

RESOLUTION NO. OB-09-13

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER CITY OF EL CAJON REDEVELOPMENT AGENCY APPROVING A PARTICIPATION AGREEMENT BETWEEN URBN RESTAURANTS INC. OR SUCH OTHER BUSINESS ENTITY FORMED AND CONTROLLED BY OR CONTROLLING URBN RESTAURANTS INC., OR THE SHAREHOLDERS THEREOF, INCLUDING BUT NOT LIMITED TO URBN COAL FIRED, LLC ("URBN") AND THE CITY OF EL CAJON, IN ITS CAPACITY AS SUCCESSOR AGENCY, FOR SALE OF SECURED PROPERTY IDENTIFIED IN THE SETTLEMENT AGREEMENT BETWEEN STEPHAN MEADOWS, MANDY MEADOWS AND DOWNTOWN EL CAJON BREWING CO. ("DECB") APPROVED BY THE OVERSIGHT BOARD ON APRIL 18, 2013, AS RESOLUTION NO. OB-06-13.

WHEREAS, beginning on November 17, 2009, the former El Cajon Redevelopment Agency ("Agency") board approved three loans to the Downtown El Cajon Brewing Co., Inc., with original principal balances totaling \$645,000, for tenant improvements, fixtures, furnishings and equipment, for the first brewing company and restaurant in El Cajon at 110 N. Magnolia Avenue ("Site"); and

WHEREAS, all three loans are memorialized and secured by, among other enforceable obligations, a Participation Agreement, Leasehold Deed of Trust, and Promissory Notes ("Loan Documents"); and

WHEREAS, on October 1, 2012, the Downtown El Cajon Brewing Co., Inc., filed for reorganization under Chapter 11 of the Bankruptcy Code; and

WHEREAS, in order to protect the security interest in the Furniture, Fixtures and Equipment under the Loan Documents with current outstanding balances of \$601,086.65, the Successor Agency immediately hired outside counsel to assist during the bankruptcy process; to obtain relief from the automatic stay in bankruptcy court; to perfect its security interest; and to foreclose on the secured property; and

WHEREAS, on April 1, 2013, the City of El Cajon, acting in its capacity as Successor Agency under the Loan Documents, executed a Settlement Agreement with the Downtown El Cajon Brewing Co., Inc. to surrender possession and all furnishings, fixtures and equipment, and all supplies, utensils, glassware, window coverings, wall art, signs and other property related to the operation of the business currently located at 110 N. Magnolia Avenue ("Secured Property") to the City of El Cajon, acting solely in its capacity as Successor Agency, who has a perfected security interest in the Secured Property; and

WHEREAS, a License Agreement between the property owner, Howard Fisher, and the Successor Agency dated April 1, 2013, was also executed to use the Site for the purpose of storing, maintaining, and keeping all of the Successor Agency's Secured

Property on Site, and for the purpose of performing any utility and maintenance obligations; and

WHEREAS, both the Settlement Agreement and License Agreement were approved by the Oversight Board at its April 18, 2013, meeting under Resolution No. OB-06-13; and

WHEREAS, the Successor Agency and Site Owner have been working cooperatively to find another operator to take over the Site and to acquire the Secured Property, including fielding of inquiries and preliminary offers; and

WHEREAS, URBN submitted a Letter of Intent ("Offer") that has been negotiated and is in a form that meets the needs of both the Site Owner and the Successor Agency; and

WHEREAS, under the terms of the Offer, URBN will acquire the Secured Property for approximately \$300,000, under terms and conditions acceptable to the Successor Agency, that will result in a return of not less than 49.9% of the principal amount of DECB Notes; and

WHEREAS, staff is also seeking approval for the Successor Agency to execute the Participation Agreement and related documents necessary to secure loan terms of approximately \$300,000 at one and one-half percent (1.5%) per annum, with a 15-year amortization schedule, interest only payments for the first two years, and a balloon payment at the tenth anniversary date.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER CITY OF EL CAJON REDEVELOPMENT AGENCY, AS FOLLOWS:

A. The Oversight Board finds that:


1. The recitals above are true and correct and have been incorporated herein by reference.
2. Approval of the Participation Agreement and preparation of related documents is exempt from the California Environmental Quality Act (CEQA) under Section 15061 (b) (3) (General Rule) of the CEQA Guidelines because the proposed agreements will not cause a significant adverse physical change to the environment either directly or indirectly.
3. The proposed Participation Agreement and terms would be in the best interests of the affected taxing entities and the public because it will yield approximately \$300,000, plus interest, to the taxing entities over a ten year period and bring a new business, together with new jobs, shoppers, and diners to an otherwise vacant storefront.

- B. The Oversight Board hereby approves that certain Participation Agreement between URBN Restaurants Inc. or such other business entity formed controlled by or controlling URBN Restaurants Inc., or the shareholders thereof, including but not limited to URBN Coal Fired, LLC ("URBN") and the City of El Cajon, in its capacity as successor agency to the El Cajon Redevelopment Agency, substantially in the form as presented at this meeting, with such changes as may be approved by the City Manager and the Department of Finance, for sale of the Secured Property identified in the Settlement Agreement between Stephan Meadows, Mandy Meadows and Downtown El Cajon Brewing Co. ("DECB") approved by the Oversight Board on April 18, 2013, as Resolution No. OB-06-13;
- C. The Oversight Board hereby approves execution by the City Manager of the City, or such person designated by the City Manager, acting in the capacity of chief executive officer for the Successor Agency, of the Participation Agreement and additional necessary documentation on behalf of the Successor Agency, substantially in the form as presented at this meeting, with such changes as may be approved by the City Manager, in order sell the personal property identified therein to URBN, and to secure loan terms outlined in the report.

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PASSED AND ADOPTED by the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency at a meeting held this 21st day of August, 2013, by the following vote to wit:

AYES: BUXBAUM, CHADWICK, GRIFFIN, GRIFFITHS, RANU  
NOES: NONE  
ABSENT: ABUSHABAN, TURNER-EMERSON

  
\_\_\_\_\_  
James S. Griffin, Vice Chairperson

ATTEST:

  
\_\_\_\_\_  
Jennifer Ficacci, Oversight Board Acting Secretary

**PARTICIPATION AGREEMENT**

By and Between the

**CITY OF EL CAJON AS SUCCESSOR AGENCY TO THE FORMER EL CAJON  
REDEVELOPMENT AGENCY,  
and**

**URBN RESTAURANTS, INC.**

**THIS PARTICIPATION AGREEMENT** (this "Agreement") is entered into as of \_\_\_\_\_, 2013, and is effective on the date it is approved by the California Department of Finance, by and between the **CITY OF EL CAJON AS SUCCESSOR AGENCY TO THE FORMER EL CAJON REDEVELOPMENT AGENCY**, a municipal corporation (the "Agency"), and **URBN RESTAURANTS INC.**, a California corporation (the "Operator").

### **RECITALS**

The following recitals are a substantive part of this Agreement:

A. On December 28, 1971, pursuant to Health & Safety Code sections 33330 *et seq.*, the City Council of the City of El Cajon (the "City") adopted Ordinance No. 2437 establishing the Central Business District Redevelopment Project Area; said Ordinance was amended by Ordinance No. 4038 on July 14, 1987 which approved the Redevelopment Plan (the "Plan") for the El Cajon Redevelopment Project Area (the "Project Area").

B. Pursuant to Community Redevelopment Law (Health and Safety Code Sections 33000, *et seq.* (the "CRL")), the City of El Cajon Redevelopment Agency (the "Redevelopment Agency") was created, and was authorized and empowered to enter into agreements for the development of real property and otherwise to assist in the redevelopment of real property within the Project Area in conformity with the Plan, to acquire real and personal property in the Project Area, to receive consideration for the provision by the Redevelopment Agency of redevelopment assistance, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and to incur indebtedness to finance or refinance redevelopment projects.

C. On February 11, 2010, in furtherance of the objectives of the CRL, the Redevelopment Agency entered into an agreement with the Downtown El Cajon Brewing Company (the "DECB Agreement") to provide for the rehabilitation and operation of certain real property located within the Project Area at 110 N. Magnolia Avenue in the City of El Cajon (the "Site") as a Micro-Brewery and full service restaurant; pursuant to the DECB Agreement, the Redevelopment Agency obtained a security interest in furnishings, fixtures, equipment, licenses, and such other personal property used at the Site as is generally described in Attachment No. 6 of this Agreement (the "Agency Property") which is attached hereto and incorporated herein by this reference.

D. Assembly Bill 1x 26 added Parts 1.8 and 1.85 to Division 24 of the California Health & Safety Code, which laws cause the dissolution and wind down of all redevelopment agencies ("Dissolution Act").

E. On December 29, 2011, in *California Redevelopment Association v. Matosantos*, Case No. S194861, the California Supreme Court upheld the Dissolution Act and thereby all redevelopment agencies in California are subject to the Dissolution Act and were dissolved effective February 1, 2012.

F. The Redevelopment Agency is now a dissolved community redevelopment agency pursuant to the Dissolution Act.

G. As of and on and after February 1, 2012, the City serves as the successor agency to the Redevelopment Agency (the “Agency” or “Successor Agency”) and will perform its functions as the successor agency under the Dissolution Act to administer the enforceable obligations of the Redevelopment Agency and otherwise unwind the Redevelopment Agency’s affairs, all subject to the review and approval by an initial seven-member oversight board formed thereunder and any county-wide oversight board that may succeed the initial oversight board in accordance with the Dissolution Act (the initial oversight board and the county-wide oversight board, herein referred to as the “Oversight Board”), and by the California Department of Finance (the “Department of Finance”).

