City of Fontana's Empowerment Revolving Loan Fund Program

Administered by AmPac Tri-State CDC, Inc. dba AmPac Business Capital

Security Agreement Without Guarantor

[Borrower's Legal Name]- [Loan Product]- Loan # [Loan Number]

THIS **SECURITY AGREEMENT** ("Security"), dated for reference purposes **[Date]** is entered into by and among **[Borrower's Legal Name], [insert legal capacity]** ("Borrower"), and AmPac Tri-State CDC, Inc. (the "Lender") with reference to the following facts:

RECITALS

A. The Borrower has entered a Loan dated as of **[Date]**, (the "Loan Agreement"), with the Lender, pursuant to which the Lender, subject to the terms and conditions contained therein, is making a Loan to the Borrower in the original principal amount of **[Loan Amount ($0.00)]** (referred to as the "Loan").

B. As a condition of making the Loan, the Lender requires that the Borrower grant to Lender a perfected Security Interest in certain personal or real property as described herein.

NOW, THEREFORE, in consideration of the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions:** All capitalized terms used herein without definitions shall have their respective meanings provided therefor in the Loan Agreement. The term "State," as used herein, means the State of California. All terms defined in the Uniform Commercial Code of the State and used herein shall have the same definitions herein as specified therein; provided, however, that the terms "Instrument" shall be such term as defined in Article 9 of the Uniform Commercial Code of the State rather than Article 3. The term "Obligations", as used herein, means all of the Indebtedness, obligations, and liabilities of the Borrower to the Lender, individually or collectively, whether direct or indirect, joint or several, absolute or contingent, due or to become due, now existing or hereafter arising under or in respect of the Loan Agreement including the Note described in the Loan Agreement, the term "Event of Default'"", as used herein, means the failure of the Borrower to pay or perform any of the obligations as and when due to be paid or performed under the terms of the Loan Agreement.

2. **Grant of Security Interests:** The Borrower hereby grants to the Lender, to secure the payment and performance in full of all of the obligations, a Security Interest in and so pledges and assigns to the Lender the following properties, assets and rights of the Borrower, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof (all of the same being hereinafter called the "Collateral"): All inventory, equipment, accounts (including but not limited to all health-care-insurance receivables), chattel paper, instruments (including but not limited to all promissory notes), letter-of-credit rights, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, and general intangibles (including but not limited to all software and all payment intangibles); all oil, gas and other minerals before extraction; all oil, gas, other minerals and accounts constituting as-extracted collateral; all fixtures; all timber to be cut; all attachments, accessions, accessories, fittings, increases, tools, parts, repairs, supplies, and commingled goods relating to the foregoing property, and all additions, replacements of and substitutions for all or any part of the foregoing property; all insurance refunds relating to the foregoing property; all good will relating to the foregoing property; all records and data and embedded software relating to the foregoing property, and all

equipment, inventory and software to utilize, create, maintain and process any such records and data on electronic media; and all supporting obligations relating to the foregoing property; all whether now existing or hereafter arising, whether now owned or hereafter acquired or whether now or hereafter subject to any rights in the foregoing property; and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property.

3. **Authorization to File Financing Statements:** The Borrower hereby irrevocably authorize the Lender at any time and from time to time to file in any Uniform Commercial Code authority any initial financing statements and amendments thereto that:

    I. **[UCC Language from Credit Memo]**

4. Borrower/Debtor is a **[Type of Entity]** organized and existing in and under the laws of the State of California, at the following locations: **[Borrower's Address]**

    I. whether the Borrower is an organization, the type of organization and any organization identification number issued to the Borrower and,

    II. in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted Collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. The Borrower agrees to furnish any such information to the Lender promptly upon request.

5. **Relation to Other Security Documents:** The provisions of this Agreement supplement the provisions of any real estate mortgage or deed of trust granted by the Borrower to the Lender and securing the payment or performance of any of the obligations. Nothing contained in any such real estate mortgage or deed of trust shall derogate from any of the rights or remedies of the Lender hereunder.

6. **Representation and Warranties Concerning Legal Status:** The Borrower represents and warrants that they are the individuals who have the authority to enter into this Agreement.

7. **Covenants Concerning Legal Status:** The Borrower covenant with the Lender as follows: **(A)** without providing at least 30 days prior written notice to the Lender, the Borrower, will not change their place of business or their mailing address **(B)** if the Borrower do not have an organizational identification number and later obtain one, the Borrower shall forthwith notify the Lender of such organizational identification number, and **(C)** the Borrower will not change their type of organization, jurisdiction of organization or other legal structure.

