption Agreement the District affirms it is clearly signing on to the Original Loan Agreement as required by the EPA in their email to the Harbor District dated August 10, 2022; and

WHEREAS, by way of this Assumption Agreement the County affirms the loan collateral is sufficient to ensure repayment of the loan as required by the EPA in their email to the Harbor District dated August 10, 2022; and

WHEREAS, by way of this Assumption Agreement, the County and the District desire to set forth the terms and conditions upon which the County will permit the District to assume the obligation to repay the Debt **and remediate the Port Property consistent with the Original Loan Agreement.**

## **AGREEMENT**

NOW, THEREFORE, for valuable consideration (the receipt and sufficiency of which are acknowledged):

**1. Assumption of the Debt Obligation.** Upon the satisfaction of the Condition Precedent set forth in Section 3, below, Borrower agrees to assume SPG's obligations under the BCRLF Loan Agreement to pay the Debt in the amount of two million three hundred twenty thousand dollars (\$2,320,000.00), in accordance with the terms and conditions of this Assumption Agreement. Borrower shall execute, for the benefit of Lender, the Limited Obligation Note (the "Note"), attached hereto as **Exhibit A** and incorporated herein by this reference, evidencing the Borrower's obligation to repay the Debt. The Note shall be secured by that Security Agreement attached hereto as **Exhibit B** and incorporated herein, which Borrower shall execute for the benefit of Lender.

**2. Limited Release of SPG.** Upon the satisfaction of the Condition Precedent set forth in Section 3, below, the County agrees to release SPG from its obligation under the BCRLF Loan Agreement and/or the 2014 Promissory Note, the 2016 Promissory Note, and the 2018 Promissory Note to repay the Debt; provided, however, that nothing in this Assumption Agreement shall release SPG from its obligations in the BCRLF Loan Agreement relating to the Remediation Work or other obligations contained therein that are not expressly assumed by Borrower in this Assumption Agreement. In the event of a default by SPG in its performance of its surviving obligations under BCRLF Loan Agreement, the County may exercise any rights and remedies available at law against SPG, but the County agrees that, in the event of a default by SPG, Lender shall not have the right to accelerate the repayment of the Debt assumed by the District or otherwise demand that the District immediately repay the Debt. For the avoidance of doubt, nothing in the preceding sentence shall operate to prevent the Lender from accelerating the Debt or otherwise demanding its immediate payment upon a default by the District in the District's performance of this Assumption Agreement or the Note.

**3. Condition Precedent; Closing.** The District's obligation to assume the Debt (or any portion thereof) is expressly conditioned upon the closing of Escrow under the Purchase Agreement by the recordation of a grant deed conveying to the District fee title to the Port Property ("Closing") in accordance with the Purchase Agreement. To facilitate Closing, the County shall deposit into Escrow, at least one business day prior to the date for Closing (currently March 1, 2023), a duly executed instrument to fully release and reconvey to SPG the security interest created by the Deed of Trust (the "Full Release and Reconveyance"), and the Escrow officer shall be instructed to record the Full Release and Reconveyance only in the event of and simultaneously with Closing. Upon the recordation of the Full Release and Reconveyance at and in the event of Closing, the District shall be deemed to have assumed the Debt in the manner set forth in this

Assumption Agreement and SPG shall be deemed released from the obligation assumed by the District to repay the Debt.

**4. Consistency with federal, state or local law.** The District will carry out the Project in accordance with the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) 104(k); Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (40 CFR Part 31); and all other applicable provisions of federal, state or local law.

**5. Compliance with the Davis-Bacon Act.** The District shall carry out the Project in accordance with the Davis-Bacon Act of 1931 (40 U.S.C. 276a-276a-5 and 42 U.S.C. 3222). CERCLA compliance with Davis Bacon requires payment of Federal prevailing wage rates for construction, repair or alteration work funded in whole or in part with BCRLF Loan Funds. The District must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction contract.

**6. Compliance.F.R.§ 5.5 (a)(3)(iii).** The District, and any and all of its contractors and subcontractors hired for the performance of the Project, shall comply with 29 C.F.R.§ 5.5 (a)(3)(iii). The District shall require a weekly statement with respect to the wages paid each employee during the preceding week for the duration of the project from every contractor and subcontractor hired for the site remediation ("Project"). These statements shall be submitted to the District and shall be maintained for a period of three years following the completion of the Project.

**7. Compliance with Executive Order 11246.** The District shall comply with Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4 relating to federally assisted construction contracts.

**8. Cleanup Plan.** The District shall provide the County with a Cleanup Plan that has been approved by the State Cleanup Oversight Agency. The approved Cleanup Plan shall comply with California Health and Safety Code, section 25356.1.

**9. Use of Funds.** The District understands and agrees that all Loan Funds provided by County shall be used to cleanup the Port Property.

**10. Compliance Project Documents.** The District further understands and agrees that any and all work performed on the Port Property for which Loan Funds are used and the receipt of any Loan Funds under this Agreement is conditioned upon the District's full compliance with the Project Documents. As used herein Project Documents shall include: This Agreement, the State Approved Cleanup Plan for the project, and any other documents related to the Project, the creation of which is required hereunder or otherwise required to be created pursuant to law.

**11. Loan Amount.** Subject to the terms and conditions set forth herein, Lender agrees to loan to District an amount not to exceed \$2,300,000 to be used for cleanup of the Port Property. The District shall evidence its obligation to repay the Loan Funds by execution of a Limited Obligation Note, attached hereto as Exhibit A and made a part hereof. Said Limited Obligation Note shall be secured in a form substantially similar to that set forth in the Security Agreement in Exhibit B attached hereto.



**12. Loan Term.** The term of the BCRLF Loan shall be a period of ten years, with interest to be charged on the Loan at a rate of zero (0) percent per annum.

**13. Loan Funds.** The Loan Funds are provided to the District through the recording of documents transferring to the District SPG's obligation to repay the \$2,300,000 Debt to the County in exchange for a credit against the purchase price equal to the Debt the District assumes. Prior to April 1, 2028, the date the District is required to begin to make monthly payments on the loan, the District agrees to use the collateral in Exhibit 1 to pay for allowable expenses incurred based upon the progress of the work and in accordance with the approved Project Documents. The total amount paid by the District for allowable expenses shall equal or exceed the \$2,300,000 Debt prior to April 1, 2028. The District shall provide the County with invoices and proof of payment by Harbor District for \$2,300,000 of allowable expenses prior to April 1, 2028.

**14. Pre-existing Expenses.** Expenses incurred more than 90 days before funding of the Loan are not allowable expenses.

**15. Budget.** The District agrees to keep all expenditures from the Loan Funds within the approved Budget. District shall not exceed any of the costs enumerated in the approved Project Budget without the prior written approval of the County or the County's designated environmental project manager.

**16. Cost Share.** District agrees to pay for twenty (20%) percent of the total project cost. The source of the District's 20% project cost share shall not be from the loan described in this agreement.

**17. Escrow Closing Requirements.** The closing of the Escrow shall be subject to:

- a) Opinion of the District's Counsel for the benefit of County that the District's is in good standing and that all documents executed by the District are valid and enforceable.
- b) Written authorization in the form of a resolution, if a corporation, or other appropriate authorization authorizing the loan to the District and authorizing District's representative to execute the loan documents on behalf of the District.

**18. Commencement of Work.** District shall commence work on the Project within 45 days from the date of execution of this Agreement and shall complete and perform all work on the Project prior to April 1, 2028.

