

DEED OF TRUST

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Garden Grove  
Attn.: City Clerk  
11222 Acacia Parkway  
Garden Grove, CA 92840

No fee document pursuant to  
Government Code Section 27383

APN: \_\_\_\_\_

DEED OF TRUST AND SECURITY AGREEMENT

THIS DEED OF TRUST AND SECURITY AGREEMENT ("Deed of Trust") made this 1<sup>st</sup> day of December, 2019, by trustor Cottage Industries, LLC, a California limited liability company ("COTTAGE"), and trustee \_\_\_\_\_ ("Trustee"), for the benefit of the City of Garden Grove, a California municipal corporation, as beneficiary ("CITY").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited, the receipt of which is hereby acknowledged, COTTAGE, hereby irrevocably grants, transfers, conveys and assigns to CITY, IN TRUST, WITH POWER OF SALE, for the benefit and security of CITY, under and subject to the terms and conditions hereinafter set forth, COTTAGE's fee interest in the property located in Orange County, California, described in the attached Exhibit "A" and more commonly known as \_\_\_\_\_ [description] \_\_\_\_\_ (the "Property").

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto;

TOGETHER WITH any and all buildings, improvements and landscaping of every kind and description now or hereafter erected thereon, and all property of COTTAGE now or hereafter affixed to or placed upon the Property (sometimes collectively referred to as the "Improvements");

TOGETHER WITH all right, title and interest of COTTAGE, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and areas of land adjacent to or used in connection with the Property;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all oil, gas and mineral rights (including royalty and leasehold rights relating thereto), all water and water rights and shares of stock relating thereto, and any and all awards made for the taking

by eminent domain or by and proceeding or purchase in lieu thereof of the whole or any part of such property; and

TOGETHER with all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefore, whether or not the same are, or shall be attached to said building or buildings in any manner.

All of the foregoing, together with the Property, is herein referred to as the "Security".

To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever.

TO SECURE to CITY the obligations and any payments required by that certain Promissory Note, between COTTAGE and CITY, of even date herewith, along with any exhibits attached thereto ("Note");

TO SECURE to CITY the performance by COTTAGE of all agreements and adherence to all conditions set forth herein and in the Note;

TO SECURE all renewals, extensions, supplements and other modifications of any of the foregoing, including without limitation modifications that are evidenced by new or additional documents or that change the rate of interest on any obligation; and

TO SECURE the payment of all other sums, with interest thereon, advanced in accordance herewith, to protect the security of this Deed of Trust; and the performance of the covenants and agreements of COTTAGE herein contained.

All of the foregoing obligations, as well as those identified hereafter, are referred to collectively herein as the "COTTAGE Covenants."

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, COTTAGE COVENANTS AND AGREES AS FOLLOWS:

1. Purpose. Pursuant to the Disposition and Development Agreement between the Lab Holdings, LLC and CITY dated May 10, 2016, which Disposition and Development Agreement was assigned by Lab Holdings, LLC to COTTAGE on May 31, 2016, which assignment was consented to by CITY, CITY has transferred the Property to COTTAGE, which will reuse the existing buildings and rehabilitate them for reuse purposes to attract commercial uses consistent with the mixed use zoning established for the Property by the City of Garden Grove. As set forth in said Disposition and Development Agreement, the Consideration for the Property was \$3,386,437.50 ("Consideration"), of which \$677,257.50 has been paid by COTTAGE to CITY. The remaining \$2,709,030.00 of the Consideration is to be paid by COTTAGE in accordance with the Note. CITY has further agreed to defer payment of interest for

a period of 30 months, and has further agreed to defer payment of development fees in the amount of \$133,715.82 subject to 4% simple interest per annum for a total of \$284,274.58 in interest being deferred for said 30 months and being added to the remaining \$2,709,030.00 of the Consideration for a total principal under the Note in the amount of \$2,993,304.58. This Deed of Trust secures the Note for that \$2,993,304,58 remaining balance of the Consideration plus deferred interest.

2. Definitions. The terms set forth in this section shall have the following meanings in this Deed of Trust. Any capitalized terms not defined in this Deed of Trust shall have the same meanings as defined in the Disposition and Development Agreement and the Note, the terms of which have been incorporate into this Deed of Trust.

