

**TWENTYNINE PALMS REDEVELOPMENT AGENCY
STOREFRONT IMPROVEMENT PROGRAM**

PROMISSORY NOTE

Notice: This Note contains an Acceleration Clause

Note Date: _____

Note Amount: \$ _____

FOR VALUE RECEIVED, the undersigned, _____, an individual [or a California corporation, or a California general partnership, as applicable] ("Maker") promises to pay to TWENTYNINE PALMS REDEVELOPMENT AGENCY, a public body, corporate and politic ("Holder"), the principal amount of _____ DOLLARS AND _____ CENTS (\$ _____) ("Note Amount"), subject to the terms and conditions set forth herein. No interest shall accrue on the Note Amount.

1. Purpose of Loan. This Note Amount is being provided by Holder in conjunction with Maker's approved Storefront Improvement Program application, approved by Holder on _____ pursuant to which Holder has agreed to provide the Note Amount upon completion of the storefront improvements (the "Project") on the Project site ("Site") described in Maker's approved application and Holder's Storefront Improvement Program Information Outline. In the event of any conflict between Holder's Storefront Improvement Program Information Outline and this Note, this Note shall control.

2. Note Amount Due and Payable; Discharge of Note Amount.

a. The due date of this Note shall be the date that is two (2) years following the Note date ("Due Date").

b. The Note Amount shall be due and payable prior to the Due Date if Maker or his/her/its successor in business on the Site, fails to continuously operate a business on the Site; provided, however, that Maker, from the Note Date to the Due Date, shall be deemed in continuous operation if the business on the Site is (i) open for business on such days and for such hours as is customary for such type of business, or (ii) temporarily or permanently closed due to casualty losses such as fire, earthquake, or other peril. In the event of such default, if the Note Amount is not timely paid in full when due, interest shall accrue on the outstanding balance at the rate of ten percent (10%) per annum, unless a lower interest rate is required by law.

c. Notwithstanding anything in this Note to the contrary, this Note shall be deemed released and discharged in full if the business on the Site has been continuously operating for the two (2) year period commencing on the Note Date and ending on the Due Date, and if during such two year period, payment is not otherwise due pursuant to the terms of this Note.

3. Default. Maker shall be deemed in default of this Note and the Note Amount shall be immediately due and payable if (i) Maker fails to make any payment due under this Note within ten (10) days of the date such payment is due; or (ii) Maker is in material breach of any of Maker's obligations under the Storefront Improvement Program, including but not limited to the terms of Paragraph 2 (b) of this Note.

4. Additional Terms Applicable to this Note.

a. All payments shall be first credited to accrued interest and second to reduction of

principal. All payments shall be made in lawful money of the United States. Payments shall be made to Holder at the address set forth in Paragraph 5 herein or at such other address as Holder may direct pursuant to notice delivered to Maker in accordance with Paragraph 5. Maker shall have the right to prepay all or any portion of the outstanding balance on this Note at any time without penalty.

b. Upon full repayment of this Note, or Holder's discharge as set in Paragraph 2(b), Holder shall return this Note to Maker marked "PAID" and upon such event this Note, except for the indemnification provision set forth in Paragraph 8, shall be of no further force or effect.

c. To the extent permitted by law, Maker waives diligence, presentment, protest and demand, and notices of protest, demand, nonpayment, dishonor, and maturity. Maker agrees that any extension of time for payment hereunder shall not affect the liability of Maker for such indebtedness. No delay or omission by Holder in exercising any right or remedy hereunder shall constitute a waiver of such right or remedy, or any other right or remedy, or any event of default. No waiver by Holder of any event of default shall constitute a waiver of any other event of default.

d. The terms of this Note shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Note or any other rule of construction which might otherwise apply.

e. The person(s) signing this Note on behalf of Maker represent and warrant that he/she/they is/are authorized to do so and that Maker is thereby bound to the terms of this Note.

5. Notices. Formal notices, demands, and communications between Maker and Holder shall be sufficiently given if delivered to the addresses indicated below by (i) registered or certified mail, postage prepaid, return receipt requested, or (ii) by same-day or overnight courier or delivery service that provides a receipt showing the date and time of delivery. Notices delivered by same-day or overnight courier or delivery service shall be effective upon receipt. Notices delivered by mail shall be effective upon the earlier of (i) receipt or (ii) Noon on the second business day following deposit with the United States Postal Service. Notices shall be addressed as follows:

If to Maker: _____

Attn: _____

If to Holder: Twentynine Palms Redevelopment Agency
City Hall
6136 Adobe Road
Twentynine Palms, CA 92277
Attn: Executive Director

Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by notice delivered as provided in this Paragraph.