H. Pursuant to the terms and conditions of the DECB Agreement, the Agency became the owner of the Agency Property, which was formerly being used the Downtown El Cajon Brewing Company in their operation of a Micro-Brewery and full service restaurant at the Site under the DECB Agreement.

I. As of the date of this Agreement, the Site is no longer being operated as a Micro-Brewery and full-service restaurant, but instead the single-story commercial building with approximately 6,584 square feet that was formerly used for this purpose is vacant; moreover, the Agency Property at the Site is not currently being utilized.

I. In furtherance of the objectives of the CRL, the Agency desires to provide for the operation of the Site as a Micro-Brewery and full service restaurant.

J. The Operator desires to rehabilitate the structure and operate a Micro-Brewery and full service restaurant at the Site. The Operator will enter into a lease with Howard Fisher, (the “Owner”) for the purpose of operating said restaurant and Micro-Brewery at the Site. The Agency and the Operator desire by this Agreement to provide for the Agency to grant to the Operator, under a loan to the Operator as memorialized by a promissory note of even date hereof (the “Promissory Note”), funding in the amount of Three Hundred Thousand Dollars (\$300,000.00), (the “Agency Loan”) for the purpose of financing the Operator’s acquisition of the Agency Property for its operation of a Micro-Brewery and full service restaurant at the Site.

K. The Agency has determined that the obligations of the Operator and the Agency, as provided herein, are in the vital and best interest of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements under which the Project Area has been undertaken.

**NOW, THEREFORE,** the Agency and the Operator hereby agree as follows:

**1. Definitions.** The following terms shall have the following meanings for the purpose of this Agreement:

“*Agency*” means the City of El Cajon as successor agency to the former El Cajon Redevelopment Agency of the City of El Cajon, a municipal corporation, exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California, and any assignee of or successor to its rights, powers and responsibilities.

“*Agency Property*” means the furnishings, fixtures, equipment, licenses, and such other personal property as generally described in Attachment No. 6 to this Agreement.

**“Agency Loan”** means the amount of money loaned by the Agency for the purpose of financing the Operator’s acquisition of the Agency Property for its operation of a Micro-Brewery and full service restaurant at the Site, as provided in Section 2.1 herein.

**“Agreement”** means this Participation Agreement between Agency and the Operator.

**“City”** means the City of El Cajon, California, a California municipal corporation. The City is not a party to this Agreement and shall have no obligations hereunder.

**“El Cajon Redevelopment Plan”** means the El Cajon Redevelopment Plan for the El Cajon Redevelopment Project Area, approved and adopted by the City Council of the City by Ordinance No. 4038 of the City of El Cajon on July 14, 1987 and includes any amendment thereof, hereafter or heretofore made pursuant to the law.

**“Conditions Precedent”** means the conditions precedent to the disbursement of the Agency Loan, as set forth in Sections 2.3 and 2.4 hereof.

**“Default”** means the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 4.1 hereof.

**“Department of Finance”** means the California Department of Finance that has oversight authority over the activities of the City of El Cajon as Successor Agency to the former El Cajon Redevelopment Agency (the “Agency”) and the Oversight Board in winding down the Agency’s redevelopment activities in accordance with Assembly Bill 1x 26 (which added Parts 1.8 and 1.85 to Division 24 of the California Health & Safety Code).

**“Effective Date of Agreement”** is set forth in the first paragraph of this Agreement.

**“F&E’s”** means the fixtures and equipment provided by Operator pursuant to Section 3.2.

**“Lease Agreement”** means the Lease Agreement between the Operator and Owner.

**“Leased Premises”** means the location and square footage controlled by the Operator through a Lease Agreement between the Operator and the Owner.

**“Micro-Brewery”** means Site improvements unique and sufficient to brew a limited production capacity of beer on site, up to 15,000 barrels per year, and shall include the presence of a full service restaurant with outdoor patio dining facilities.

**“Notice”** shall mean a notice in the form prescribed by Section 5.1 hereof.

**“Operating Covenant”** means the Operating Covenant in the form of Attachment No. 3 attached hereto and incorporated herein.

**“Operator”** means URBN Restaurants, Inc., a California corporation.

**“Oversight Board”** means the initial seven-member oversight board and any county-wide oversight board that may succeed the initial oversight board, formed in accordance with Assembly Bill 1x 26 (which added Parts 1.8 and 1.85 to Division 24 of the California Health & Safety Code)



that supervise the activities of the City of El Cajon as Successor Agency to the former El Cajon Redevelopment Agency in winding down its redevelopment activities.

“**Owner**” means Howard Fisher, or such person, organization or entity succeeding to the interests of Howard Fisher in the ownership of the Leased Premises.

“**Property**” means that parcel of real property, as and more particularly described in the Property Legal Description.

“**Property Legal Description**” means the description of the Property which is attached hereto as Attachment No. 1 and incorporated herein.

“**Related documents**” means the Participation Agreement, Operating Covenant, Promissory Note, Leasehold Deed of Trust with Fixture Filing and Security Agreement, Guarantee Agreement, and any other document, contract or agreement executed in relation to Agency assistance or loan.

“**Schedule of Performance**” means the schedule attached hereto as Attachment No. 5

“**Site Improvement**” means the improvements required to rehabilitate the Property to enable Operator to operate as a Micro-Brewery and full service restaurant.

“**Transfer**” shall have the meaning attributed to such term as provided in Section 5.3(a).

## 2. AGENCY ASSISTANCE

**2.1 Agency Loan.** Subject to all of the terms, covenants and conditions which are set forth herein, the Agency hereby agrees to loan to the Operator the amount not to exceed sum of Three Hundred Thousand Dollars (\$300,000.00) (the “Agency Loan”) for the purpose of financing the Operator’s acquisition of the Agency Property for its operation a Micro-Brewery and full service restaurant at the Site. The Agency Loan shall be considered disbursed to the Operator upon recordation of the Leasehold Deed of Trust with Fixture Filing and Security Agreement, Operating Covenant, and any other Related Documents, in the form of title to the Agency Property promptly upon approval by the Department of Finance and after the satisfaction of all Conditions Precedent to the disbursement of the Agency Loan as hereinafter provided. Terms of the Agency Loan are more particularly described in Attachment 7 (“Promissory Note”).

### 2.2 [Reserved]

**2.3 Conditions Precedent to Disbursement of Agency Assistance.** Subject to all of the terms, covenants and conditions set forth in this Agreement, the Agency shall disburse the Agency Loan to the Operator upon satisfaction of the following conditions precedent (the “Conditions Precedent”) to the reasonable satisfaction of the Agency on or prior to the date provided for in the Schedule of Performance:

(a) **Execution and Delivery of Documents By Operator.** Operator shall have executed and delivered to the Agency, the Operating Covenant, and any other documents and instruments required to be executed and delivered by Owner. Operator shall provide Agency with certified copies of its Articles of Incorporation, By-Laws, corporate resolution and such other

documents as may be requested by Agency to demonstrate that this Agreement will be properly executed by Operator.

(b) **Concept Design.** The Operator shall have submitted to the Agency evidence satisfactory to the Agency that the Site can operate as a Micro-Brewery with full service restaurant.

(c) **Financial Statements.** The Operator shall have submitted financial statements, concept design and a pro-forma financial statement for the rehabilitation and operation of the Property in accordance with the terms of this Agreement in form and substance satisfactory to the Agency.

(d) **Operating Covenant and Related Documents.** The Operator shall deliver the fully executed Operating Covenant and Related Documents to the Agency.

(e) **Governmental Approvals; Permits.** Operator shall have submitted plans for the renovation of the Site to the Agency and the City and shall provide evidence to the Agency that (1) such plans have been ~~approved by~~ submitted to the City of El Cajon Community Development Corporation Design Review Commission, (2) the City has approved a conditional use permit for the Micro-Brewery and full service restaurant on the Property, and (3) City and such other governmental entities having any jurisdiction over the renovation and use of the Property as a Micro-Brewery and full service restaurant have issued such permits or given such approvals, as are legally necessary and appropriate, and all such entities have, or are prepared to issue permits to complete the work. Such evidence shall be accompanied by a schedule for the completion of the work.

(f) **Lease Agreement.** Operator shall submit to the Agency for its approval an executed copy of the Lease Agreement which shall include a provision satisfactory to the Agency granting the Agency the right to assume the Lease Agreement or, in the alternative, direct an assignment of the Lease Agreement to a third party, in any event for the purpose of operating the Site upon default by Operator. The Lease Agreement shall provide that there shall be no amendments to the Lease Agreement without the prior written consent of the Agency, which shall not be unreasonably withheld. The Lease Agreement may also provide that at the end of the term thereof all equipment shall remain the property of the Operator. In the event Agency does not approve the Lease Agreement within one month of Operator's submission of the Lease Agreement to Agency for approval, or if, within 30 days of execution of this Agreement, Owner does not agree to Lease Agreement terms and execute the Lease Agreement containing terms required by this Agreement or otherwise required by Agency or City, then this Agreement shall be null and void and of no force and effect.

(g) **Title to Land.** The Agency shall be satisfied that upon the disbursement of the Agency Loan to Operator, Owner will have good and marketable fee title to the Property and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens for current real property taxes and assessments not yet due and payable, and any other matters specifically approved in writing by the Agency. Owner or Operator shall provide the Agency, not later than the date provided in the Schedule of Performance, a copy of a preliminary title report with respect to the Property and copies of Owner's Lease with respect to the Owner's leasehold interest accompanied by consent of the Owner of the fee interest underlying the Owner's leasehold or evidence satisfactory to Agency that such consent is not necessary. This Agreement shall be null and void should Owner fail to provide

Operator with the documents specified herein sufficient to enable Operator to comply with this provision.