- a. "COTTAGE" shall mean the trustor, Cottage Industries, LLC.
- b. "Deed of Trust" shall mean this Deed of Trust and Security Agreement.
- c. "Loan" shall have the same meaning as set forth in the Promissory Note.
- d. "Note" shall mean that certain Promissory Note secured by this Deed of Trust, of even date herewith, executed by COTTAGE for the benefit of the CITY.
- e. "CITY" shall mean the City of Garden Grove, a California municipal corporation.
- f. "Disposition and Development Agreement" shall mean the Disposition and Development Agreement, executed by Lab Holdings, LLC and the CITY dated May 10, 2016, which was assigned by Lab Holdings, LLC to COTTAGE on May 31, 2016, and consented to by CITY.
- g. "Property" shall mean that certain real property legally described on Exhibit "A," attached to this Deed of Trust and incorporated herein, together with all Improvements, and fixtures now or hereafter constructed, placed or located on the Property.
- h. "Term" shall mean the term of the Note, the obligations of which are secured by this Deed of Trust.

3. COTTAGE's Estate. COTTAGE represents and warrants that it is lawfully seized of the estate hereby conveyed, that it has the right to grant and convey the Security, and that other than this Deed of Trust, and the Note, the Security is not encumbered by any senior liens. COTTAGE agrees to warrant and defend generally the title to the Security against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage of any title insurance policy insuring CITY's interest in the Security.

4. Payment of Sums Owed. COTTAGE shall promptly pay to CITY, when due, any amounts due under the Note, including, but not limited to amounts due under the Loan as set forth in the Note.

5. COTTAGE Covenants. COTTAGE will observe and perform all of the covenants and agreements of the COTTAGE Covenants, as more specifically contained herein.

6. Transfer of Property by COTTAGE. Prior to expiration of the Term, COTTAGE agrees that COTTAGE shall not sell or transfer the Security except as may be provided in the Note and the Disposition and Development Agreement, without the prior written consent of CITY. The following events shall not be considered a transfer of interest: (a) a change in ownership of COTTAGE as a result of a merger, consolidation, reorganization, or joint venture; (b) the sale, exchange, issuance, or other transfer of COTTAGE's stock on a national exchange or between COTTAGE's parent company, if any, and any subsidiary, affiliate, related entity, or other entity that controls, is controlled by, or is under common control with COTTAGE; (c) the Transfer of this Agreement to COTTAGE's parent entity, if any, or any subsidiary, affiliate, related entity, an entity that controls, is controlled by, or is under common control with COTTAGE; or (d) a collateral assignment of COTTAGE's interest in this Agreement to a lender as security for any indebtedness of COTTAGE to the lender. COTTAGE shall not be required to obtain City's consent and City shall have no right to delay, alter, or impede any of the foregoing transactions or combinations thereof, but such transfer of interest shall be effective only upon not less than sixty (60) days written notice to City.

7. Liens. COTTAGE shall not cause, incur, suffer or permit to exist or become effective any lien, encumbrance or charge upon all or any part of the Property, or any interest therein other than (i) easements, rights of way, covenants, conditions, restrictions, liens and other title limitations as provided in the Disposition and Development Agreement, or as approved in writing by CITY, and (ii) immaterial easements and rights of way which are required by governmental authorities as a condition to the use of the Security (collectively, the "Permitted Encumbrances"). COTTAGE shall pay and promptly discharge, at COTTAGE's cost and expense, all liens, encumbrances and charges upon the Security, or any part thereof or interest therein other than the Permitted Encumbrances. If COTTAGE shall fail to remove and discharge any such lien, encumbrance, or charge, then, in addition to any other right or remedy of CITY, CITY may, but shall not be obligated to, discharge the same, without inquiring into the validity of such lien, encumbrance or charge nor inquiring into the existence of any defense or offset thereto, either by paying the amount claimed to be due, or by procuring the discharge of such lien, encumbrance or charge by depositing in court a bond or the amount claimed, or otherwise giving security for such claim, in such manner as is or may be prescribed by law. COTTAGE shall, immediately upon demand by CITY, pay to CITY an amount equal to all costs and expenses incurred by CITY in connection with the exercise by CITY of the foregoing right to discharge any such lien, encumbrance or charge, together with interest thereon from the date of such expenditure and, until paid, such sums shall be secured hereby.