8. **Representations and Warranties Concerning Collateral, etc.:** The Borrower further represent the warrant to the Lender as follows:

    (A) The Borrower are the owners of, or will become the owner of the Collateral, free from any adverse lien, Security Interest, or other encumbrance, except for the Security Interest created by this Agreement,

    (B) None of the Collateral constitutes, or is the proceeds of, "farm products" as defined in §9-102(a)(34) of the Uniform Commercial Code,

    (C) None of the account debtor or other persons Obligated on any of the Collateral

is governmental authority subject to the Federal Assignment of Claims Act or like federal, state, or local statute or rule in respect of such Collateral,

(D) The Borrower has at all times operated its business in compliance with all applicable provisions of the federal Fair Labor Standards Act, as amended, and with all applicable provisions of federal, state, and local statues and ordinances dealing with the control, shipment, storage or disposal of Hazardous Materials or Substances and

(E) All of the representations and warranties set forth in the Loan Agreement remain true and correct.

9. **Covenants Concerning Collateral, etc.:** The Borrower further covenant with the Lender as follows:

(A) The Collateral will all be kept at the Property and the Borrower, will not remove the Collateral from the Property without the express written consent of the Lender, which shall be requested by at least 30 days prior to written notice to the Lender,

(B) The Borrower shall be the owner of the Collateral free from any Lien, Security Interest, or other encumbrance, and the Borrower shall defend the same against all claims and demands of all persons at any time claiming the same or any interests therein adverse to the Lender

(C) The Borrower shall not pledge, mortgage, or create, or suffer to exist a Security Interest in the Collateral in favor of any person other than the Lender

(D) The Borrower will keep the Collateral in good order and repaid and will not sure the same in violation of law or any policy of insurance there on,

(E) The Borrower will permit the Lender, or its designee, to inspect the Collateral at any reasonable time, wherever located,

(F) The Borrower will pay promptly when due all taxes, assessment, governmental charges, and levies upon the Collateral or incurred in connection with the use or operation of such Collateral or incurred in connection with the Agreement,

(G) The Borrower will continue to operate, its business in compliance with all applicable provisions of the federal Fair Labor Standards Act, as amended, and with all applicable provisions of federal, state, and local statutes and ordinances dealing with the control, shipment, storage, or disposal of Hazardous Materials or Substances, and

(H) The Borrower will not sell or otherwise dispose, or offer to sell or otherwise dispose, of the Collateral or any interest therein except for dispositions with the express written consent of the Lender, which shall be requested by at least 30 days prior written notice to the Lender

10. **Collateral Protection and Preservation; Obligations and Duties:** Anything herein to the contrary notwithstanding, the Borrower shall remain liable under each contract or Agreement comprised in the Collateral to be observed or performed by the Borrower. The Lender shall not have any obligation or liability under any such contract or Agreement by reason of or arising out of this Agreement or the receipt by the Lender of

any payment relating to any of the Collateral, nor shall the Lender be obligated in any manner to perform any of the obligations of the Borrower under or pursuant to any such contract or Agreement, to make inquiry as to the nature of sufficiency of any payment received by the Lender in respect of the Collateral or as to the sufficiency of any performance by any party under any such contract or Agreement, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to the Lender or to which the Lender may be entitled at any time or times. The Lender's sole duty with respect to the custody, safe keeping, and physical preservation of the Collateral in its possession, under keeping, and physical preservation of the Collateral in its possession, under §9-207 of the Uniform Commercial Code of the Status or otherwise, shall be to deal with such Collateral in the same manner as the Lender deals with similar properties for its own amount.

11. **Notification to Account Debtors and Other Persons Obligated on Collateral:** If an Event of Default shall have occurred and be continuing, the Borrower shall, at the request of the Lender, notify account debtors and other persons obligated on any of the Collateral of the Security Interest of the Lender in any account, chattel paper, general intangible, instrument or other Collateral and that payment thereof is to be made directly to the Lender or to any financial institution designated by the Lender as the Lender's agent therefore, and the Lender may itself, if an Event of Default shall have occurred and be continuing, without notice to or demand upon the Borrower, so notify account debtors and other persons obligated on Collateral. After the making of such a request or the giving of any such notification, the Borrower shall hold any proceeds of collection of accounts, chattel paper, general intangibles, instruments, and other Collateral received by the Borrower as trustee for the Lender without commingling the same with other funds of the Borrower and shall turn the same over to the Lender in the identical form received, together with any necessary endorsements or assignments. The Lender shall apply the proceeds of collection of accounts, chattel paper, general intangibles, instruments, and other Collateral received by the Lender to the Obligations, such proceeds to be immediately entered after final payment in cash or other immediately available funds of the items giving rise to them.