(h) **No Default.** There shall exist no condition, event or act which would constitute an Event of Default (as hereinafter defined) hereunder or which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default.

(i) **Representations and Warranties.** All representations and warranties of Operator herein contained shall be true and correct.

(j) **[Reserved]**

(k) **Commencement of Construction.** Operator shall have commenced construction within the times provided for in the Schedule of Performance (Attachment 5), unless commencement of construction or compliance with the Schedule of Performance is prevented by Agency or City's failure to approve plans or issue permits as required under subparagraph (e).

(l) **Insurance.** Operator shall file with Agency on or prior to the date set forth in the Schedule of Performance and annually thereafter during the time of the Operating Covenant, proof of insurance accompanied by an endorsement naming the Agency as an additional insured. Such insurance shall include (a) insurance against loss or damage to the Leased Premises resulting from fire, lightning, vandalism, malicious mischief, and such perils ordinarily defined as "extended coverage" and such other perils as the Agency may agree should be insured against if such insurance is available from reputable insurers. Operator shall not be required to obtain or maintain earthquake insurance. Such insurance shall be maintained in an amount not less than the appraised value of the Site subject to a "deductible clause" in an amount not to exceed Fifty Thousand Dollars (\$50,000.00) and shall contain an inflation guard endorsement. The term "full replacement value" as used in this Section shall mean the actual replacement cost of a "new" Micro-Brewery and full service restaurant (including the cost of restoring the surface of the Property but excluding the cost of restoring trees, plants and shrubs); (b) public liability insurance against claims for bodily injury or death, or damage to property occurring upon, in or about the Site, such insurance to afford protection to a limit of not less than \$5,000,000 combined single limit bodily injury and property damage with a "deductible clause" in the amount of Fifty Thousand Dollars (\$50,000.00), and (c) workers' compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the Workers' Compensation Insurance and Safety Act now in force in California, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof, such workers' compensation insurance to cover all persons employed in connection with the Property and to cover full liability for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death during or in connection with the Property or the business of the Agency. For any time prior to the completion of the Site Improvements, Operator may cause the contractor to provide such insurance.

**2.4 Conditions Precedent to Disbursement of Agency Loan.** Notwithstanding the provisions of Section 2.3, the Agency Loan shall not be disbursed until and unless this Agreement and the Agency Loan contemplated herein has been approved by the Agency, the Oversight Board, and the Department of Finance, in accordance with applicable law.

**2.5 Representations and Warranties.** Operator represents and warrants to Agency as follows:

(a) *Authority.* Operator has full right, power and lawful authority to execute this Agreement and to undertake all obligations as provided herein.

(b) *Litigation.* To the best of Operator's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Property or any portion thereof, at law or in equity before any court or governmental agency, domestic or foreign.

(c) *No Conflict.* To the best of Operator's knowledge, Operator's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Operator is a party or by which it is bound.

(d) *No Operator Bankruptcy.* Operator is not the subject of a bankruptcy proceeding.

(e) *Submissions.* To Operator's best knowledge, all of the items and information submitted to Agency hereunder with respect to the Operator, the Property and the Site Improvement is true, correct and complete.

Until the termination of the Operating Covenant, Operator shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.5 not to be true as of the disbursement of the Agency Loan, immediately give written notice of such fact or condition to Agency. Such exception(s) to a representation shall not be deemed a breach by Operator hereunder, but shall constitute an exception which Agency shall have a right to approve or disapprove. The representations and warranties set forth in this Section 2.5 shall survive the final disbursement of the Agency Loan.

### **3. SITE IMPROVEMENTS; OPERATOR OBLIGATIONS**

**3.1 Site Improvements.** The Operator shall be responsible for completing the Site Improvements as more particularly described in Attachment No. 2 hereto and providing the Fixtures and Equipment ("F&E's") as more particularly described in Attachment No. 4 hereto, within the times provided in the Schedule of Performance attached hereto as Attachment No. 5, with the express understanding that the dates of performance will change and be extended if the City does not approve matters or grant permits as contemplated. Operator shall provide necessary funding ("Operator's Contribution") to provide all F&E's for the operation of the Site other than, and in addition to, the Agency Property, including, but not limited to, bars, tables, and chairs, such specialty equipment necessary to conduct brewing activities unique to a Micro-Brewery, and an equipped kitchen sufficient to undertake activities associated with a full service restaurant and an outdoor patio dining area. Operator shall make all reasonable efforts to employ workers and companies located in El Cajon and to purchase all necessary Site Improvement materials and supplies from El Cajon businesses.

**3.2 Operating Covenant.** Upon execution of this Agreement, the Operator shall execute and deliver to the Agency the Operating Covenant substantially in the form attached hereto as Attachment No. 3 pursuant to which the Operator shall covenant and agree to complete the Site Improvements and to thereafter operate the Property as a Micro-Brewery and full service restaurant for a period commencing not later than the date provided for in the Schedule of Performance and ending on or after ~~nine-ten (910)~~ nine-ten (910) years after the effective date of this Agreement as more particularly ~~set forth in~~ recording of the Operating Covenant and Leasehold Deed of Trust . Notwithstanding the foregoing, but consistent with the operation of the Property as a Micro-Brewery, the Operator may periodically program special events consistent with community activities such as Concerts On The Green, Cajon Classic Cruise, Mother Goose Parade, Alley Cat Art Walk, or professional events particular to the craft of a Micro-Brewery and full service restaurant. The Operating Covenant shall be secured by a Security Agreement with respect to the F&E and a UCC-1 filed with the Secretary of State. Consistent with the Scope of Development, the Operator shall maintain the Site Improvements at a standard equal to or exceeding that of Class A rating as issued by the San Diego County Health Department upon inspection of food handling/eating establishments.

#### **4. DEFAULTS AND REMEDIES**

**4.1 Default Remedies.** Subject to the extensions of time set forth in Section 5.2 of this Agreement, failure by either party to perform any action or covenant required by this Agreement or as set forth in the Operating Covenant within the time periods provided for in the Schedule of Performance following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the notice of the Default. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party within thirty (30) days from receipt of such notice immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with diligence. Operator shall cause the Owner to grant to Agency within the Lease Agreement or in a separate document an option in a form satisfactory to the Agency providing that in the event of default by Operator under the Lease Agreement or this Participation Agreement, Agency shall have the option, but not the obligation, to operate the Site Improvements on an interim basis until a successor operator can be found. It shall also provide that if the Agency does not exercise the option, Owner shall take ownership of the F&E and may operate the Site Improvements or re-lease the Property for the purpose of operating it as a Micro-Brewery as herein defined. Owner shall have 90 days within which to determine whether to operate the Site Improvements or re-lease the Property for operation as a Micro-Brewery. If Owner operates or re-leases the Property as a Micro-Brewery consistent with this Agreement, Agency will consider such action consistent with the Operating Covenant. If Owner does not operate or re-lease the Property, Agency shall take ownership of the F&E.

**4.2 Institution of Legal Actions.** In the event of a dispute arising out of or under the terms of this Agreement, the parties hereto agree to submit said dispute for resolution by arbitration before a single arbitrator before the Judicial Arbitration and Mediation Service ("JAMS") or similar service in San Diego acceptable to the parties. The arbitrator shall be selected by agreement of both parties and shall be empowered to grant any relief or remedy consistent with the purpose of this Agreement. In the event that the parties cannot reach agreement within two weeks as to the selection of a mutually agreeable arbitrator, each side shall select an arbitrator and the two arbitrators shall select a third arbitrator to act as the appointed arbitrator. Subject to the restrictions otherwise set forth in this Agreement, either party may institute an action in court proceedings at law

or equity to seek provisional remedies such as injunctive relief, which are otherwise unavailable through JAMS or similar service arbitration. Such legal actions for provisional remedies must be instituted in the Superior Court of the County of San Diego, State of California, or in the United States District Court for the Southern District of California. Notice of the demand for arbitration shall be filed in writing with the other party and with JAMS or similar service and shall be made within a reasonable time after the dispute has arisen.

**4.3 Termination by the Operator.** In the event that the Operator is not in default under this Agreement and Agency does not tender the Agency Loan to the Operator by the time required hereunder, or in the event of any default of Agency prior to the disbursement of the Agency Loan which is not cured within the time set forth in Section 4.1 hereof, and any such failure is not cured within the applicable time period after written demand by the Operator, then this Agreement may, at the option of the Operator, be terminated by Notice thereof to Agency. From the date of the Notice of termination of this Agreement by the Operator to Agency and thereafter, this Agreement shall be deemed terminated and there shall be no further rights or obligations between the parties hereunder, except that the Operator may pursue any remedies it has hereunder.

**4.4 Termination by Agency.** In the event that Agency is not in Default under this Agreement and prior to the disbursement of the Agency Loan:

(a) Operator (or any successor in interest) assigns this Agreement or any rights therein or in the Property in violation of this Agreement; or

(b) Operator does not fulfill one or more of the Conditions Precedent to the disbursement of the Agency Loan to Operator to be fulfilled by the Operator on or before the time set forth in the Schedule of Performance and such failure is not caused by Agency; or

(c) Operator is otherwise in default of this Agreement and fails to cure such default within the time set forth in Section 4.1 hereof;

then this Agreement and any rights of the Operator or any assignee or transferee with respect to or arising out of the Agreement or the Property, shall, at the option of Agency, be terminated by Agency by Notice thereof to the Operator. From the date of the Notice of termination of this Agreement by Agency to the Operator and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations between the parties, except that Agency may pursue any remedies it has hereunder.