**19. Work Performance.** All work of the Project performed pursuant to this Agreement and with Loan Funds shall be performed in a good and workmanlike manner.

**20. Changes to the Project.** All changes or modification to the the Project Documents shall be approved in writing by the State Cleanup oversight agency and the County prior to such change or modification becoming effective. All additional costs incurred as the result of any change orders shall be the responsibility of the District. In the event that unforeseen conditions are discovered during the project implementation, the County reserves the right to revise the Cleanup Action and the Project Documents.

**21. Permit Requirements.** The District, at its sole cost and expense, and from sources

other than Loan Funds, shall be responsible for obtaining all permits, licenses, approvals, certifications and inspections required by federal, state or local law and to maintain such permits, licenses, approvals, certifications and inspections in current status during the term of this Agreement.

**22. Completion of the Project.** The District shall notify the County when it believes the Project is complete. The notice shall contain certification or documentation that the cleanup is complete and has been performed in accordance with the terms of this Agreement. This cleanup closeout documentation shall summarize the actions taken, the resources committed, the problems encountered in completion of the project, if any, identify any institutional controls required, and document that the cleanup is complete and is protective of human health and the environment. This documentation shall be submitted to the State Cleanup oversight agency for review and approval and to the County's designated environmental project manager, if applicable, for review and comment. The Project shall not be deemed complete until State Cleanup oversight agency and County deems it as such.

**23. Escrow Closing Requirements.** The District shall perform all of its obligations and agreements under this Loan Agreement, the Limited Obligation Note and the Security Agreement securing same, if applicable, and any other agreements or instruments to which the District is a party and which relate to this Loan or to the Project.

**24. Signage.** The District shall erect a sign on the Port Property stating that the Project is being financed in part by the US-EPA's BCRLF and the Lender and providing the appropriate contacts for obtaining information on activities being conducted at the site and for reporting suspected criminal activities. The sign erected on the Port Property shall comply with all requirements of the state and local law applicable to on-premise outdoor advertising.

**25. Forebearance.** Any forbearance by the Lender with respect to any of the terms and conditions of this Agreement or the Letter of Loan Guarantee shall in no way constitute a waiver of any of Lender's rights or privileges granted hereunder.

**23. Discrimination.** The Borrower will comply with the statutes prohibiting discrimination on the grounds of race, color, national origin, sex and disability. In addition, the Borrower will undertake good faith efforts to give opportunities for qualified Small Business Enterprises (SBE), Minority Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE) to submit proposals, bids, and provide services on contracts and subcontracts for services and supplies. The Borrower shall submit a report of such efforts on the County - provided form.

**4 24. Events of Default.** In the event of a default of any of the terms or conditions of this Assumption Agreement, the Note, or Security Agreement, then, in that event, the entire outstanding principal balance amount of this Debt and any outstanding interest shall become immediately due and payable without the necessity of demand from Lender and any other amounts owing hereunder. The Borrower shall be deemed to be in default under this Loan Agreement upon the occurrence of any of the following events (each an "Event of Default"):

- a) The Borrower assigns this Agreement to a third party without the prior written consent of the Lender;



b) Any representation or warranty made herein or in any report, certificate, financial statement or other instrument furnished in connection with this Agreement or the Loan Documents shall prove to be false in any material respect;

c) The Borrower fails to pay any principal amount, fee or interest on the indebtedness to the Lender after the same shall become due and payable as set forth in the Note;

d) The Borrower fails to perform any term, covenant or condition to be performed hereunder, the Note or Security Agreement, and such failure is not remedied within thirty (30) days, unless a longer period of time is reasonably required to cure such failure and Borrower has not commenced curing such failure within such period. Said 30-day period shall commence upon the mailing of written notice by certified mail, return receipt requested, from the Lender to the Borrower, specifying said failure. Notwithstanding the foregoing, in the event such failure cannot be reasonably cured in any length of time, such failure shall immediately constitute a default. In addition to the provisions for acceleration in the event of default set forth in this subdivision (d), the Lender shall have the right to proceed by appropriate judicial proceedings to enforce performance or observation of the applicable provisions of this Agreement and/or terminate this Agreement and recover damages from the Borrower to the extent allowed by law.

e) Any proceeding involving the Borrower, commenced under any bankruptcy or reorganization arrangement, probate, insolvency, readjustment of debt, dissolution or liquidation law of the United States, or any state, but if such proceedings are instituted, no Event of Default shall be deemed to have occurred hereunder unless the Borrower either approves, consents to, or acquiesces in such proceedings, or such proceedings are not dismissed within sixty (60) days.

f) An order, judgment or decree is entered, without the application, approval or consent of the Borrower, by any court of competent jurisdiction approving the appointment of a receiver, trustee or liquidator of the Borrower of all or a substantial part of its assets, and such order, judgment or decree shall continue in effect for a period of sixty (60) days.

**5.25. Records.** The Borrower agrees to maintain financial and programmatic records pertaining to all matters relative to this Assumption Agreement in accordance with generally accepted accounting principles and procedures and to retain all of its records and supporting documentation applicable to this Agreement for a period of three (3) years except as follows: (i) Records that are subject to audit findings shall be retained three (3) years after such findings have been resolved; and (ii) All such records and supporting documents shall be made available, upon request, for inspection or audit by the Lender or its representatives.

The Borrower agrees to permit the Lender or its designated representative to inspect and/or audit its records and books relative to this Assumption Agreement at any time during normal business hours and under reasonable circumstances and to copy therefrom any information that the Lender desires relevant to this Assumption Agreement. The Lender shall provide written notice to the Borrower prior to the execution of this provision. The Borrower agrees to deliver the records

or have the records delivered to the Lender or its designated representative at an address designated by such party within the County of Humboldt. If the Lender or its representative finds that the records delivered by the Borrower are incomplete, the Borrower agrees to pay the Lender or its representative's costs to travel to the Borrower's office or other location where the books or records are located to audit or retrieve the complete records.

The Borrower must obtain written approval from the Lender prior to destroying, or approving the destruction of, any records.

**6 26. Indemnity.** The Borrower agrees to protect, indemnify, defend and hold harmless, the Lender, its officers, administrators, agents, servants, employees and all other persons or legal entities to whom the Borrower or Lender may be liable from, for or against, from any and all claims, demands, suits, losses, damages, judgments, costs and expenses, whether direct, indirect or consequential and including, but not limited to, all fees, expenses and charges of attorneys and other professionals, court costs, and other fees and expenses for bodily injury, including death, personal injury and property damage, arising out of or in connection with the performance of any work or any responsibility or obligation of the Borrower as provided herein and caused in whole or in part by any act, error, or omission of the Borrower, its agents, servants, employees or assigns. To the furthest extent allowed by law, Borrower further agrees to indemnify, defend, and hold harmless the Lender, its officers, administrators, agents, servants, employees, and all other persons or legal entities to whom the Borrower or Lender may be liable from, for or against, from any and all claims, demands, suits, losses, damages, judgments, costs, and expenses, whether direct, indirect, or consequential, and including, but not limited to, all fees, expenses, and charges of attorneys and other professionals, court costs, and other fees and expenses arising out of or in connection with any liability arising from the condition of the Property as a result of any violation of law related to the protection of the environment, including but not limited to any law related to cleanup, remediation, general health and safety, hazardous substances, hazardous activities, or nuisance, whether or not caused by Borrower.