12. **Power of Attorney:**

    12.1 Appointment and Powers of Lender: The Borrower hereby irrevocably constitute and appoint the Lender and any officer or agent thereof, with full power of substitution, as their true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of the Borrower or in the Lender's own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or desirable to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, hereby gives said attorneys the power and right, on behalf of the Borrower, without notice to or assent by the Borrower, to do the following:

        (A) Upon the occurrence and during the continuance of an Event of Default, generally to sell, transfer, pledge, make any Agreement with respect to or otherwise deal with any of the Collateral in such manner as is consistent with

the Uniform Commercial Code of the State and as fully and completely as though the Lender were the absolute owner thereof for all purposes, and to do at the Borrower's expense, at any time, or from time to time, all acts and things which the Lender deems necessary to protect, preserve, or realize upon the Collateral and the Lender's Security Interest therein, in order to effect the intent of this Agreement, all as fully and effectively as the Borrower might do, including, without limitation.

I. The filing and prosecuting of registration and transfer applications with the appropriate federal or local agencies or authorities with respect to trademarks, copyrights, and patentable inventions and processes,

II. Upon written notice to the Borrower, the exercise of voting rights with respect to voting securities, which rights may be exercised, if the Lender so elects, with a view to causing the liquidation in a commercially reasonable manner of assets of the issuer of any such securities and the execution, delivery, and recording, in connection with a sale or other disposition of any Collateral, of the endorsements, assignments, or other instruments of conveyance or transfer with respect to such Collateral; and

(B) To the extent that the authorization given herein is not sufficient, to file such financing statements with respect hereto, with or without the signature, or a photocopy of this Agreement in substitution for a financing statement, as the Lender may deem appropriate and to execute in the Borrower's names such as financing statements and amendments thereto and continuation statements which may require the Borrower's signatures.

12.2 Ratification by Borrower: To the extent permitted by law, the Borrower hereby ratify all that said attorney shall lawfully do or cause to be done by virtue hereof. This role of power of attorney is a power coupled with an interest and shall be irrevocable.

12.3 No Duty on Lender: The powers conferred on the Lender hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon it to exercise any such powers. The Lender shall be accountable only for the amounts that it receives because of the exercise of such powers and neither it nor any of its officers, directors, employees, or agents shall be responsible to the Borrower for any act of failure to act, except for the Lender's own gross negligence or willful misconduct.

13. Remedies: If an Event of Default shall have occurred and be continuing, the Lender may, without notice to or demand upon the Borrower, declare this Agreement to be in Default, and the Lender shall thereafter have in any jurisdiction in which enforcement hereof is sought, in addition to all other rights and remedies, the rights and remedies of a secured party under the Uniform Commercial Code or of any jurisdiction in which Collateral is located, including, without limitation, the right to take possession of the

Collateral, and for that purpose the Lender may, so far as the Borrower can give authority therefor, enter upon any premises on which the Collateral may be situated and remove the same therefrom. The Lender may in its discretion require the Borrower to assemble all or any part of the Collateral at such location or locations within the authority(ies) of the Borrower's principal office(s) or at such other locations as the Lender may designate. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Lender shall give to the Borrower at least five business days prior written notice of the time and place of any public sale of Collateral or of the time after which any private sale or any other intended disposition is to be made. The Borrower hereby acknowledge that five business days prior written notice of such sale or sales shall be reasonable notice. In addition, the Borrower waive all rights that it may have to a judicial hearing in Advance of the enforcement of any of the Lender's rights, including, without limitation, its right following an Event of Default to take immediate possession of the Collateral and to exercise its rights with respect thereto.

14. **Standards for Exercising Remedies:** To the extent that applicable law imposes duties on the Lender to exercise remedies in a commercially reasonable manner, the Borrower acknowledge and agrees that it is not commercially unreasonable for the Lender:

(A) To fail to incur expenses deemed significant by the Lender to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition,

(B) To fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third-party consents for the collection of disposition of Collateral to be collected or disposed of,

(C) To fail to exercise collection remedies against account debtors or other persons obligated on Collateral or to remove liens or encumbrances on or any adverse claims against Collateral,

(D) To exercise collection remedies against account debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of specialized nature,

(E) To contact other persons, whether or not in the same business as the Borrower, for expressions of interest in acquiring all or any portion of the Collateral,

(F) To hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature,

(G) To dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets,

(H) To dispose of assets in wholesale rather than retail markets,

(I) To deny disposition warranties,

(J) To purchase insurance or Loan enhancements to insure the Lender against risks of loss, collection, or disposition of Collateral or to provide to the Lender a guaranteed return from the collection or disposition of Collateral, or to the extent deed appropriate by the Lender, to obtain the services of other brokers, investment Lenders, consultants, and other professionals to assist the Lender in the collection of disposition of any of the Collateral. The Borrower acknowledges that the purpose of this Section 14 is to provide non-exhaustive indications of what actions of omissions by the Lender would not commercially unreasonable in the Lender's exercise of remedies against the Collateral and that other actions or omissions by the Lender shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 16. Without limitation upon the foregoing, nothing contained in this Section 14 shall be construed to grant any rights to the Borrower or to impose any duties on the Lender that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section 14.