**4.5 Acceptance of Service of Process.** In the event that any legal action is commenced by the Operator against Agency, service of process on Agency shall be made by personal service upon the Executive Director of Agency/City Manager of City or in such other manner as may be provided by law. In the event that any legal action is commenced by Agency against the Operator, service of process on the Operator shall be made in such manner as may be provided by law and shall be effective whether served inside or outside of California.

**4.6 Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

**4.7 Inaction Not a Waiver of Default.** Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**4.8 Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

**4.9 [Reserved]**

## **5. GENERAL PROVISIONS**

**5.1 Notices, Demands and Communications Between the Parties.** Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To Agency: City of El Cajon as Successor Agency to the Former El Cajon  
Redevelopment Agency  
200 Civic Center Way  
El Cajon, CA 92020  
Attention: Douglas Williford

To Operator: URBN Restaurants, Inc.  
8335 Prestwick Drive  
La Jolla, CA 92037  
Attention: Jonathan L. Mangini

Any written notice, demand or communication shall be deemed received immediately upon receipt; provided, however, that refusal to accept delivery after reasonable attempts thereto shall constitute receipt. Any notices attempted to be delivered to an address from which the receiving party has moved without notice shall be effective on the third day from the date of the attempted delivery or deposit in the United States mail.

**5.2 Enforced Delay; Extension of Times of Performance.** In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other party; acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of Agency which shall not excuse performance by Agency); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the

contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Agency and Operator. The Executive Director of Agency shall have the authority to approve extensions of time on behalf of Agency.

### **5.3 Transfers of Interest in Property or Agreement.**

(a) **Prohibition.** The qualifications and identity of the Operator are of particular concern to Agency. It is because of those qualifications and identity that Agency has entered into this Agreement with the Operator. For the period commencing upon the date of this Agreement and until the expiration of the Operating Covenant, no voluntary or involuntary successor in interest of the Operator shall acquire any rights or powers under this Agreement, nor shall the Operator make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing, lease or sub-lease of the whole or any part of the Property (a "Transfer") without prior written approval of Agency. Notwithstanding the foregoing, the Agency agrees that, with the prior written approval of the Agency, the Operator may enter into an agreement with the Owner for the purpose of rehabilitating the Property and operating the Site Improvements in accordance with the provisions of Section 4.1 hereof. The Agency agrees not to unreasonably withhold its consent to an assignment to a third party experienced in the operation of a Micro-Brewery subject to all of the provisions of this Agreement.

In the event the Operator proposes any Transfer of the whole or any part of the Property or the Improvements, at least ninety (90) days prior to such Transfer, the Operator shall give written notice thereof to the Agency and shall provide evidence to the Agency that the assignee has assumed or will assume in writing through an Assignment and Assumption Agreement, all of the obligations of Operator under this Agreement. Such assignment shall not, however, release the Operator from any obligations to the Agency hereunder unless otherwise agreed in writing by the Agency.

(b) **Successors and Assigns.** All of the terms, covenants and conditions of this Agreement shall be binding upon the Operator and its permitted successors and assigns. Whenever the term "Operator" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

(c) **Assignment by Agency.** Agency may assign or transfer any of its rights or obligations under this Agreement with the approval of the Operator, which approval shall not be unreasonably withheld; provided, however, that Agency may assign or transfer any of its interests hereunder to the City at any time without the consent of the Operator.

**5.4 Nondiscrimination Covenant.** There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.



**5.5 Non-Liability of Officials and Employees of Agency.** No member, official, officer or employee of Agency or the City shall be personally liable to the Operator, or any successor in interest, in the event of any Default or breach by Agency (or the City) or for any amount which may become due to the Operator or its successors, or on any obligations under the terms of this Agreement.

**5.6 Relationship Between Agency and Operator.** It is hereby acknowledged that the relationship between Agency and Operator is not that of a partnership or joint venture and that Agency and Operator shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided in this Agreement, including the Attachments hereto, Agency shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Improvements.

**5.7 Agency Approvals and Actions.** Whenever a reference is made herein to an action or approval to be undertaken by Agency, it shall mean conditioned on the approval of the Agency's Oversight Board and the Department of ~~finance~~ Finance, and where the Executive Director of Agency, or designee, is authorized to act on behalf of Agency unless specifically provided otherwise or the law otherwise requires.

**5.8 Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement is executed in five (5) originals, each of which is deemed to be an original.

**5.9 Integration.** This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement constitutes the entire understanding and agreement of the parties, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

**5.10 Real Estate Brokers.** Agency and Operator each represent and warrant to the other that no broker or finder is entitled to any agent's or finder's fee in connection with this transaction, and each agrees to defend and hold harmless the other from any claim to any such fee resulting from any action on its part.

**5.11 No Third Party Beneficiaries.** Notwithstanding any other provision of this Agreement to the contrary, nothing herein is intended to create any third party beneficiaries to this Agreement, and no person or entity other than Agency and Operator, and the permitted successors and assigns of either of them, shall be authorized to enforce the provisions of this Agreement.

**5.12 Titles and Captions.** Titles and captions are for convenience of reference only and do not define, describe, or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

**5.13 Interpretation.** As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word “including” shall be construed as if followed by the words “without limitation.” This Agreement shall be interpreted as though prepared jointly by both parties.

**5.14 No Waiver.** A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

**5.15 Administration.** This Agreement shall be administered and executed by the Executive Director, or designated representative, following approval of this Agreement by the Agency, and with the approval of the Oversight Board and Department of Finance. The Agency shall maintain authority of this Agreement through the Executive Director, or authorized representative. The Executive Director shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the Agency so long as such actions do not substantially change the uses or development permitted on the Site, or add to the costs to the Agency as specified herein and as approved by the Agency Board, Oversight Board and Department of Finance, and such amendments may include extensions of time specified in the Schedule of Performance and modifications of the Scope of Development. All other waivers or amendments shall require the written consent of the Agency Board, Oversight Board and Department of Finance.

**5.16 Modifications.** Any alteration, change, or modification of or to this Agreement, in order to become effective, shall be approved and authorized by the Oversight Board and the Department of Finance, and shall be made in writing and in each instance signed on behalf of each party.

**5.17 Severability.** If any term, provision, condition, or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

**5.18 Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term “holiday” shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**5.19 Legal Advice.** Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or

on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

**5.20 Time of Essence.** Time is expressly made of the essence with respect to the performance by Agency and the Operator of each and every obligation and condition of this Agreement.

**5.21 Cooperation.** Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

**5.22 Conflicts of Interest.** No member, official or employee of Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

**5.23 Jurisdiction; Venue.** Operator acknowledges that this Agreement was entered into and is to be performed in the County of San Diego and irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of San Diego or the United States District Court of the Southern District of California, as the Agency may deem appropriate, in connection with any legal action or proceeding arising out of or relating to this Agreement. Operator also waives any objection regarding personal or in rem jurisdiction or venue, including the right to remove any action from San Diego County as is otherwise allowed by Code of Civil Procedure section 394.

**5.24 Time for Acceptance of Agreement by Agency.** This Agreement, when executed by the Operator and delivered to Agency, must be authorized, executed and delivered by Agency on or before thirty (30) days after signing and delivery of this Agreement by the Operator, or the approval of the Department of Finance, whichever shall last occur, or this Agreement shall be void, except to the extent that the Operator shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement. Operator understands and agrees that it shall be a condition precedent that the Department of Finance has approved this Agreement and the Related Documents prior to any obligation on the part of the Agency to execute this Agreement and the Related Documents.

IN WITNESS WHEREOF, the Agency and the Operator have executed this Operator Participation Agreement as of the date set forth above.

**AGENCY:**

**CITY OF EL CAJON AS SUCCESSOR AGENCY  
TO THE FORMER EL CAJON  
REDEVELOPMENT AGENCY**, a municipal  
corporation

By: \_\_\_\_\_  
Douglas Williford, Executive Director

**ATTEST:**

\_\_\_\_\_  
Kathie Rutledge, Agency Secretary

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Jenny Ficacci, Housing Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Morgan L. Foley  
City Attorney/Agency Counsel

**OPERATOR:**

URBN RESTAURANTS, INC.  
a California Corporation

By: \_\_\_\_\_  
Jonathan L. Mangini, President

**ATTACHMENT NO. 1**

**PROPERTY LEGAL DESCRIPTION**

That real property located in the State of California, County of San Diego, City of El Cajon, and described as follows:

PARCEL A:

PARCEL 2 OF PARCEL MAP NO. 17766, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 15, 1996 AS FILE NO. 1996-0521646 OF OFFICIAL RECORDS.

PARCEL B:

NON-EXCLUSIVE EASEMENTS AND RIGHT TO USE THE COMMON AREAS FOR THE PURPOSES FOR WHICH THEY ARE PROVIDED AND INTENDED, INCLUDING, BUT NOT LIMITED TO, INGRESS, EGRESS, ACCESS, DIRECTIONAL SIGNS, AND PARKING FOR VEHICULAR OR PEDESTRIAN TRAFFIC UPON OR ACROSS THE PARKING AREAS, ENTRANCES, EXITS, DRIVEWAYS, WALKS OR SERVICE DRIVES LOCATED WITHIN THE COMMON AREAS AND THE USE OF THE STORM DRAINAGE AND RETENTION FACILITIES, LANDSCAPING, AND PUBLIC RESTROOMS, THE COMMON AREA SHALL BE USED FOR ROADWAYS, WALKWAYS, INGRESS AND EGRESS, PARKING OF MOTOR VEHICLES. LOADING AND UNLOADING OF COMMERCIAL AND OTHER VEHICLES FOR DRIVEWAY PURPOSES, AND FOR THE COMFORT AND CONVENIENCE OF CUSTOMERS, INVITEES AND EMPLOYEES FOR ALL BUSINESSES AND OCCUPANTS OF THE BUILDINGS CONSTRUCTED ON THE BUILDING AREAS DEFINED THEREIN, AS CONVEYED, SET FORTH AND DESCRIBED IN THE CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS RECORDED NOVEMBER 3, 1993, AS FILE NO. 1993-0739849 OF OFFICIAL RECORDS.