6. Litigation. This Note shall be governed by and construed under the laws of the State of California. The parties agree that in any litigation between the parties arising out of this Note, the Municipal and Superior Courts of the State of California in and for the County of San Bernardino shall have exclusive jurisdiction. The prevailing party in any litigation between the parties arising out of or connected to this Note, in addition to whatever other relief to which the prevailing party is entitled, shall also be entitled to reasonable attorney's fees, including fees and costs for discovery, expert witness fees, and any fees and costs for appeal. In the event of such legal action, service of process on holder shall be made in such manner as provided by law for service on a California public

entity; service of process on Maker shall be made in such manner as may be provided for by law, and shall be valid whether made within or without the State of California.

7. Nonliability of Holder Officers. No member, official, officer, employee, agent, or representative of Holder shall be personally liable to Maker in the event of any default or breach by Holder or for any amounts which may become due to Maker or on any obligation under the terms of this Note.

8. Holder Indemnified. Maker agrees to and shall indemnify, defend, and hold Holder harmless from and against any and all claims, liabilities, losses, damages, costs, and expenses, including reasonable attorney's fees and costs (which shall include fees and expenses related to investigating the action, conducting discovery, retaining expert witnesses, prosecuting the action, and appeal), that is in any way related to (i) the Storefront Improvement Program, (ii) this Note, or (iii) the improvement work on the Site undertaken pursuant to the Storefront Improvement Program, that arises from or is the result of (A) the death or injury to any person, (B) any accident, injury, loss, or damages to any person or to the property of any person, or (C) failure of Maker to timely make any payment due by Maker to any person.

9. Prevailing Wages. With respect to the redevelopment and construction activities undertaken by Maker on the Site pursuant to this Note, or undertaken by Maker as part of the same construction project to which this Note relates, Maker acknowledges and agrees that it shall be required to, and shall be required to cause all of its contractors and their subcontractors to, pay prevailing wages in compliance with California Health and Safety Code Sections 33423 through 33426 and California Labor Code Section 1770 *et seq.*, and shall be responsible for keeping of all records required pursuant to Labor Code Section 1770 *et seq.*, including but not limited to Labor Code Section 1776, and for complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and for complying with all regulations and statutory requirements pertaining thereto. Such requirements are generally set forth in the Prevailing Wage and Public Works Requirements, attached hereto as **Attachment No. 1** and incorporated herein; provided, however, that Holder does not represent, warrant, or guarantee that **Attachment No. 1** sets forth all applicable requirements, and Maker acknowledges and agrees that it shall be independently responsible for reviewing the applicable law and regulations with respect to the payment of prevailing wages and complying therewith. Maker, as may be requested by Holder, but not more than once every (60) days during the construction of the Project, shall submit to Holder a certified and completed Public Works Payroll Reporting Form as published by the California Department of Industrial Relations, Division of Labor Standards Enforcement. In addition to any other Maker indemnifications of Holder set forth in this Note, Maker shall indemnify, defend, and hold Holder and the City of Twentynine Palms and their respective officers, officials, members, employees, agents, and representatives harmless from and against any liability, loss, damage, cost or expenses (including reasonable attorneys' fees, expert witness fees, and court costs) arising from the failure of Maker or its contractors or subcontractors to pay the applicable prevailing wages in accordance with applicable law.

10. Time of Essence. Time is of the essence in this Note.

[end - signature page follows]

IN WITNESS WHEREOF, MAKER EXECUTES AND ENTERS INTO THIS NOTE AS OF THE NOTE DATE FIRST ABOVE WRITTEN.

“MAKER”

[PRINT NAME]

By:

[SIGNATURE]

[PRINT NAME]

By:

[SIGNATURE]

ATTACHMENT NO. 1 TO
STOREFRONT IMPROVEMENT PROGRAM PROMISSORY NOTE

PREVAILING WAGE INFORMATION

[NOTE: The following is a summary only and shall not be construed as a complete statement of all of Maker's requirements. Holder shall have no responsibility or liability with respect to Maker's compliance, or the compliance of Maker's contractors and subcontractors, with applicable prevailing wage laws, regulations, and requirements. In the event of any conflict between this summary and the requirements imposed by applicable laws, regulations, and requirements, the applicable laws, regulations, and requirements shall apply.]