**27. Delay.** It is expressly understood that a failure or delay on the part of the Borrower in the performance, in whole or in part, or any of the terms of this Agreement, if such failure is attributable to an Act of God, fire, flood, riot, insurrection, embargo, emergency or governmental orders, regulations, priority, or other limitations or restrictions, or other similar unforeseen causes beyond the reasonable control of such party, the failure or delay shall not constitute a breach or default under this Agreement however, the Borrower shall use its best effort to insure that the Project is completed in a reasonable time without unnecessary delay.

**7 28. Assignment.** The Borrower shall not assign or attempt to assign directly or indirectly, any of its rights under this Assumption Agreement or under any instrument referred to herein without the prior written consent of the Lender.

**8 29. Nuclear Free Ordinance.** The Borrower certifies by its signature below that Borrower is not a Nuclear Weapons Contractor, in that the Borrower does not knowingly or intentionally engage in the research, development, production, or testing of nuclear warheads, nuclear weapon systems or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. Borrower agrees to notify the Lender immediately if it becomes a Nuclear

Weapons Contractor, as defined above. The Lender may immediately terminate this Assumption Agreement if it determines that the foregoing certification is false or if Borrower becomes a Nuclear Weapons Contractor.

**9 30. Third Party Beneficiary.** This Assumption Agreement is not intended to create or vest any rights in any third party or to create any third-party beneficiaries.

**10 31. Modification.** All amendments to this Assumption Agreement shall be in writing and signed by both parties hereto.

**11 32. Fore Majeure.** It is expressly understood that a failure or delay on the part of the Borrower in the performance, in whole or in part, or any of the terms of this Assumption Agreement, if such failure is attributable to an Act of God, fire, flood, riot, insurrection, pandemic, embargo, emergency or governmental orders, regulations, priority, or other limitations or restrictions, or other similar unforeseen causes beyond the reasonable control of such party, the failure or delay shall not constitute a breach or default under this Agreement; however, the Borrower shall use its best effort to insure performance without unnecessary delay.

**12 33. Successors.** The provisions of this Assumption Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**13 34. No Waiver.** No failure of either Party to exercise any power or right given it hereunder or to insist on strict compliance by the other party with its obligations hereunder, or any custom of practice of the parties at variance with the terms hereof shall constitute a waiver of the other party's right to demand at any time exact compliance with the terms hereof.

**14 35. Notices.** All notices, requests, instructions or other documents to be given hereunder to either party by the other shall be in writing and delivered personally or sent by certified or registered mail, postage prepaid, to the addresses set forth in this Assumption Agreement. Any such notice, request, instruction or other document shall be conclusively deemed to have been received and be effective on the date on which personally delivered or, if sent by certified or registered mail on the day mailed to the parties as follows:

TO THE LENDER:	The County of Humboldt [INSERT ADDRESS]
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TO THE BORROWER	Humboldt Bay Harbor, Recreation and Conservation District Attn: Executive Director 601 Startare Drive Eureka, CA 95501 Facsimile: 707-443-0800
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with a copy to:	Ryan T. Plotz
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The Mitchell Law Firm, LLP  
426 1<sup>st</sup> Street  
Eureka, CA 95501  
Facsimile: 707-444-9586

TO SPG:

[INSERT ADDRESS]

or to such other address as a party may subsequently specify in writing to the other party.

**15 36. Survival.** This Assumption Agreement and all covenants, agreements, representations and warranties made herein shall survive the execution of this Assumption Agreement and shall continue in full force and effect so long as the loan obligation described herein is outstanding and unpaid.

**16 37. Severability.** If any provision or item of this Assumption Agreement is held invalid, such invalidity shall not affect other provisions or items of this Assumption Agreement, which can be given effect without the invalid provisions, or items, and to this end, the provisions of this Assumption Agreement are hereby declared severable.

**17 38. Integration.** Except for any exhibits, attachments, plats or other documents as may be affixed hereto, made a part hereof, and properly identified herewith, this Assumption Agreement constitutes the entire contract between the parties, and shall not be otherwise affected by any other purported undertaking, whether written or oral.

**18 39. Governing Law.** This Assumption Agreement shall be governed by the laws of the State of California and shall be tried in a court of competent jurisdiction in the County of Humboldt, State of California. The parties hereby waive all provisions of law providing for a change of venue to any other county or state.

*[Signature Page Follows This Page]*

IN WITNESS HEREOF, the Parties have caused this Assumption Agreement to be executed in the name and on behalf of each of them (acting individually or by their respective officers or appropriate legal representatives, as the case may be, hereunto duly authorized) as of the day and year first written above.

**BORROWER: HUMBOLDT BAY HARBOR, RECREATION, AND CONSERVATION DISTRICT, a California special district**

Witness:

By: \_\_\_\_\_  
Name: Greg Dale  
Title: President of the Board of Commissioner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
Name: Ryan T. Plotz  
Title: District Counsel

**LENDER: COUNTY OF HUMBOLDT, a political subdivision of the State of California**

Witness:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chair of the Board of Supervisors

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SAMOA PACIFIC GROUP LLC, a California limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit A**  
**LIMITED OBLIGATION NOTE**  
**(“Note”)**

**\$ 2,320,000.00**

Eureka, California  
[INSERT DATE]

FOR VALUE RECEIVED, Humboldt Bay Harbor, Recreation and Conservation District, a public entity (“Maker”), promises to pay to the order of the County of Humboldt, a political subdivision of the State of California (“Payee”), the principal sum of Two Million, Three Hundred and Twenty Thousand Dollars and no cents (\$2,320,000.00), plus interest on the unpaid balance at the interest rates as provided hereafter and on the terms and conditions contained herein.

**1. Interest Rate.** The outstanding principal balance of this Note shall bear interest (computed on the basis of a 360-day year, actual days elapsed) at Zero Percent (0%) per annum, compounded annually.

**2. Payments.** The principal amount of this Note and any accrued but unpaid interest shall be due and payable as set forth in **Exhibit 1** hereto and incorporated herein by this reference.

**3. Maturity Date.** The maturity date of the obligation shall be ten (10) years after the Closing, as said term is defined in that written Agreement to Assume County of Humboldt Brownfields Cleanup Revolving Fund Loan Agreement (the “Assumption Agreement”) to which this Note is attached as Exhibit A.

**4. Loan Documents.** This Note, the Assumption Agreement, the Security Agreement, and such other and further documents delivered by Maker to Payee thereunder are collectively referred to as the “Loan Documents”. All capitalized terms used in this Note, unless otherwise defined in this Note, will have the respective meanings specified in the Loan Documents.

**5. Prepayment.** Prepayment may be made without penalty by Maker at any time prior to the Maturity Date.

**6. Limited Obligation Note.** Notwithstanding any other provision of this Note, this loan is a limited obligation note of the Maker within the meaning of California Harbors and Navigation Code section 6084.2. This Note is sold in consideration for the amounts advanced by Payee under the terms and conditions of the Assumption Agreement dated [REDACTED], 2023, between the Maker and Payee. The purpose of the Note is to procure funds for the Maker’s acquisition of the Port Property, as said term is defined in the Assumption Agreement. The Maker’s sources of revenue for repayment of the Note shall be limited to the revenue sources set forth the Security Agreement dated [REDACTED], 2023 (the “Security Agreement”), by and between Maker and Payee. However, should such revenue be insufficient for the payment of interest and principal, Maker may make payments from other legally available revenue sources from any other funds or legally available revenue pursuant to Harbors and Navigations Code section 60804.2(f).