8. Preservation and Maintenance of Security. COTTAGE agrees that at all times prior to full payment of the sums owed under the Note, secured by this Deed of Trust, that the COTTAGE will, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition and repair and in a prudent and businesslike manner.

9. Protection of CITY's Security.

- a. If COTTAGE fails to perform the COTTAGE Covenants or any obligations contained in this Deed of Trust, or the Note, if an Event of Default, as defined hereafter, occurs, or if any action or proceeding is commenced which materially affects CITY's interest in the Security, then CITY, at its option and upon notice to COTTAGE, may make such appearances, disburse such sums and take such action as it determines necessary to protect CITY's interest, including but not limited to, disbursement of reasonable attorney's fees and necessary repairs to the Security.
- b. Any amounts disbursed by CITY pursuant to this Section will become an indebtedness of COTTAGE secured by this Deed of Trust. Unless COTTAGE and CITY agree to other terms of payment, such amount will be payable upon notice from CITY to COTTAGE requesting payment thereof, and will bear interest of ten percent (10%) from the date of disbursement unless payment of interest at such rate would be contrary to applicable law, in which event such amounts will bear interest at the highest rate permissible under applicable law. Nothing contained in this Section will require CITY to insure any expense or take any action hereunder.
- c. In the event that the COTTAGE fails to observe or perform any obligations or COTTAGE Covenants under this Deed of Trust, or the Note, then the CITY may hold COTTAGE in default, treat the occurrence as an Event of Default pursuant to this Deed of Trust, and take any actions available under this Deed of Trust, or the Note, including, but not limited to, acceleration of any payments due or sale of the Security, as provided for hereafter.

10. Events of Default. Each of the following shall constitute an event of default ("Event of Default"): (a) the occurrence of any default under the provisions of this Deed of Trust, or the Note; or (b) the failure to make any payment or perform any of COTTAGE's other obligations now or hereafter secured by this Deed of Trust (subject to any applicable cure period).

11. Acceleration. Remedies and Notice. If COTTAGE is in default of any obligations under this Deed of Trust (including the COTTAGE Covenants), or the Note, or at the occurrence of any Event of Default, then at the option of CITY, the amount of any payment related to any such default, the Loan amount under the Note, as applicable, and any other indebtedness and other obligations secured hereby shall immediately become due and payable without presentment, protest notice or demand, all of which are hereby expressly waived, upon written notice by CITY to COTTAGE and no omission on the part of CITY to exercise such option when entitled to do so shall be construed as a waiver of such right.

Upon COTTAGE's breach of any covenant or agreement in this Deed of Trust (including, but not limited to, the covenant to pay, when due, any sums secured by this Deed of Trust), or the Note, or upon the occurrence of an Event of Default, CITY, prior to acceleration of the sums due under the Note, shall provide notice by certified mail, return receipt requested, to COTTAGE specifying:

- a. the breach or Event of Default;

- b. if the breach or Event of Default is curable, and the action required to cure such breach;
- c. a date, not less than thirty (30) days from the date the notice is effective, by which such breach, if curable, is to be cured; and
- d. if the breach is curable, that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums due under the Note, as secured by this Deed of Trust, as well as sale of the Security (collectively the "Notice of Default")

If the breach or Event of Default is not curable or is not cured on or before the date specified in the Notice of Default, CITY, at its option, may:

- i. declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by California law;
- ii. commence an action to foreclose this Deed of Trust as a mortgage, or specifically enforce any of the covenants hereof;
- iii. deliver to Trustee a written declaration of default and demand for sale, pursuant to the provisions for notice of sale as the law may require; or
- iv. exercise all other rights and remedies provided herein, in the instruments by which COTTAGE acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby; or provided by law.

The Notice of Default shall also inform COTTAGE of COTTAGE's right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of default or any other defense of COTTAGE to acceleration and sale.