APN: 487-192-56-00

## ATTACHMENT NO. 2

### SCOPE OF DEVELOPMENT

#### GENERAL PROJECT DESCRIPTION

Renovate the existing vacant single story commercial building at 110 N. Magnolia Avenue in El Cajon to accommodate a Micro-Brewery and full service restaurant with outdoor patio dining. Areas requiring renovation are described below.

#### SITE IMPROVEMENTS

Site Improvements consistent with a Micro-Brewery and full service restaurant to accommodate the specialty use unique to a Micro-Brewery. Further, Operator has committed to site development including outdoor dining and patio on the Property. Operator will secure all required permits and business licenses required by the City of El Cajon for Site Improvements.

#### STRUCTURE

If necessary, Operator will install or make adjustments as required to strengthen the structural integrity of the Property to conform with California Building Code regulations. Operator will install all ADA requirements both internal and external to the structure as required by the California Building Code.

#### ARCHITECTURAL

Address any exterior deficiencies and install improvements associated with the new business in conformance with ~~Downtown Design Commission guidelines~~ Specific Plan No. 182.

ATTACHMENT NO. 3

OPERATING COVENANT

Recording Requested By and  
When Recorded Mail To:

City of El Cajon as Successor Agency to  
Former El Cajon Redevelopment Agency  
200 Civic Center Way  
El Cajon, California 92020  
Attention: Executive Director

[Space above for recorder.]

APN: 487-192-56-00

OPERATING COVENANT

This Operating Covenant (the "Covenant") is dated this [redacted], 2013, by and between the City of El Cajon as Successor Agency to the Former El Cajon Redevelopment Agency, a municipal corporation ("Agency") and ~~Urban~~ URBN Restaurants, Inc., a California corporation ("Operator") with reference to the following facts:

A. The Operator and Agency have entered into a Participation Agreement (the "Agreement") dated [redacted], 2013, pursuant to which the Operator has agreed to rehabilitate a vacant commercial one story structure addressed as 110 N. Magnolia Avenue, El Cajon, California, 92020, (the "Leased Property," as further defined in the Agreement) on certain real property (the "Property") leased by Operator and located within the El Cajon Redevelopment Project Area, which Site is legally described in Exhibit "A" attached hereto and incorporated herein by reference, and to operate the Site Improvements as a Micro-Brewery accordance with the Agreement and certain covenants contained within the Agreement and set forth hereinbelow.

B. Agency has required, and Operator has agreed, that this Covenant be executed by and between the Operator and the Agency and recorded in the Official Records of San Diego County to evidence Operator's obligations to develop, operate, and maintain the Site Improvements in accordance with the covenants contained hereinbelow.

C. All capitalized terms utilized in this Covenant, unless otherwise defined herein, shall have the meanings set forth therefor in the Agreement.

**NOW, THEREFORE**, in consideration of the recitals set forth above and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, hereto, the parties hereto agree as follows:

1. **Operating Covenants.** Operator hereby covenants and agrees to complete the Site Improvement with funds as Operator deems necessary. The Site Improvements shall be completed in accordance with plans submitted to and approved by the Agency and City of El Cajon. Upon

completion of the rehabilitation, Operator covenants and agrees to operate the Site Improvements as a Micro-Brewery with full service restaurant for a period commencing not later than the date provided in the Schedule of Performance and ending on or after ~~nine-ten~~ (910) years after the ~~effective date~~ recordation of the of the Agreement. Notwithstanding the foregoing, but consistent with the operation of a Micro-Brewery with full service restaurant, the Operator may periodically program special events consistent with community special events particular to downtown El Cajon, i.e., Cajon Classic Cruise, Concerts On The Green, Alley Cat Art Walk, Mother Goose Parade or those special events unique to and particular to the craft of micro-brewing of beer. The Operator shall maintain Site Improvements at a standard equal to or exceeding that of a Class A eating establishment as designated by the County of San Diego Department of Health.

2. **Nondiscrimination Covenant.** There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.



IN WITNESS WHEREOF, the Agency and the Operator have executed this Covenant as of the date set forth above.

**AGENCY:**

**CITY OF EL CAJON AS SUCCESSOR AGENCY  
TO THE FORMER EL CAJON  
REDEVELOPMENT AGENCY**, a municipal  
corporation

By: \_\_\_\_\_  
Douglas Williford, City Manager

**ATTEST:**

\_\_\_\_\_  
Kathie Rutledge, CMC, City Clerk/Agency Secretary

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Jenny Ficacci, Housing Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Morgan L. Foley  
City Attorney/Agency Counsel

**OPERATOR:**

URBN RESTAURANTS, INC.  
a California Corporation

By: \_\_\_\_\_  
Jonathan L. Mangini, President

**EXHIBIT "A"**

**PROPERTY LEGAL DESCRIPTION**

PARCEL A:

PARCEL 2 OF PARCEL MAP NO. 17766, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 15, 1996 AS FILE NO. 1996-0521646 OF OFFICIAL RECORDS.

PARCEL B:

NON-EXCLUSIVE EASEMENTS AND RIGHT TO USE THE COMMON AREAS FOR THE PURPOSES FOR WHICH THEY ARE PROVIDED AND INTENDED, INCLUDING, BUT NOT LIMITED TO, INGRESS, EGRESS, ACCESS, DIRECTIONAL SIGNS, AND PARKING FOR VEHICULAR OR PEDESTRIAN TRAFFIC UPON OR ACROSS THE PARKING AREAS, ENTRANCES, EXITS, DRIVEWAYS, WALKS OR SERVICE DRIVES LOCATED WITHIN THE COMMON AREAS AND THE USE OF THE STORM DRAINAGE AND RETENTION FACILITIES, LANDSCAPING, AND PUBLIC RESTROOMS, THE COMMON AREA SHALL BE USED FOR ROADWAYS, WALKWAYS, INGRESS AND EGRESS, PARKING OF MOTOR VEHICLES. LOADING AND UNLOADING OF COMMERCIAL AND OTHER VEHICLES FOR DRIVEWAY PURPOSES, AND FOR THE COMFORT AND CONVENIENCE OF CUSTOMERS, INVITEES AND EMPLOYEES FOR ALL BUSINESSES AND OCCUPANTS OF THE BUILDINGS CONSTRUCTED ON THE BUILDING AREAS DEFINED THEREIN, AS CONVEYED, SET FORTH AND DESCRIBED IN THE CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS RECORDED NOVEMBER 3, 1993, AS FILE NO. 1993-0739849 OF OFFICIAL RECORDS.

APN: 487-192-56-00

**ATTACHMENT NO. 4**

**FIXTURES AND EQUIPMENT**

Operator to provide a full and complete list of all Site Improvements made to the Property including Fixtures and Equipment as a condition of receiving a Certificate of Occupancy as required and issued by the City of El Cajon.

## ATTACHMENT NO. 5

### SCHEDULE OF PERFORMANCE

<i>Action</i>	<i>Time From Date of Agreement</i>
1 Execution of <u>Agreement and Related Documents</u>	Within two (2) weeks of <u>DOF approval</u>
2 Submit Lease with Owner for Agency approval	Upon Execution of Agreement
3 Submit to Agency evidence of title or lease to land	Upon Execution of Agreement
4 Record operating covenant, <u>Leasehold Deed of Trust, UCC-1</u>	Within (1) month*
5 Provide evidence of contract with architect	Within (1) month*
6 Complete Concept Design	Within two (2) months*
7 Submit concept design, preliminary cost estimate, operating pro forma, refined scope of development and timeline for Agency approval	Within three (3) months*
8 Complete schematic design and submit to <del>ECCDC</del> /Agency/City for design review and environmental review (assumes exemption)	Within three (3) months*
9 Submit construction plans and refined cost estimate	Within four (4) months*
10 Complete building plan check	Within five (5) months*
11 Submit final plans and refined cost estimate (for Agency approval)	Within six (6) months*
12 Submit bids and construction contract (for Agency review)	Within seven (7) months*
13 Submit proof of insurance	Within seven (7) months*
14 Obtain building permit and commence construction	Within seven (7) months*
15 Submit list of all Site Improvements made to property, including Fixtures and Equipment	Within nine (9) months*
16 Complete construction and Open Micro-Brewery	Within nine (9) months*

\* Following Department of Finance approval

**ATTACHMENT NO. 6**

**DESCRIPTION OF AGENCY PROPERTY**

ATTACHMENT NO. 7

PROMISSORY NOTE

# PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No.	Call	Collateral	Account	Officer	Initials
\$300,000.00								
References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.								