**7. Collateral.** The repayment of this Note is secured by a security interest in those revenue assets of Maker as evidence by the Security Agreement by Maker in favor of Payee or any other instrument or documents given to evidence or further secure the payment of any obligations created hereunder (collectively the “Collateral”). However, no documents related to the Collateral shall be construed or effective to be inconsistent with the status of this Note as limited obligation note of the Maker within the meaning of California Harbors and Navigation Code section 6084.2.

**8. Representations and Warranties of Maker.** Maker hereby represents and warrants to Payee that:

8.1 The execution, delivery and performance of this Note and all other agreements and instruments required by Payee in connection with the Loan Documents are not in contravention of any of the terms of any indenture, agreement or undertaking to which Maker is a party or by which it or any of its property is bound or affected.

8.2 Maker has the power and authority to execute and deliver the Note and the Loan Documents.

8.3 Maker is not in violation with respect to any applicable laws, rules, ordinances or regulations which materially affect the operations or financial condition of Maker.

8.4 Neither the execution, delivery or performance of this Note (i) is prohibited by or requires Maker to obtain or make any consent, authorization, approval, registration or filing under any statute, law, ordinance, regulation, rule, judgment, decree or order of any court or governmental agency, board, bureau, body, department or authority, or of any other person, (ii) will cause any acceleration of maturity of any note, instrument or other obligation to which Maker is a party or by which Maker is bound or with respect to which Maker is an obligor or guarantor or (iii) will result in the creation or imposition of any lien, claim, charge, restriction, equity or encumbrance of any kind whatsoever upon or give to any other person any interest or right (including any right of termination or cancellation) in or with respect to any of the properties, assets, business, agreements or contracts of Maker.

**9. No Waiver.** Upon any default, neither the failure of Payee to promptly exercise Payee’s right to declare the outstanding principal balance to be immediately due and payable, nor the failure of Payee to demand strict performance of any obligation of Maker or of any person who may be liable hereunder, shall constitute a waiver of any such rights, nor a waiver of such rights in connection with any future default on the part of Maker.

**10. Default.** The following shall constitute default under this Note:

10.1 Maker fails to pay any amount due hereunder within ten (10) business days after delivery of a notice of default;

10.2 Maker files a bankruptcy petition, a bankruptcy petition is filed against the Maker which is not dismissed within 90 days of such filing, the Maker makes a general assignment for the benefit of creditors, or Maker fails to pay debts generally as they become due;

10.3 Maker defaults in the due performance or observance of any provision, term, covenant or condition under any of the Loan Documents, or any representation or warranty made by Maker as required by this Note proves to be false or misleading in any material respect.

**11. Acceleration.** If any default by Maker continues for more than ten (10) business days after notice to Maker at the address set forth below Maker's signature herein, the entire principal balance of this Note shall, at the election of Payee, become immediately due and payable. Maker agrees to pay all costs of collection, including reasonable attorneys' fees, court costs, and other costs incurred by the Payee enforcing this Note. Upon the occurrence of any default, Payee, at its option, shall have the right to apply all payments made under this Note to principal, interest, and other charges, fees, costs and expenses payable by Maker under this Note in such order and amounts as Maker may determine in its sole and absolute discretion.

**12. Late Payments.**

12.1 If Payee has not received the full amount of any payment by the end of the fifteen (15) business days after the date it is due, Maker will pay a late charge to Payee in the amount of \$50. Maker will pay this late charge only once on any late payment.

12.2 From and after the Maturity Date, or such earlier date as all sums owing on this Note become due and payable by acceleration or otherwise, all sums owing on this Note (including interest), at the option of Payee, shall bear interest from the date the payment becomes due until Maker pays in full, at five (5) percentage points above the rate at which interest would otherwise accrue under this Note.

**13. Usury.** All agreements herein are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance hereof, or otherwise, shall the amount paid or agreed to be paid to the holders hereof for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, the fulfillment of any provision hereof, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance the holder hereof shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest.

**14. Laws.** This Note shall be construed according to the laws of the State of California and venue for any legal action involving the interpretation, performance or enforcement of this

Note shall be within the County of Humboldt, State of California.

**15. Payments.** All amounts payable under this Note are payable in lawful money of the United States. Checks constitute payment only when collected, provided that checks constituting “collected funds” (such as cashiers checks, bank checks) shall be credited upon receipt so long as payment on same is ultimately honored. Each payment is to be applied when received first to accrued but unpaid interest and any balance shall be used to reduce the principal balance of this Note.

**16. Attorneys’ Fees.** In the event of any dispute relating to this Note which involves litigation or arbitration, then the prevailing party in such dispute shall be entitled to recover its reasonable attorneys fees and costs, including but not limited to fees and costs incurred in connection with appellate enforcement, from the non-prevailing party.

**17. Notices.** All notices, requests, instructions or other documents to be given hereunder to either party by the other shall be in writing and delivered personally or sent by certified or registered mail, postage prepaid, to the addresses set forth in this Note. Any such notice, request, instruction or other document shall be conclusively deemed to have been received and be effective on the date on which personally delivered or, if sent by certified or registered mail on the day mailed to the parties as follows:

TO THE PAYEE:	The County of Humboldt [INSERT ADDRESS]
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TO THE MAKER	Humboldt Bay Harbor, Recreation and Conservation District Attn: Executive Director 601 Startare Drive Eureka, CA 95501 Facsimile: 707-443-0800
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with a copy to:	Ryan T. Plotz The Mitchell Law Firm, LLP 426 1 <sup>st</sup> Street Eureka, CA 95501 Facsimile: 707-444-9586
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or to such other address as a party may subsequently specify in writing to the other party.

**18. Waiver of Maker.** Maker waives demand, notice, diligence, protest, presentment for payment, and notice of extension, dishonor, protest, demand and non-payment of this Note.

**19. Time Is Of The Essence.** Maker acknowledges and agrees that time is of the essence with respect to compliance with each and every term and provision of this Note.

**MAKER:**

Humboldt Bay Harbor, Recreation and Conservation District

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

Print Name: Greg Dale

Title: President of the Board of Commissioners

List of Exhibits

Exhibit 1 – Payment Schedule

## Exhibit 1 – Payment Schedule

**Section 1. Balloon Payment.** Subject to the Monthly Payment Commencement (defined in Section 2, below) and/or the Partial Debt Forgiveness Opportunity (defined in Section 3, below), all unpaid principal and interest shall be due and payable on the Maturity Date. For the avoidance of doubt, and except in the case of a default under this Note or the Loan Documents, the District may, but shall not be obligated, to make any payments as to principal or interest on the indebtedness prior to the Maturity Date.

**Section 2. Monthly Payment Commencement.** Maker shall begin making monthly payments of principal on the indebtedness beginning on April 1, 2028, in the amount of ten thousand dollars (\$10,000.00) per month, with all unpaid principal and interest remaining due on the Maturity Date (the “Monthly Payment Commencement”).

**Section 3. Partial Debt Forgiveness Loan to Grant Conversion Opportunity.** If, prior to the Maturity Date, (i) the District has leased the Port Property (or a portion thereof) to a third party for the development and operation of re-developed port facilities, and (ii) a taxable “possessory interest(s)”, as that term is defined in California Revenue and Taxation Code section 107, has been established on the Port Property such that Payee is able to assess the possessory interest in accordance with the Revenue and Taxation Code, then (iii) at the sole discretion of the Humboldt County Board of Supervisors one-half (50%) of the then existing indebtedness under this Note shall may be deemed forgiven a grant by Payee such that the Maker is relieved of any obligation to repay that portion of the indebtedness forgiven converted to a grant (the “Partial Debt Forgiveness Loan to Grant Conversion Opportunity”).