15. **No Waiver by Lender:** The Lender shall not be deemed to have waived any of its rights upon or under the Obligations or the Collateral unless such waiver shall be in writing and signed by the Lender. No delay or omission on the part of the Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver on any one occasion shall not be construed as a bar to or waiver of any right on any future occasion. All rights and remedies of the Lender with respect to the Obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, shall be cumulative and may be exercised singularly, alternatively, successively, or concurrently at such time or at such times as the Lender deems expedient.

16. **Suretyship Waivers by Borrower:** The Borrower waives demand, notice, protest, notice of acceptance of this Agreement, notice of Loans made, Loan extended, Collateral received or delivered, or other action taken in reliance hereon and all other demands and notices of any description. With respect to both the Obligations and the Collateral, the Borrower assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of or failure to perfect any Security Interest in any Collateral, to the addition or release of any party or person primarily or secondarily liable to the acceptance of partial payment thereon and the settlement, compromising, or adjusting of any thereof, all in such manner and at such time or times as the Lender may deem advisable. The Lender shall have no duty as to the collection or protection of the Collateral or any income thereon, nor as to the preservation of rights against prior parties. The Borrower further waives all other suretyship defenses.

17. **Marshal Obligation:** The Lender shall not be required to marshal any present or future Collateral security(including but not limited to this Agreement and the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such Collateral security or other assurances of payment in any order, and all its rights hereunder and in respect of such Collateral security and other assurances of payment shall be cumulative and in addition to all other rights, however existing or arising. To the

extent that it lawfully may, the Borrower hereby agree that they will not invoke any law relating to the marshalling of Collateral which might cause delay in or impede the enforcement of the Lender's rights under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, the Borrower hereby irrevocably waive the benefits of all such laws.

18. **Proceeds of Dispositions: Expenses:** The Borrower shall pay to the Lender on demand all expenses, including reasonable attorney's fees and disbursements, incurred, or paid by the Lender in protecting, preserving, or enforcing the Lender's rights under or in respect of any of the Obligations or any of the Collateral. After deducting all said expenses, the residue of any proceeds of collection or sale of the Obligations or Collateral shall, to the extent received in cash, be applied to the payment of the Obligations in such order or preference as the Lender may determine proper allowance and provision being made for any Obligations not then due. Upon the final payment and satisfaction in full of all the Obligations and after making any payments required be Sections9-608(a)(1)(C) or 9-615(a)(3) of the Uniform Commercial Code, any excess shall be returned to the Borrower, and the Borrower shall remain liable for any deficiency in the payment of the Obligations.

19. **Overdue Amounts:** Until paid, all amounts due and payable by the Borrower hereunder shall be a debt secured by the Collateral and shall accrue interest at the rate indicated by the contract prejudgment and the legal rate thereafter.

20. **Governing Law:** Consent to Jurisdiction: This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. The Borrower agrees that any suit for the enforcement of this Agreement may be brought in the courts of the State or any federal court sitting therein and consents to the non- exclusive authority of such court. The Borrower hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

21. **Counterparts.** This Agreement may be signed in counterparts and sill be binding on all parties hereto notwithstanding that all the parties are not signatories to the original or same counterpart. The parties agree that this document may be executed and delivered by facsimile, PDF transmission, any electronic signature complying with the applicable laws governing electronic signatures, California Uniform Electronic Transaction Act (Cal. Civ. Code Sections 1633.1-1633.17) or the U.S. Federal ESIGN Act of 200, as amended, or similar reproduction of such signed writing using electronic mail shall be as effective as an original executed signature page.

22. **Miscellaneous:** The headings of each section of this Agreement are for convenience only and shall not define or limit the provisions thereof. This Agreement and all rights and obligations hereunder shall be binding upon the Borrower and their respective successors and assigns and shall inure to benefit of the Lender and its successors and assigns. If any term of this Agreement shall be held to be invalid, illegal, or

unenforceable, the validity of all other terms hereof shall in no way be affected thereby,

and this Agreement shall be construed and be enforceable as if such invalid, illegal, or unenforceable term had not been included herein. The Borrower acknowledge receipt of a copy of this Agreement.

IN WITNESS WHEREOF, Intending to be legally bound, the parties hereto have caused this Agreement to be duly executed as of the date first above written. This Security Agreement is dated: **[Date]**.

Borrower:

[Borrower's Legal Name]

_____

[Signer(s) Legal Name(s), and Title(s)]

Lender:

AmPac Tri-State CDC, Inc.

_____

Hilda J. Kennedy, Executive Director