**Borrower:** URBN Restaurants, Inc.  
Jonathan L. Mangini  
8335 Prestwick Drive  
La Jolla, CA 92037  
**[Insert other Borrowers, as appropriate]**

**Lender:** City of El Cajon as Successor Agency to the former El Cajon Redevelopment Agency  
200 Civic Center Way  
El Cajon, CA 92020

**Property Address:** 110 N. Magnolia Avenue, El Cajon, CA 92020

**Principal Amount:** \$300,000.00      **Interest Rate:** 1.500%      **Date of Note:** **[insert date]**

**PROMISE TO PAY.**

Urbn Restaurants, Inc., a California corporation and Jonathan L. Mangini, a Married Man (individually and jointly, "Borrower") **[Insert other Borrowers, as appropriate]** promises to pay the CITY OF EL CAJON AS SUCCESSOR AGENCY TO THE FORMER EL CAJON REDEVELOPMENT AGENCY ("Lender"), or order, in lawful money of the United States of America, the principal amount of THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$300,000.00), together with interest thereon at the rate of 1.500% annually.

**INTEREST.** Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 1.5%.

**PAYMENT INFORMATION.**

**Time and Place of Payments.**

I will make annual payments on the interest to Lender in equal installments of **FOUR THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$4,500.00)** every year for two (2) years beginning on \_\_\_\_\_; and payments of interest and principal in equal installments of **TWENTY TWO THOUSAND FOUR HUNDRED EIGHTY THREE and 31/100 DOLLARS (\$22,483.31)** beginning on \_\_\_\_\_ for the next eight (8) years. A lump-sum payment in the amount of the outstanding principal amount of the Loan plus any remaining interest shall be made on **[insert date]**, which is called the "Maturity Date."

I will make my annual payments at **City of El Cajon, 200 Civic Center Way, El Cajon, CA 92020 Attn: City Manager**, or at a different place if required by the Note Holder.

**Amount of Monthly Payments.**

My annual payment for the first two (2) installments will be in the amount of **U.S. \$4,500.00**. My annual payment for the next eight (8) installments will be in the amount of **U.S. \$22,483.31**. Upon the Maturity Date my annual payment will be in the amount of **U.S. \$148,349.63, plus any unpaid interest, late fees or other charges.**

**PREPAYMENT.** Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Except for the foregoing, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: City of El Cajon as Successor Agency to the former El Cajon Redevelopment Agency, 200 Civic Center Way, El Cajon, California, 92020.

Initials \_\_\_\_\_

**LATE CHARGE.** If a payment is 15 days or more late Borrower will be charged **4.000% of the regularly scheduled payment or \$15.00, whichever is greater.**

**INTEREST AFTER DEFAULT.** Upon default, including failure to pay upon final maturity, at Lender's option, and if permitted by applicable law, Lender may add unpaid accrued interest to principal and such sum will bear interest therefrom until paid at the rate of ten percent (10%) per annum. Upon Borrower's failure to pay all amounts declared due pursuant to this section, the total sum due under this Note will bear interest from the date of acceleration or maturity at the interest rate of this Note.

**DEFAULT.** Each of the following shall constitute an event of default ("Event of Default") under this Note:

**Payment Default.** Borrower fails to make any payment when due under this Note.

**Other Defaults.** Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

**Default in Favor of Third Parties.** Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Death or Insolvency.** The dissolution (regardless of whether election to continue is made), any member withdraws from Borrower, or any other termination of Borrower's existence as a going business or the death of any member, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws or against Borrower.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness, or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure an Event of Default.

**Adverse Change.** A material change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**Cure Provisions.** If any default, other than a default in payment, is curable and if Borrower has not been given a notice of breach of the same provision of this Note within the preceding twelve (12) months, it may be cured (and no event of default will have occurred) if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonable practical.

**LENDER'S RIGHTS.** Upon default, Lender may declare the entire unpaid principal balance of this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

**ATTORNEYS' FEES; EXPENSES.** Lender may hire or pay someone else to help collect the loan if Borrower does not pay. Borrower also will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for



bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. Borrower also will pay any court costs, in addition to all other sums provided by law.

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

**DISHONDERED ITEM FEE.** Borrower will pay a fee to Lender of **\$25.00** if Borrower makes a payment on Borrower's loan and the check or pre-authorized charge with which Borrower pays is later dishonored.

**COLLATERAL.** Borrower acknowledges this Note is secured by a Leasehold Deed of Trust with Fixture Filing and Security Agreement by **URBN Restaurants, Inc.** and UCC-1 Security interest, each dated \_\_\_\_\_ to a trustee in favor of Lender on real property located in SAN DIEGO County, State of California.

**GENERAL PROVISIONS.** Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

**PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER AGREES TO THE TERMS OF THE NOTE.**

**BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.**

**BORROWER(S):**

By: \_\_\_\_\_ **Mr. Jonathan L. Mangini** By: \_\_\_\_\_

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

\_\_\_\_\_

ATTACHMENT NO. 8

LEASEHOLD DEED OF TRUST WITH FIXTURE FILING AND SECURITY  
AGREEMENT

RECORDING REQUESTED BY AND  
WHEN RECORDED, RETURN TO:

Morgan L. Foley, Esq.  
City of El Cajon  
200 Civic Center Way  
El Cajon, CA 92020

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This office is exempt from filing fees under  
California Government Code §6103 and  
§27383. No documentary transfer tax per  
California Revenue and Taxation Code §11921.

LEASEHOLD DEED OF TRUST  
WITH  
FIXTURE FILING  
AND SECURITY AGREEMENT

By  
URBN RESTAURANTS, INC.

Dated as of \_\_\_\_\_, 2013

## TABLE OF CONTENTS

	<b>Page</b>
Section 1. Grant in Trust.....	3
Section 2. Obligations.....	5
Section 3. Security Agreement and Fixture Filing.....	5
Section 4. Absolute Assignments; Assignment of Leases and Rents.....	6
Section 5. Acceleration upon Default.....	7
Section 6. Covenants of the Trustor.....	7
Section 7. Leasehold Protections.....	9
Section 8. Fee Owner's Bankruptcy.....	9
Section 9. Condemnation Proceeds.....	10
Section 10. Acceptance Not Waiver.....	10
Section 11. Conveyance, Easements, Subordination, Releases.....	10
Section 12. Right of Entry for Inspection.....	11
Section 13. Entry, Possession, Operation of Property.....	11
Section 14. Power of Sale.....	12
Section 15. Satisfaction and Reconveyance.....	13
Section 16. Additional Security.....	13
Section 17. Notice of Action.....	13
Section 18. Charge for Provision of Statement.....	13
Section 19. Waiver of Statute of Limitations.....	13
Section 20. Irrevocable by the Trustor.....	14
Section 21. Substitution of Trustee.....	14
Section 22. [Reserved].....	14
Section 23. [Reserved].....	14
Section 24. Notices.....	14
Section 25. Successors Bound.....	14
Section 26. Severability of Invalid Provisions.....	15
Section 27. Amendments; Releases or Reconveyances.....	15
Section 28. Headings and References.....	15
Section 29. Governing Law; Venue.....	15
Section 30. Attorneys' Fees.....	15

## LEASEHOLD DEED OF TRUST

THIS LEASEHOLD DEED OF TRUST WITH FIXTURE FILING ("**Deed of Trust**") is made as of \_\_\_\_\_, 2013, by URBN RESTAURANTS, INC., a California corporation, (the "**Trustor**") to the CITY OF EL CAJON, a California municipal corporation (the "**Trustee**"), as trustee for the benefit of the CITY OF EL CAJON AS SUCCESSOR AGENCY TO THE FORMER EL CAJON REDEVELOPMENT AGENCY, a municipal corporation, (the "**Agency**"), sometimes referred to herein as the "**Beneficiary**"

### **THIS DEED OF TRUST WITNESSETH:**

#### Section 1. Grant in Trust

The Trustor irrevocably grants, transfers and absolutely, unconditionally and irrevocably assigns to the Trustee, in trust, with power of sale and right of entry and possession, the entire right, title and interest of Trustor in and to that certain real property (the "**Land**") situated in the County of San Diego, State of California, and more particularly described in **Exhibit A** attached hereto and made a part hereof, all right, title and interest that the Trustor otherwise now has or may hereafter acquire in the Land, together with all right, title and interest that the Trustor now has or may hereafter acquire in:

(i) All buildings, structures, improvements, fixtures, equipment and appurtenances now and hereafter owned, constructed, located, erected, installed or affixed by or on behalf of the Trustor upon or appurtenant to the Land and all replacements and substitutions therefor ("**Facilities**");

(ii) All appurtenances, improvements, easements, pipes, transmission lines or wires and other rights used in connection with the Land or as a means of access thereto, whether now or hereafter owned or constructed or placed upon or in the Land or Facilities ("**Appurtenances**");

(iii) All machinery, equipment, goods and other personal property of the Trustor whether moveable or not, if the same is (a) now owned or hereafter acquired by the Trustor, (b) now or hereafter located at or used in connection with the Facilities, (c) financed with the proceeds of the loan from Agency to Trustor or (d) obtained in order to satisfy its obligations under the Participation Agreement as identified below, and all improvements, restorations, replacements, repairs, additions, accessions or substitutions thereto or therefor, including, without limitation, all machinery, equipment, material, furnishings and appliances for generation or distribution of air, water, heat, electricity, light, fuel or refrigeration, for purposes of ventilation, sanitation or drainage, for exclusion of vermin or insects, for removal or disposal of dust, refuse or garbage; all elevators, awnings, wind coverings, floor covering, laundry equipment, kitchen equipment, cabinets, furniture and furnishings; all fixed and moveable equipment now or hereafter installed or placed upon, or used in connection with, or in the Land or the Facilities for use in a micro brewery and

restaurant; the products and proceeds from any and all such property; all the estate, interest, right, title, property or other claim or demand of every nature whatsoever, in and to such property, including specifically, but without limitation, all deposits made with or other security given to utility companies by the Trustor with respect to such property and claims or demands relating to insurance or condemnation awards which the Trustor now has or-may hereafter acquire ("**Equipment**");