## Exhibit B

### SECURITY AGREEMENT

This Security Agreement (“Agreement”) effective as of [REDACTED], 2023, by and between the COUNTY OF HUMBOLDT, a political subdivision of the State of California, hereinafter referred to as the “Secured Party”, and the HUMBOLDT BAY HARBOR, RECREATION, AND CONSERVATION DISTRICT, a California special district, hereinafter referred to as the “Debtor”. The Secured Party and Debtor may be referred to individually as a “Party” or collectively as the “Parties”.

### RECITALS

WHEREAS, Debtor has executed that certain Limited Obligation Promissory Note pursuant to California Harbors and Navigation Code section 6084.2 dated as of [REDACTED], 2023 (the “Note”), evidencing a loan by Secured Party to Debtor in the principal amount of \$2,320,000 (the “Loan”).

WHEREAS, to secure the repayment of the Loan, Secured Party requires Debtor to grant security interest in certain of Debtor’s assets to Secured Party, and Debtor is willing to grant Secured Party a security interest in such assets under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the respective covenants and promises of the parties hereto, and in order to induce Secured Party to make the Loan to Debtor, Debtor and Secured Party hereby agree as follows:

1. **Security Interest.** This Agreement shall constitute a security agreement, pursuant to the terms of which, and pursuant to the provisions of the California Uniform Commercial Code (the “Code”), Debtor does hereby grant to Secured Party, and Secured Party does hereby accept, a security interest (the “Security Interest”) in all of the right, title and interest which Debtor has, or may hereafter have, in, under, or to such items of tangible and intangible personal property as are identified on **Exhibit 1** attached hereto and incorporated herewith (defined in Section 27 below as, and referred to hereinafter collectively as, the “Collateral”), together with any and all other security which may hereafter be given by Debtor to Secured Party pursuant to the terms of this Agreement to the extent that such other security may be lawfully used to secure a limited obligation note pursuant to California Harbors and Navigation Code section 6084.2 (also referred to hereinafter collectively as, the “Collateral”), as collateral security for:

(a) payment to Secured Party, in lawful currency of the United States of America, of all amounts due under the Note, this Agreement, and any of the other documents executed in connection with the Loan, (including but not limited to that Agreement to Assume County of Humboldt Brownfields Cleanup Revolving Fund Loan Agreement, the Note, and this Agreement, all of which are collectively referred to hereinafter the “Loan Documents”);

(b) repayment to Secured Party, in lawful currency of the United States of America, of all future advances which may be made by Secured Party to Debtor;



(c) reimbursement to Secured Party, in lawful currency of the United States of America, for all advances and expenditures made by Secured Party for the protection, maintenance, preservation or repair of the Collateral (including, but not limited to, attorneys' fees and court costs, whether incurred at the trial, appellate or administrative levels) for all of which Debtor hereby agrees to reimburse Secured Party;

(d) payment to Secured Party, in lawful currency of the United States of America, of all liabilities of any kind, whether primary, secondary, direct or contingent, which are now due or which may hereafter become due from Debtor to Secured Party; and

(e) performance by Debtor of all of their obligations under the Loan Documents.

2. **Representations and Warranties.** Debtor hereby represents and warrants to Secured Party that:

(a) Debtor is the owner of the Collateral, free and clear of all security interests other than the Security Interest granted and those security interests described in **Exhibit 2** attached hereto and incorporated herein by this reference (the "Permitted Liens");

(b) Debtor has full power and authority to enter into this Agreement, subject only to the limitations of California Harbors and Navigation Code section 6084.2 and the status of the Note as a limited obligation note, and doing so does not violate the terms of any agreement to which Debtor is a party or which governs, evidences, or constitutes a part of the Collateral;

(c) all of the Collateral is genuine, and none of the Collateral is subject to any lien, offset or counterclaim;

(d) all statements contained herein and in the document(s) evidencing or constituting part of the Collateral are, and shall continue to be, true;

(e) all of the terms of the document(s) evidencing or constituting part of the Collateral are in compliance with all applicable laws, ordinances, rules, regulations and requirements; and

(f) all unpaid installments due under the document(s) evidencing or constituting part of the Collateral are as represented to Secured Party, and there is no deficiency with respect to any such installments due prior to the date hereof.

3. **Affirmative Covenants.** Debtor hereby covenants and agrees to and with Secured Party that Debtor shall:

(a) pay Secured Party all amounts payable under the Note and the other Loan Documents, and under all other obligations of Debtor held by Secured Party, as and when the same shall become due and payable (whether at maturity, by acceleration, or otherwise);

(b) perform all obligations for which the Security Interest has been granted;

(c) defend the Collateral against the claims and demands of all persons whomsoever;

(d) immediately pay Secured Party, as part of the debt secured hereby, all amounts (including, but not limited to, attorneys' fees and court costs, whether incurred at the trial, appellate or administrative levels), together with interest thereon, paid or advanced by Secured Party: (i) for taxes or levies relative to the Collateral; or (ii) in taking possession of, disposing of, or preserving the Collateral after any default under this Agreement;

(e) immediately inform Secured Party in writing of any change in the address of Debtor;

(f) perform in full all of Debtor's obligations under the Loan Documents;

(g) execute any and all additional agreements, assignments, or documents which may be deemed necessary or advisable by Secured Party to effectuate the purposes of this Agreement.

4. **Negative Covenants.** Debtor hereby covenants and agrees to and with Secured Party that following the date hereof, and for so long as any indebtedness remains outstanding under the Note or any of the other Loan Documents, Debtor shall not, without the prior written consent of Secured Party:

(a) sell or otherwise convey the Collateral, or any interest therein, or any real property that is associated with or the lease or operation of as of or after the date hereof creates, funds or otherwise gives rise to revenues constituting the Collateral ;

(b) assign, pledge, mortgage or otherwise encumber, or permit any liens or security interests (other than the security interests granted by any of the Loan Documents, and by the Permitted Liens, and any security interest lower in priority than the Security Interest granted hereby) to attach to any of the Collateral or to be levied upon the Collateral under any legal process; or

(c) permit anything to be done that might impair the value of the Collateral, or the Security Interest granted hereby.

5. **Default.** At the option of Secured Party, and without the need for any form of notice to, demand of, consent from, or approval by Debtor (or anyone else), Secured Party may declare Debtor to be in default under this Agreement upon the happening of any of the following events (each of which shall be an "Event of Default"):

(a) failure of Debtor to perform any of the obligations of Debtor under this Agreement;

(b) failure of Debtor to make any payment, as and when due (whether of principal, interest or otherwise), which is due under the Loan Documents, or under any other indebtedness of Debtor to Secured Party;

(c) any deterioration of or impairment to the Collateral, or any part thereof, or decline or depreciation in the value or market price thereof (whether actual or reasonably anticipated) which causes the Collateral, in the sole judgment of Secured Party, to become unsatisfactory as to character or value;

(d) the levy of any attachment, execution or other process against Debtor, or against any of the Collateral; or

(e) the insolvency, failure in business, commission of any act of bankruptcy, general assignment for the benefit of creditors, or filing of any petition in bankruptcy or for relief under the provisions of any bankruptcy laws (whether of the United States of America, of any state or locality located therein, or otherwise), by or against Debtor, accommodation maker, surety, guarantor, or endorser for or of any indebtedness of Debtor to Secured Party.