I. Maker Requirements

(1) (A) Obtain the prevailing wage rate from the Director of Industrial Relations in accordance with Labor Code Sections 1771 and 1773.

(B) Obtain the Public Works Payroll Reporting form (Form A-1-131) from an office of the Division of Labor Standards Enforcement (DLSE) or from the Division of Labor Statistics & Research, P.O. Box 420603, San Francisco, CA 94101. Telephone: (415) 703-4780.

(2) Specify the appropriate prevailing wage rates, in accordance with Labor Code Sections 1773.2 and 1777.5.

(A) The posting requirement is applicable for each job site.

EXCEPTION: If more than one worksite exists on any project, then the applicable rates may be posted at a single location which is readily available to all workers.

(B) If a wage rate for a craft, classification or type of worker is not published in the Director's general prevailing wage determinations, a request for a special determination should be made by the awarding body to Chief, Division of Labor Statistics and Research, P.O. Box 420603, San Francisco, CA 94142, at least 45 days prior to the project bid advertisement date.

(3) Notify the Division of Apprenticeship Standards, Department of Industrial Relations. See Labor Code Section 1773.3.

(4) Inform prime contractors, to the extent feasible, of relevant public work requirements:

NOTE: Requirement information may be disseminated at a pre-acceptance of bid conference or in a call for bids or at an award of bid conference.

The public works requirements are:

(A) the appropriate number of apprentices are on the job site, as set forth in Labor Code Section 1777.5.

(B) workers' compensation coverage, as set forth in Labor Code Sections 1860 and 1861.

(C) keep accurate records of the work performed on public works projects, as set forth in Labor Code Section 1812.

(D) inspection of payroll records pursuant to Labor Code Section 1776, and as set forth in Section 16400 (e) of Title 8 of the California Code of Regulations.

(E) and other requirements imposed by law.

(5) Withhold monies. See Labor Code Section 1727.

(6) Ensure that public works projects are not split or separated into smaller work orders or projects for the purpose of evading the applicable provisions of Labor Code Section 1771.

(7) Deny the right to bid on public work contracts to contractors or subcontractors who have been debarred from bidding on public works contracts, as set forth in Labor Code Section 1777.7.

(8) Not permit workers on public works to work more than eight hours a day or 40 hours in any one calendar week, unless compensated at not less than time and a half as set forth in Labor Code Section 1815.

EXCEPTION: If the prevailing wage determination requires a higher rate of pay for overtime work than is required under Labor Code Section 1815, then that higher overtime rate must be paid, as specified in subsection 16200(a)(3)(F) of Title 8 of the California Code of Regulations.

(9) Not take or receive any portion of the workers' wages or accept a fee in connection with a public works project, as set forth in Labor Code Sections 1778 and 1779.

(10) Comply with those requirements as specified in Labor Code Sections 1776(g), 1777.5, 1810, 1813, and 1860.

II. Contractor and Subcontractor Requirements (Maker Is Responsible for Insuring Compliance).

The contractor and subcontractors shall:

(1) Pay not less than the prevailing wage to all workers, as defined in Section 16000 of Title 8 of the California Code of Regulations, and as set forth in Labor Code Sections 1771 and 1774;

(2) Comply with the provisions of Labor Code Sections 1773.5, 1775, and 1777.5 regarding public works jobsites;

(3) Provide workers' compensation coverage as set forth in Labor Code Section 1861;

(4) Comply with Labor Code Sections 1778 and 1779 regarding receiving a portion of wages or acceptance of a fee;

(5) Maintain and make available for inspection payroll records, as set forth in Labor Code Section 1776;

(6) Pay workers overtime pay, as set forth in Labor Code Section 1815 or as provided in the collective bargaining agreement adopted by the Director of Industrial Relations as set forth in Section 16200 (a) (3) of Title 8 of the California Code of Regulations;

(7) Comply with Section 16101 of Title 8 of the California Code of Regulations regarding discrimination;

(8) Be subject to provisions of Labor Code Section 1777.7 which specifies the penalties imposed on a contractor who willfully fails to comply with provisions of Section 1777.5;

(9) Comply with those requirements as specified in Labor Code Sections 1810 and 1813; and

(10) Comply with other requirements imposed by law.

[End]