CITY shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Section.

12. Foreclosure by Power of Sale. Should CITY elect to foreclose by exercise of the power of sale herein contained, CITY shall notify Trustee and shall deposit with Trustee this Deed of Trust, and the Note, which is secured hereby (and the deposit of which shall be deemed to constitute evidence that unpaid amounts due pursuant to the Note are immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

- a. Upon receipt of such notice of election to foreclose from CITY, Trustee shall cause to be recorded, published and delivered to COTTAGE the Notice of Default, as outlined above, and CITY'S notice of election to sell as then required by law and by this Deed of Trust. Trustee shall, without demand on COTTAGE, after lapse of such time as may then be required by law and after recordation of a Notice of

Default and after Notice of Sale having been given as required by law, sell the Security, at the time and place of sale fixed by it in said Notice of Sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise to the COTTAGE according to law, at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation Trustee or CITY, may purchase at such sale, and COTTAGE hereby covenants to warrant and defend the title of such purchaser or purchasers.

- b. After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (i) the unpaid amounts due pursuant to the Note; (ii) all other sums then secured hereby, as applicable; and (iii) the remainder, if any, to COTTAGE.
- c. Trustee may postpone sale of all or any portion of the Security by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

13. COTTAGE's Right to Reinstate. Notwithstanding CITY's acceleration of the sums secured by this Deed of Trust, or other actions taken in response to any Event of Default of COTTAGE, COTTAGE shall have the right to have any proceedings commenced by CITY, to enforce this Deed of Trust, discontinued at any time prior to five (5) days before sale of the Security pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if:

- a. COTTAGE pays CITY all sums which would be then due under this Deed of Trust, or the Note, as applicable;
- b. COTTAGE cures all breaches of any other covenants or agreements of COTTAGE contained in this Deed of Trust, or the Note, as applicable
- c. COTTAGE pays all reasonable expenses incurred by CITY and Trustee in enforcing the covenants and agreements of COTTAGE contained in this Deed of Trust, and in enforcing CITY's and Trustee's remedies, including, but not limited to, reasonable attorney's fees, as applicable; and
- d. COTTAGE takes such action as CITY may reasonably require to assure that the lien of this Deed of Trust, CITY's interest in the Security and COTTAGE's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired.

Upon such payment and cure by COTTAGE, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

14. Forbearance by CITY Not a Waiver. Any forbearance by CITY in exercising any right or remedy shall not be a waiver of the exercise of any such right or remedy, nor shall acceptance by CITY of any payment provided for in the Note constitute a waiver of the CITY's right to require prompt payment of any remaining amounts owed. The procurement of insurance or the payment of taxes or other liens or charges by CITY shall not be a waiver of CITY's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

15. Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or any other document, including the Note, or afforded by law or equity, and may be exercised concurrently, independently or successively at the discretion of CITY.

16. Reconveyance. Upon payment of all sums secured by this Deed of Trust, as set forth in the Note, CITY shall request Trustee to reconvey the Security and shall surrender this Deed of Trust and the Note to Trustee. Trustee shall reconvey the Security without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

17. Substitute Trustee. CITY, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. The successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

18. Notice. All notices, demands and requests which may be given, or which are required to be given by any party to this Deed of Trust, and any exercise of a right of termination provided by this Deed of Trust, shall be in writing and shall be deemed effective either: (1) on the third (3<sup>rd</sup>) business day after being sent, by certified or registered mail, return receipt requested, addressed to the intended recipient at the address specified below; (2) on the first (1<sup>st</sup>) business day after being deposited into the custody of a nationally recognized overnight delivery service (i.e., FedEx Corporation, UPS, or DHL) addressed to such party at the address specified below; or (3) on the business day sent via electronic mail in Portable Document Format (PDF) with confirmation of receipt, in which case notice shall be deemed delivered upon receipt of confirmation of receipt. For purposes of this section, the addresses of the parties for all notices are as follows:

If to COTTAGE:       Cottage Industries, LLC  
                          Attn.: \_\_\_\_\_  
                          709 Randolph Ave.  
                          Costa Mesa, CA 92626