## **6. Remedies.**

(a) Upon the occurrence of any Event of Default, Secured Party, at its option, may declare all or any part of any indebtedness of Debtor to Secured Party which is secured by the Collateral to be immediately due and payable, irrespective of any agreement to the contrary as to maturity, and Secured Party shall also have all of the rights and remedies provided herein, as well as those of a secured party under the Code. All rights and remedies provided herein or in any other applicable security or other agreement shall, to the fullest extent permitted by law, be cumulative. Without limiting the generality of the foregoing, upon the occurrence of any Event of Default under this Agreement, Debtor hereby authorizes Secured Party, at any time following the occurrence of any Event of Default, and without affecting the liability of Debtor, under the Loan Documents under any other indebtedness of Debtor to Secured Party, to do any or all of the following (to the extent applicable to the Collateral):

(i) renew, extend, accelerate or otherwise change the time for payment of, or otherwise change the terms of, the Loan Documents (or any part thereof);

(ii) take and hold security other than the Collateral, for the payment of any indebtedness of Debtor to Secured Party (or any part thereof), and exchange, enforce, waive, and release the Collateral, any such other security, or any part of either;

(iii) release or substitute Debtor, or any of the co-makers, accommodation makers, sureties, guarantors or endorsers (if any) for or of the Loan Documents, or any part thereof, or any other parties thereto;

(iv) collect (by legal proceedings or otherwise), and endorse, receive and receipt for, payments of interest, principal and other sums now or hereafter payable upon or on account of the Collateral (or any part thereof);

(v) enter into any extension, reorganization, deposit, merger or consolidation agreement, or any agreement in any other way relating to or affecting the Collateral (or any part thereof), and, in connection therewith, deposit or surrender control of any or all of the Collateral, or accept other property in exchange for any or all of the Collateral;

(vi) make any compromise or settlement it deems desirable or proper with reference to the Collateral;

(vii) insure, process and preserve the Collateral; and

(viii) sell, lease or otherwise dispose of the Collateral, or any interest therein, at whatever location is convenient to Secured Party, and otherwise exercise as to the Collateral all the rights, powers and remedies of an owner.

(b) Prior to any sale or other disposition of the Collateral (or any part thereof), however, Secured Party shall give such notice (whether to Debtor or otherwise) regarding such sale or other disposition as may be required under the Code, but shall not otherwise be required to give or obtain any form of notice to, demand of, consent from, or approval by Debtor (or any other person or entity). The proceeds of any sale or other disposition of the Collateral shall be applied: (A) first, to the reasonable expenses of retaking, holding, handling, preparing for sale (or other disposition) and selling (or otherwise disposing of) the Collateral, in the manner authorized in this Agreement, including (but not limited to) the reasonable attorneys' fees and court costs, if any, incurred by Secured Party in so doing (whether at the trial, appellate or administrative levels); (B) then, to any and all indebtedness of Debtor to Secured Party which is secured by the Security Interest; and (C) the surplus, if any, shall be delivered to the parties entitled thereto pursuant to the terms of the Code. Should there be a deficiency in the amounts owed Secured Party by Debtor after pursuit of the foregoing remedies, then Debtor shall promptly pay the same to Secured Party. Secured Party may buy at any public sale of the Collateral, and if the Collateral is of a type customarily sold in a recognized market or is the subject of widely or regularly distributed standard price quotations, then Secured Party may buy at any private sale of the Collateral. Any such sale (whether public or private) may be conducted by an auctioneer, or by an officer, attorney or agent of Secured Party.

(c) Notwithstanding anything to the contrary in this Section, the dollar amount to which the Secured Party shall be entitled as a result of any remedies pursued by Secured Party shall be limited to the dollar amount of all obligations secured by the security interests granted herein plus any interest, fees or costs associated with the default causing Secured Party to pursue a remedy, and with the pursuit and achievement of the remedy itself.

7. **Waiver of Rights.** Debtor hereby waives any right to require Secured Party to: (a) proceed first (under this Agreement, with respect to any of the Collateral, or with respect to any indebtedness of Debtor to Secured Party) against any particular person, entity or collateral; (b) proceed first against, or exhaust, any particular part of the Collateral; or (c) pursue any other particular remedy which may be available to Secured Party; and also waives any defense arising by reason of any disability of Debtor (or any other person or entity), or by reason of the cessation (from any cause whatsoever) of liability of Debtor (or any other person or entity). Until all amounts due under the Note and/or this Agreement have been paid in full, Debtor shall have no

right of subrogation to the rights of any person or entity in connection with the Note or this Agreement, and Debtor hereby waives: (A) any right which Debtor might otherwise have (now or in future) to enforce any remedy which Secured Party now has or may hereafter have against any person or entity; and (B) any benefit of, and any right to participate in, any of the Collateral, or any other security now or hereafter held by Secured Party.

8. **Return of Collateral to Debtor.** Secured Party may at any time and from time to time deliver to Debtor such of the Collateral, or any part thereof, as is in Secured Party's possession, and the receipt thereof by Debtor shall thereafter discharge Secured Party in full from any and all liability or responsibility therefor.

9. **Transfer of Security Interest.** Secured Party may at any time and from time to time transfer to any other party or parties all or any part of the Security Interest, and all or any part of the Collateral which may be in Secured Party's possession, and shall thereafter be fully discharged from all liability and responsibility with respect to such of the Collateral as is so transferred. Upon such transfer, the transferee shall be vested with all the rights and powers of Secured Party hereunder with respect to such of the Collateral as is so transferred, but, with respect to any of the Collateral not so transferred, Secured Party shall retain all of its rights and powers (whether given to it in this Agreement, or otherwise). Secured Party may assign its rights as the secured party hereunder to any persons or entities, in Secured Party's discretion, and upon notice to Debtor, but without any requirement for consent or approval by or from Debtor, and any such assignment shall be valid and binding upon Debtor, as fully as if it had expressly approved the same.

10. **Successors.** All of the terms, covenants and conditions of this Agreement shall be binding upon, and shall inure to the benefit of, the respective heirs, executors, administrators, successors and permitted assigns of the parties hereto; provided, however, Debtor may not delegate its obligations hereunder without the prior written consent of Secured Party.

11. **Continuing Agreement.** This Agreement is a continuing security agreement, and all of the rights, powers and remedies of Secured Party hereunder shall, despite the bankruptcy of Debtor, or any other event or proceeding affecting Debtor, apply to all past, present and future indebtedness of Debtor to Secured Party, including indebtedness arising under successive transactions which either continue from time-to-time, or which create new indebtedness after all or any prior indebtedness has been satisfied. Until all indebtedness of Debtor to Secured Party shall have been paid in full, the power of sale of the Collateral and all other rights, powers and remedies granted to Secured Party hereunder shall continue to exist, and may be exercised by Secured Party at any time and from time to time, irrespective of the fact that the indebtedness of Debtor to Secured Party, or any part thereof, may have become barred by a statute of limitations.

12. **Cumulative Rights.** The rights, powers and remedies given to Secured Party pursuant to this Agreement shall be in addition to all rights, powers and remedies given to Secured Party by virtue of any applicable governmental law, ordinance, rule, regulation or requirement. No forbearance, failure or delay by Secured Party in exercising any right, power or remedy granted to Secured Party hereunder shall be deemed a waiver of such right, power or remedy, nor shall any such forbearance, failure or delay preclude the further exercise of such right, power or remedy, or any other right, power or remedy; and every such right, power and remedy of

Secured Party shall continue in full force and effect until such right, power or remedy is specifically waived by Secured Party in writing.