(iv) All subleases with respect to the Land, Facilities, Appurtenances and Equipment ("**Leases**");

(v) All rentals or other payments which may now or hereafter accrue or otherwise become payable under the Leases to or for the benefit of the Trustor together with all other income, rents, revenues, issues, profits, reserves and royalties produced by the Land, Facilities, Appurtenances and Equipment or by all management or service contracts or other contracts affecting the Property, including but not limited to security deposits (collectively the "**Rents**"); and

(vi) All earnings, accounts, products, inventory, damages, indemnifications, insurance proceeds and any other proceeds from any and all of such Land, Facilities, Appurtenances, Equipment, Leases, Rents and Accounts including specifically, but without limitation, all deposits made with or other security given to utility companies and claims or demands relating to insurance or condemnation awards which the Trustor now has or may hereafter acquire, including all advance payments of insurance premiums made by the Trustor with respect thereto ("**Proceeds**");

(vii) All accounts, accounts receivable and other rights to payment of money now owned or hereafter acquired by the Trustor, whether due or to become due and whether or not earned by performance ("**Accounts**"), including without limitation the following:

(a) Any and all Accounts arising from any source, including without limitation operations of the Trustor or its agents at the Facilities, and at any other facility, including, but not limited to, a micro brewery and restaurant; and

(b) Any and all Accounts from a micro brewery and restaurant, and any other programs run by and operations of the Trustor or its agents.

For purposes hereof, "Accounts" covered hereby shall include without limitation accounts, chattel paper, deposit accounts and instruments as defined by the California Commercial Code, and any amounts receivable from third party payors (including insurance companies) in connection with the foregoing; and

(viii) All right, title and interest of the Trustor in all the Trustor's inventory, work in process, finished goods and goods held for sale or lease or furnished under contracts of service, and all returned and repossessed goods, and all goods covered by documents of title, including warehouse receipts, bills of lading and all other documents of every type covering all or any part of the Property, now owned or hereafter acquired, whether held by the Trustor

or any third party, which is located on, appurtenant to, relating to, or used by or useful in connection with the Property ("**Inventory**");

All of the Trustees right, title and interest in the above referenced Land, Facilities, Appurtenances, Equipment, Leases, Rents, Proceeds, Accounts and Inventory as hereby conveyed to the Trustee or made subject to the security interest herein described, including, but not limited to that certain leasehold estate (the "**Leasehold**") under that certain lease (the "Lease") between the Trustor and Howard Fisher (the "**Lessor**"), dated as of July \_\_, 2013 which Lease was recorded in the official records of the County of San Diego, on \_\_\_\_\_ is collectively referred to herein as the "**Property**."

The Trustor warrants and agrees that as of the date of recording of this Deed of Trust it has not entered into any sales agreement, option, assignment, sublease, pledge, mortgage, deed of trust, financing statement, security agreement or any other arrangement regarding the Property apart from the transactions referenced in or secured by this Deed of Trust and has not nor will not execute any document or instrument referring to or covering the Property, or any part thereof, and no such documents or instruments are on file, recorded or in effect in any public office, and agrees that the Property is, and shall be, kept free from any lien, security interest, encumbrance or any other interest other than as approved by the Agency.

#### **FOR THE PURPOSE OF SECURING:**

##### Section 2. Obligations

(1) Payment of Loan Repayments and Additional Payments (as those terms are defined in the Promissory Note and the Participation Agreement, which are defined in the Participation Agreement) pursuant to that certain Participation Agreement, dated as of \_\_\_\_\_, 2013, by and between the Agency and the Trustor (the "**Participation Agreement**");

(2) Performance of each and every obligation, covenant and agreement of Trustor contained in the Participation Agreement;

(3) Performance of each and every obligation, covenant and agreement contained in this Deed of Trust;

(4) Payment of Loan Repayments and Additional Payments pursuant to the Promissory Note; and

(5) The foregoing obligations are hereinafter sometimes referred to as the "**Obligations**."

#### **THIS DEED OF TRUST FURTHER WITNESSETH:**

##### Section 3. Security Agreement and Fixture Filing

This Deed of Trust shall also constitute a security agreement and the Trustor hereby pledges and grants to the Beneficiary a security interest in and to all of the Property not constituting

real property under the laws of the State of California ("**Personal Property**"), whether Trustor now or hereafter obtains an interest in such Personal Property and all the proceeds or products thereof, including but not limited to all of those items listed in Exhibit B attached hereto and made a part hereof. Upon any default of the Trustor hereunder, the Beneficiary shall be entitled to exercise with respect to all such collateral all of the rights and remedies set forth herein, in the Participation Agreement or otherwise afforded to a secured party in default under the terms of Article 9 of the California Uniform Commercial Code, any or all of which may be pursued and exercised concurrently, consecutively, alternatively or otherwise. The Trustor will execute one or more supplemental security agreements and financing statements as the Beneficiary may from time to time require, covering any property now or hereafter constituting a portion of the Property and otherwise the collateral securing the indebtedness secured hereunder and such financing statements and other and further assurances as the Beneficiary may request to perfect or evidence the security interest herein created (which shall cover all proceeds and products of collateral), including but not limited to, UCC-1 Financing Statements (which shall contain the description of collateral attached as **Exhibit B**) and UCC Continuation Statements.

The Trustor will pay all costs of filing any financing, continuation or termination statements with respect to the security interest created by this Deed of Trust; and the Beneficiary is hereby appointed the Trustor's attorney-in-fact to do, at the Beneficiary's option and at the Trustor's expense, all acts and things which the Beneficiary may deem necessary to perfect and continue perfected the security interest created by this Deed of Trust and to protect the Property. The Beneficiary may execute, sign, endorse, transfer or deliver, in the name of the Trustor, notes, checks, drafts or other instruments for the payment of money and receipts, certificates of origin, certificates of title, applications for certificates of title, or any other documents necessary to evidence, perfect or realize upon the security interests and secured indebtedness created or secured by this Deed of Trust. This authority shall be considered a power coupled with an interest and shall be irrevocable until all the indebtedness secured hereby shall have been paid in full.

This Deed of Trust shall also constitute a Uniform Commercial Code financing statement ("**Fixture Filing**") for all Personal Property now or hereafter so affixed by or on behalf of the Trustor to the Land so that such Personal Property becomes a fixture.

#### Section 4. Absolute Assignments; Assignment of Leases and Rents

(A) The Trustor hereby absolutely, unconditionally and irrevocably assigns to the Beneficiary the Lease and the absolute right to collect the Rents. The Beneficiary authorizes Trustor, prior to any default in the payment of any indebtedness secured hereby or in the performance of any covenant or obligation hereunder without notice, to collect and use all such Rents as they become due and payable, and to exercise all rights under the Lease if not otherwise restricted under the Participation Agreement. The foregoing assignment shall not impose upon the Beneficiary any duty to produce Rents from the Property or cause the Beneficiary to be a "mortgagee in possession" for any purpose.

(B) Except as otherwise permitted under the Participation Agreement, the Trustor agrees that it will not amend, modify, change or waive, or consent to any amendment, modification, change or waiver of, any term or provision of the Lease without the prior written consent of the Beneficiary.



(C) The Trustor agrees that it will take all steps and do all things necessary to keep and maintain the Lease in full force and effect and will enforce or cause to be enforced all and singular the provisions thereof, and bring and prosecute or cause to be prosecuted any and all suits, actions and proceedings necessary to enforce compliance with all of the terms, provisions and covenants thereof. If, in the reasonable opinion of the Beneficiary, the Trustor has failed, or is about to fail, to take suitable action to enforce the Lease or any guaranty thereof or to first preserve any rights or remedies thereunder, the Beneficiary, after giving five (5) business days' written notice to the Trustor, may, but is not required to, take such action as it shall deem appropriate, in its own name or in the name of the Trustor for the use and benefit of the Beneficiary, to enforce the Leases and to preserve any rights or remedies thereunder, and all costs and expenses incurred by the Beneficiary in taking any such action shall be payable on demand and shall constitute part of the secured indebtedness hereunder.

Section 5. Acceleration upon Default

In the event of any default by the Trustor under the Participation Agreement, the Regulatory Agreement, the Promissory Note or any other agreements secured hereby, or upon the breach by the Trustor of any of its covenants or agreements contained herein, Beneficiary shall have the option of declaring the unpaid balance owing under the Participation Agreement and any other sums secured hereby immediately due and payable as provided in the Participation Agreement.