If to CITY:            City of Garden Grove,  
                          Attn.: City Manager  
                          11222 Acacia Parkway  
                          Garden Grove, CA 92840

19. Governing Law. This Deed of Trust shall be governed by the laws of the State of California.

20. Severability. Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid or applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

21. Captions. The captions and headings in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

22. Exhibits. Any exhibits referred to in this Deed of Trust are incorporated in this Deed of Trust by such reference.

23. Subordination. This Deed of Trust shall be automatically subordinate to a deed of trust, to be executed by COTTAGE or COTTAGE's successor in interest and recorded in Orange County, California, to secure a loan (hereafter referred to as a "construction loan") obtained for the purpose of the construction of the rehabilitation work on the Property, provided that the conditions listed below are satisfied. For purposes of this Deed of Trust, "construction loan" shall include any advance of funds to COTTAGE by the lender for the purpose of the construction of the rehabilitation work on the Property and secured by a lien on the Property, whether in the form of a mortgage, deed of trust, or other security instrument in favor of the lender. The following are the conditions to this subordination:

- a. At the time of recordation of the deed of trust securing the construction loan, no unrescinded Notice of Default of this Deed of Trust appears of record.
- b. Any funds derived from the construction loan secured by the Property shall be used only for the construction of improvements on the Property and, to the extent permitted in this Deed of Trust, for the payment of loan fees, interest, or charges directly connected with the construction of improvements on the Property. "Construction of improvements" as used in this Deed of Trust shall mean the rehabilitation work associated with the Cottage Industries project, including the actual costs of labor and materials to rehabilitate the structures on the Property with the usual appurtenances, including parking facilities, driveway, and fencing; aggregate costs of general improvements, including engineering fees, architectural fees, drafting fees, and permit and inspection fees.
- c. The total amount of the construction loan shall not exceed thirty (30) percent of the anticipated value of the Property after completion of the construction of improvements financed by the construction loan, as determined by the lender. For example, if the value of the Property is estimated at \$4 million after completion of the rehabilitation work, the construction loan shall not exceed \$1.2 million.

- d. No portion of the construction loan shall be used to pay loan fees, interest, or other charges not directly connected with the construction of improvements on the Property.
- e. The proceeds of the construction loan shall be disbursed by the Lender either through its own offices or through a bonded disbursement control agency only after inspection of the work completed on the Property and presentation of vouchers signed by COTTAGE or its successors in interest for the cost of work, labor, or materials actually performed or used in the construction of improvements on the Property.
- f. The remaining terms and provisions of the construction loan shall be as required by the Lender.

CITY shall, within fifteen (15) days after receipt of a written request therefor from COTTAGE, execute a separate agreement of subordination, in recordable form, in favor of the construction loan to which this Deed of Trust is hereby subordinated, and deliver the subordination agreement to the lender or the lender's title company designated by COTTAGE. The terms of any such subordination agreement shall prevail over the subordination provisions provided for in this Deed of Trust. CITY's City Manager shall have authority to approve and execute such subordination agreement.

IN WITNESS WHEREOF, COTTAGE has executed this Deed of Trust as of the date first written above.

COTTAGE INDUSTRIES, LLC  
 a California limited liability company

By: \_\_\_\_\_  
 as agent and manager

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

Date: \_\_\_\_\_

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

Date: \_\_\_\_\_

EXHIBIT "A" TO DEED OF TRUST

GENERAL DESCRIPTION OF THE PROPERTY

	<b>Address</b>	<b>APN</b>
1	12911 7TH ST	090-172-18
2	11352 ACACIA PKWY	090-172-29
3	12902 7TH ST	090-173-04
4	12912 7TH ST	090-173-05
5	12932 7TH ST	090-173-07
6	11361 GARDEN GROVE BLVD	090-173-09
7	11391 GARDEN GROVE BLVD	090-173-11
8	12911 8TH ST	090-173-16
9	11412 ACACIA PKWY	090-173-22
10	12932 8TH ST	090-174-05
11	12931 9TH ST	090-174-11
12	12941 9TH ST	090-174-10

A trust deed will be recorded for each parcel described above.