13. **Termination of Security Interest.** At such time as all amounts due to Secured Party in connection with the Loan (whether under the Note, this Agreement, any Loan Document, any other indebtedness of Debtor to Secured Party, any documents entered into in connection with any of the foregoing, or otherwise), the repayment of which is secured by the Security Interest, have been paid in full, Secured Party shall terminate and release the Security Interest granted hereby, without any warranties of any kind whatsoever, upon request by Debtor to do so. Debtor shall pay all reasonable expenses involved in such termination and release.

14. **Entire Agreement.** The terms of this Agreement are intended by the parties hereto as a final expression of their agreement with respect to the subject matter hereof, and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Agreement constitute the complete and exclusive statement of its terms, and that no extrinsic evidence whatsoever may be introduced in any proceedings (whether judicial or otherwise) involving this Agreement, except for evidence of a subsequent written amendment to this Agreement.

15. **Invalidity.** If any provision of this Agreement or the application thereof to any person(s) or circumstance(s) shall to any extent be held to be invalid or unenforceable, neither the remainder of this Agreement nor the application of such provision to any person(s) or circumstance(s) other than those as to whom or which it is held to be invalid or unenforceable shall be affected thereby, and every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

16. **Notices and Demands.** Except as otherwise expressly provided in this Agreement or required by law, Secured Party shall be under no duty or obligation whatsoever to make or give any presentments, demands for performance, notices of nonperformance, protests, notices of protest, or notices of dishonor to anyone in connection with: (a) the exercise of any of the rights of Secured Party under this Agreement or under any documents evidencing or constituting any part of the Collateral; or (b) any obligation or evidence of indebtedness which is in whole or in part secured by the Security Interest. All notices and demands of any kind which the parties hereto may be required or may desire to give to or make on one another in connection with this Agreement or any of the other Loan Documents shall be in writing, and shall either be served personally or by registered or certified mail, return receipt requested. Any such notice or demand so served by registered or certified mail shall be deposited in the United States mail with postage thereon fully prepaid, addressed to the party to be served as follows:

If to Secured Party:

County of Humboldt  
[INSERT NAME AND ADDRESS]



If to Debtor:

Humboldt Bay Harbor, Recreation and  
Conservation District  
Attn: Executive Director  
601 Startare Drive  
Eureka, CA 95501  
Facsimile: 707-443-0800

with a copy to:

Ryan T. Plotz  
The Mitchell Law Firm, LLP  
426 1<sup>st</sup> Street  
Eureka, CA 95501  
Facsimile: 707-444-9586

Each such notice or demand shall be deemed to have been given or made on the day of actual delivery, or at the expiration of the third day after the date of being so mailed, whichever is earlier in time, unless the actual receipt of the notice or demand is called for in this Agreement, in which case it shall be deemed to have been given or made only on the date of such actual receipt. Any party hereto may from time to time, by notice in writing given in the aforesaid manner, designate different mailing addresses or persons to which or to whom such notices or demands are thereafter to be addressed, but such change of address or change of party to be addressed notices shall be effective only upon actual receipt. In no event shall Secured Party be obligated to serve more than a total of two (2) originals and/or copies of a given notice or demand, for that notice or demand to be deemed to have been given or made under this Agreement. If the circumstances are ever such that there is a greater number of addresses and/or parties at or on which originals and/or copies of notices or demands might otherwise be required to be served by Secured Party under the terms of this Agreement, Secured Party shall only be obligated to serve such originals and/or copies of notices on the first two (2) of such addresses and/or parties of which it is notified (except to the extent that Debtor directs Secured Party, by notice in the aforesaid manner, to substitute other addresses and/or parties for those first ones).

17. **Joint and Several Obligations.** If this Agreement is signed by more than one party as Debtor, the obligations of Debtor hereunder shall be joint and several. Each married person who signs this Agreement in his or her individual capacity expressly agrees that, in addition to community property, his or her separate property shall be liable for all indebtedness secured by the Security Interest.

18. **Indemnity.** Debtor shall indemnify and defend Secured Party against, and hold Secured Party harmless from, any and all claims, demands, liabilities, losses, lawsuits, judgments, costs and expenses (including, but not limited to, reasonable attorneys' fees and court costs, whether incurred at the trial, appellate or administrative levels) which may arise from or out of the acts of Debtor or any other party with respect to the Security Interest and/or the Collateral, or any documents evidencing, constituting a part of, governing, and/or entered into in connection with either or both of the foregoing, including (but not limited to) the Leases, the General Contract, and the Architect's Agreement.

19. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

20. **Headings.** The headings of the various paragraphs of this Agreement are intended solely for means of reference, and are not intended for any purpose whatsoever to modify, explain or place any construction on any of the provisions of this Agreement.

21. **Recitals and Exhibits.** The Recitals at the beginning of this Agreement are accurate and shall constitute an integral part of this Agreement, and this Agreement shall be construed in light of those Recitals. The exhibits, supplements, schedules, and addenda (if any) attached to and referred to in this Agreement are hereby incorporated into this Agreement as fully as if set out in their entirety herein.

22. **Pronouns and Conjunctions.** In this Agreement, personal pronouns shall be construed as though of the gender and number required by the context (the singular including the plural, the plural including the singular, and each gender including other genders, all as may be required by the context). Wherever in this Agreement the term “and/or” is used, it shall mean one or the other, both, any one or more, or all of the things, events, persons or parties in connection with which the term is used.

23. **Modification of Agreement.** This Agreement may not be modified, amended or otherwise changed in any manner, except by a written amendment executed by all of the parties hereto, or their respective successors or assigns.

24. **Attorneys’ Fees.** In the event of litigation involving Secured Party and Debtor in connection with the interpretation of this Agreement, or the enforcement of any right of either of them under this Agreement, the prevailing party shall be entitled to payment by the other party of the court costs and reasonable attorneys’ fees incurred by the prevailing party in connection with such litigation (whether incurred at the trial, appellate or administrative levels).

25. **No Assumption of Obligations.** Secured Party does not assume hereby, or by realizing in future upon the Collateral (or any part thereof), any of Debtor’s obligations or duties under any Agreement, or otherwise with respect to the Collateral.

26. **Further Assurances.** Debtor shall promptly execute and/or file any additional documents or instruments required to perfect and maintain the Security Interest granted to Secured Party herein and to maintain its priority; and Debtor hereby authorizes Secured Party to file any financing statements or other documents required to accomplish the same, including, without limitation,, any UCC financing statements or control agreements (as that term is defined in the UCC).

27. **Definitions.** The definitions appearing in this Agreement or any supplement or schedule shall be applicable to both the singular and plural forms of the defined terms:

“**Account**” means any “account,” as such term is defined in the UCC, now owned or hereafter acquired by Debtor or in which Debtor now holds or hereafter acquires any interest and, in any

event, shall include, without limitation, all accounts receivable, book debts and other forms of obligations now owned or hereafter received or acquired by or belonging or owing to Debtor (including, without limitation, under any trade name, style or division thereof) whether arising out of goods sold or services rendered by Debtor or from any other transaction, whether or not the same involves the sale of goods or services by Debtor (including, without limitation, any such obligation that may be characterized as an account or contract right under the UCC) and all of Debtor's rights in, to and under all purchase orders or receipts now owned or hereafter acquired by it for goods or services, and all of Debtor's rights to any goods represented by any of the foregoing (including, without limitation, unpaid seller's rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods), and all monies due or to become due to Debtor under all purchase orders and contracts for the sale of goods or the performance of services or both by Debtor or in connection with any other transaction (whether or not yet earned by performance on the part of Debtor), now in existence or hereafter occurring, including, without limitation, the right to receive the proceeds of said purchase orders and contracts, and all collateral security and guarantees of any kind given by any Person with respect to any of the foregoing.

**“Affiliate”** means any Person which directly or indirectly controls, is controlled by, or is under common control with Debtor. “Control,” “controlled by” and “under common control with” mean direct or indirect possession of the power to direct or cause the direction of management or policies (whether through ownership of voting securities, by contract or otherwise); provided, that control shall be conclusively presumed when any Person or affiliated group directly or indirectly owns five percent (5%) or more of the securities having ordinary voting power for the election of directors of a corporation.

**“Agreement”** means this Security Agreement and each Exhibit, Supplement or Schedule thereto, as each may be amended or supplemented from time to time.

**“Bankruptcy Code”** means the Federal Bankruptcy Reform Act of 1978 (11 U.S.C. §101, et seq.), as amended.

**“Collateral”** means all of Debtor’s right, title, and interest which Debtor has or may hereafter have in, under or to all items of personal property (together with any of the security which may hereafter be given by Debtor to Secured Party pursuant to the terms of this Agreement) comprising the following: the tangible and intangible personal property designated on the **Exhibit 1** attached hereto, including, without limitation, the Deposit Accounts and Debtor’s Books and all of Debtor’s rights, title, and interest with respect to same.

**“Debtor’s Books”** means all of Debtor’s books and records including without limitation: ledgers; records concerning Debtor’s assets or liabilities, the Collateral, business operations or financial condition; and all computer programs, or tape files, and the equipment, containing such information.

**“Deposit Accounts”** means any “deposit accounts,” as such term is defined in the UCC, now owned or hereafter acquired by Debtor or in which Debtor now holds or hereafter acquires any interest.

**“Documents”** means any “documents,” as such term is defined in the UCC, now owned or hereafter acquired by Debtor or in which Debtor now holds or hereafter acquires any interest.

**“Lien”** means any mortgage, deed of trust, pledge, hypothecation, assignment for security, security interest, encumbrance, levy, lien or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, against any property, any conditional sale or other title retention agreement, any lease in the nature of a security interest, and the filing of any financing statement (other than a precautionary financing statement with respect to a lease that is not in the nature of a security interest) under the UCC or comparable law of any jurisdiction.

**“Obligations”** means all debts, obligations and liabilities of Debtor to Lender currently existing or now or hereafter made, incurred or created under, pursuant to or in connection with this Agreement or any other Loan Document, whether voluntary or involuntary and however arising or evidenced, whether direct or acquired by Lender by assignment or succession, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether Debtor may be liable individually or jointly, or whether recovery upon such debt may be or become barred by any statute of limitations or otherwise unenforceable; and all renewals, extensions and modifications thereof; and all attorneys' fees and costs incurred by Lender in connection with the collection and enforcement thereof as provided for in any Loan Document.

**“Permitted Lien”** means Liens which have been disclosed to Lender in writing prior to the date of this agreement and are set forth on **Exhibit 2** of “Permitted Liens” attached hereto;

**“Proceeds”** means “proceeds,” as such term is defined in the UCC and, in any event, shall include, without limitation, (a) any and all Accounts, cash or other forms of money or currency or other proceeds payable to Debtor from time to time that is (or is in respect of) the Collateral, (b) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to Debtor from time to time with respect to any of the Collateral, (c) any and all payments (in any form whatsoever) made or due and payable to Debtor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental authority (or any Person acting under color of governmental authority), and (d) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

**“Person”** means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, other entity or government (whether federal, state, county, city, municipal, local, foreign, or otherwise, including any instrumentality, division, agency, body or department thereof).

**“Records”** means all Debtor's computer programs, software, hardware, source codes and data processing information, all written documents, books, invoices, ledger sheets, financial information and statements, and all other writings concerning the Collateral.

**“Rights to Payment”** means all Debtor's accounts, instruments, contract rights, documents, chattel paper and all other rights to payment, including, without limitation, the Accounts, all negotiable certificates of deposit and all rights to payment concerning the Collateral.

**“Supporting Obligations”** means any “supporting obligations,” as such term is defined in the UCC, now owned or hereafter acquired by Debtor or in which Debtor now holds or hereafter acquires any interest.

**“UCC”** means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of California; provided, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, Lender's Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of California, the term “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions. Unless otherwise defined herein, terms that are defined in the UCC and used herein shall have the meanings given to them in the UCC.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Debtor and Secured Party have caused this Agreement to be executed as of the date first above written.

**DEBTOR: HUMBOLDT BAY HARBOR, RECREATION, AND CONSERVATION DISTRICT, a California special district**

Witness:

By: \_\_\_\_\_  
Name: Greg Dale  
Title: President of the Board of Commissioner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
Name: Ryan T. Plotz  
Title: District Counsel

**SECURED PARTY: COUNTY OF HUMBOLDT, a political subdivision of the State of California**

Witness:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chair of the Board of Supervisors

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT 1**  
**to Security Agreement**

Collateral

1. Any revenue or funds received or receivable by Debtor derived from the anticipated lease of Debtor's real property on the Samoa Peninsula commonly referred to as Assessor Parcel Nos. 401-031-040-000 and 401-031-083-000 for the development of port facilities;

2. Any revenue or funds received or receivable by Debtor derived pursuant to that Sublease dated February 11, 2019 (and amendments thereto), by and between Debtor and Nordic Aquafarms California, LLC, a Delaware limited liability company, f/k/a California Marine Investments LLC, concerning that portion of Debtor's real property on the Samoa Peninsula commonly referred to as Assessor Parcel No. 401-112-021-000;

3. Any revenue or funds received or receivable by Debtor derived pursuant to leases of those portions of Debtor's real property on the Samoa Peninsula commonly referred to as Assessor Parcel No. 401-112-021-000 that are not covered under the Sublease described in Item "2", above;

**EXHIBIT 2**  
**to Security Agreement**

The Permitted Liens

As to the District's real property commonly referred to as Assessor Parcel No. 401-112-021-000, the District discloses to Secured Party that the Debtor leases the subject property to the Humboldt Bay Development Association, Inc. ("HBDA"), a California non-profit public benefit corporation, pursuant to that certain Ground Lease effective March 9, 2016, for a term of 65 years commencing March 9, 2016 (the "Ground Lease"). Reference is made to that certain Credit Agreement dated as of March 9, 2016, by and among New Markets Community Capital XVII, LLC, a Delaware limited liability company ("NMCC"), as lender, CNMC SUB-CDE 69, LLC, a Delaware limited liability company ("CNMC"), as lender, and the HBDA, as borrower, under which HBDA entered into that certain Leasehold Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing dated March 9, 2016 in favor of NMCC and CNMC, affecting the subject property (collectively referred to herein as the "Leasehold Mortgage"). Further, HBDA, as landlord, leased back the subject property to Debtor, as tenant, pursuant to that certain Operating Lease, effective March 9, 2016, for a term of 30 years commencing on March 9, 2016 (subject to three (3), ten (10) year extension periods as set forth therein) (the "Operating Lease").

The above referenced financing mechanism under the New Market Tax Credits program is intended to expire in March, 2023, and thereafter, if removed, will no longer constitute a "Permitted Lien" on the subject property.