Section 6. Covenants of the Trustor

For the purpose of protecting and preserving the security of this Deed of Trust, the Trustor promises and agrees to do the following:

a. (1) to take all action necessary to keep the Property at all times entirely free of dry rot, fungus, termites, beetles and all other wood-boring, wood-eating, harmful or destructive insects, and in all respects properly to care for and keep all of the Property, including all such buildings, structures and other improvements, in good condition and repair;

(2) not to remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or regulations or permitted pursuant to the Participation Agreement) any of the Facilities; provided, however, that the Trustor may make such proper replacements, repairs, renewals, removals and alterations as it shall in good faith reasonably determine are necessary or advisable to maintain or enhance the efficiency and value of the security created hereby;

(3) to complete promptly and in good and businesslike manner any building or other improvements which may be constructed on the Land, to promptly restore in like manner (to the extent permitted by law) any Facilities which may be damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefor, provided that the Trustor shall not be required to pay any such claim if it shall in good faith contest the validity thereof and, if so contested, shall provide for the payment thereof in a manner reasonably satisfactory to the Indenture Trustee;

(4) to comply with all laws, ordinances, regulations, conditions and restrictions now or hereafter affecting the Property or any part thereof or requiring any alterations or improvements to be made thereon;

(5) not to commit or permit any waste, and not to permit any deterioration, of the Property; and

(6) not to commit, suffer or permit any act to be done in or upon the Property in violation of any law or ordinance if such act might have consequences that would materially and adversely affect the financial condition, assets, properties or operation of the Trustor;

b. to provide and maintain hazard insurance as required by the Participation Agreement, and to deliver duplicate originals or certified copies of the policies of said insurance to the Trustee upon its request, and that any unexpired insurance and all returnable insurance premiums shall inure to the benefit of, and pass to, the purchaser of the property covered thereby at any Trustee's sale held hereunder;

c. to appear in and defend any action or proceeding affecting or purporting to affect the security of this Deed of Trust, any additional or other security for any of the obligations secured hereby, or the interest, rights, powers, or duties of the Trustee or the Beneficiary hereunder, it being agreed, however, that in the case of an action or proceeding against the Trustee or the Beneficiary said Trustee or Beneficiary, at its option, may appear in and defend any such action or proceeding and, in addition, it being agreed that the Trustee or Beneficiary may commence any action or proceeding deemed necessary by it to perfect, maintain or protect such interest, rights, powers or duties, all in such manner and to such extent as it may determine in its sole discretion to be appropriate, and the Trustee or the Beneficiary is authorized to pay, purchase or compromise on behalf of the Trustor any encumbrance or claim which in its judgment appears or purports to affect the security hereof or to be superior hereto; to pay all costs and expenses, including costs of evidence of title and attorney's fees in a reasonable sum, in any above described action or proceedings in which the Beneficiary or the Trustee may appear;

d. (1) to pay, and submit to the Beneficiary, at least five (5) days before default or delinquency, a receipt or other evidence of payment, or certified copy thereof, evidencing payment of all taxes and assessments affecting the Property, and any accrued interest, cost or penalty thereon, provided that the Trustor shall not be required to pay any such tax or assessment if it shall in good faith contest the validity thereof and, if so contested, shall provide for the payment thereof in a manner reasonably satisfactory to the Beneficiary;

(2) to pay when due all encumbrances (including any debt secured by deed of trust), ground rents, liens or charges, with interest, on the Property or any part thereof which appear to be prior or superior hereto, and to pay immediately and in full all such encumbrances, rents, liens or charges, if any, which may now be due or payable; provided that the Trustor shall not be required to pay any such encumbrances, rent, lien or charge if it shall in good faith contest the validity thereof and, if so contested, shall provide for the payment thereof in manner satisfactory to the Beneficiary; and

(3) to pay when due all costs, fees and expenses of these trusts, including costs of evidence of title and the Trustee's fees in connection with sale, whether completed or not, which amounts shall become due upon delivery to the Trustee of declaration of default and demand for sale, as hereinafter provided;

e. to pay immediately and without demand all reasonable and necessary sums expended or expense incurred by the Trustee or by the Beneficiary to enforce the terms of this trust, including attorneys' fees, under any of the terms of this Deed of Trust, with interest from date of expenditure at the rate of ten percent (10%) per annum.

#### Section 7. Leasehold Protections

(a) Trustor hereby covenants and agrees to keep, observe and perform all of the terms, covenants and conditions of lessee under the Lease. Trustor agrees that it will not amend, modify, surrender or terminate, or seek to amend, modify, surrender or terminate, the Lease, in whole or in part, without the prior written consent of the Beneficiary, and hereby grants to the Beneficiary for the term hereof Trustor's power to amend, modify, surrender or terminate the Lease; provided, however, that prior to a default, the Beneficiary shall not amend, modify, surrender or terminate the Lease. Trustor will promptly notify the Beneficiary in writing of any default by Trustor under the Lease and will promptly deliver to the Beneficiary copies of any notice from the Lessor claiming any default under the Lease or purporting to terminate the Lease.

(b) Trustor will, within ten (10) days after written demand from the Beneficiary, use its best efforts to obtain from the Lessor under the Lease and deliver to the Beneficiary a certificate stating that the Lease is in full force and effect, is unmodified, that no notice of termination or default thereon has been served on the lessee thereof, and stating the date to which any rent has been paid. Trustor will furnish to the Beneficiary, upon demand, proof of payment of all items which are required to be paid by Trustor pursuant to the Lease and proof of payment of which is required to be given to the Lessor under the Lease.

(c) Trustor shall execute and deliver, on request of the Beneficiary, such instruments as the Beneficiary may deem useful or required to permit the Beneficiary to cure any default under the Lease or permit the Beneficiary to take such other action as the Beneficiary considers desirable or necessary to cure or remedy any matter in default under the Lease, and to preserve the interest of Trustor in the Property.

#### Section 8. Fee Owner's Bankruptcy

(a) Trustor shall, immediately after obtaining knowledge thereof, notify the Beneficiary of any filing by or against the fee owner of the land ("Fee Owner") of a petition under the Bankruptcy Code, 11 U.S.C. §101, et seq. Trustor shall promptly deliver to the Beneficiary copies of all notices, summonses, pleadings, applications and other documents received by the Trustor in connection with any such petition and any related proceedings.

(b) The lien of this Deed of Trust shall attach to all of Trustor's rights and remedies at any time arising under or pursuant to Subsection 365(h) of the Bankruptcy Code, 11 U.S.C. §365(h) or any successor or replacement statute, including, without limitation, all of

Trustor's rights to remain in possession of the property. Trustor shall have the right to remain in possession of the property so long as there is no default hereunder.

(c) Trustor shall not, without the Beneficiary's prior written consent, elect to treat the Lease as terminated under Subsection 365(h)(1) of the Bankruptcy Code, 11 U.S.C. §365(h)(1). Any such election made without Beneficiary's consent shall be void.

(d) Trustor hereby unconditionally assigns, transfers and sets over to Beneficiary all of Trustor's claims and rights to the payment of damages arising from any rejection by Fee Owner of the Lease under the Bankruptcy Code, 11 U.S.C. §101, *et seq.* Beneficiary shall have the right to proceed in its own name or in the name of Trustor in respect of any claim, suit, action or proceeding relating to the rejection of the Lease, including, without limitation, the right to file and prosecute, to the exclusion of Trustor, any proofs of claim, complaints, motions, applications, notices and other documents in any case in respect of Lessor under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the indebtedness and obligations secured by this Deed of Trust shall have been satisfied and discharged in full. Any amounts received by Beneficiary as damages arising out of the rejection of the Lease as aforesaid shall be applied first to all costs and expenses of Beneficiary (including without limitation reasonable attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this paragraph.

Section 9. Condemnation Proceeds

All condemnation proceeds of the Property shall be deposited with the Beneficiary and are hereby assigned to said Beneficiary to be held and paid first to any outstanding obligations of Trustor to Beneficiary and the remainder to be paid to Trustor; provided that any condemnation proceeds not so required to be deposited may be retained by the Trustor and used for any lawful purpose, subject to Trustor's obligation to repair or restore the Property following such condemnation.

Section 10. Acceptance Not Waiver

By accepting payment of any sum secured hereby after its due date, neither the Trustee nor the Beneficiary shall be deemed to have waived its right either to require prompt payment when due of all other sums so secured or to declare a default as herein provided for failure so to pay.

Section 11. Conveyance, Easements, Subordination, Releases

To the extent permitted under the Participation Agreement, at any time, or from time to time, without liability therefor and without notice, upon written request by the Beneficiary or Trustor, upon presentation of this Deed of Trust, and without affecting the liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Property, the Trustee shall reconvey any part of the Property, consent in writing to the making of any map or plat thereof, execute releases, join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof. The

Trustor, the Beneficiary and the Trustee shall execute and deliver any agreements subordinating the lien or charge hereof to the lien of any mortgage or Deed of Trust for the benefit of Lessor and any releases and waivers of the lien of this Deed of Trust as is necessary to accommodate the requirements of the holders of any deed of trust for the benefit of Lessor.

Section 12. Right of Entry for Inspection

The Trustee and the Beneficiary are each authorized, by themselves or their agents or workers, in a reasonable manner such as not to interfere with the Trustor's business in a materially adverse manner and after giving written notice to enter during reasonable business hours (or at any time agreeable to the Trustor) upon any part of the Property for the purpose of inspecting the same.

Section 13. Entry, Possession, Operation of Property

a. Should the Trustor fail or refuse to make any payment or to do any act which it is obligated hereunder to make or do, at the time and in the manner herein provided, then the Trustee or the Beneficiary, in its sole discretion, without notice to or demand upon the Trustor and without releasing the Trustor from any obligation hereof, is authorized to do and may do any of the following:

(1) make any such payment or do any such act in such manner and to such extent as it may deem necessary to protect the security hereof, the Trustee and the Beneficiary being authorized to enter upon the Property for such purposes;

(2) pay, purchase, contest or compromise any claim, debt, lien, charge or encumbrance which in the judgment of the Trustee or the Beneficiary may affect or appear to affect the security of this Deed of Trust, the interest of the Beneficiary or the rights, powers or duties of the Trustee or the Beneficiary hereunder; or

(3) either by itself or by its agents appointed by it for that purpose, enter into and upon and take and hold possession of any or all of the Property, exclude the Trustor and all other persons therefrom, and operate and manage the Property, and rent and lease the same and collect any and all rents, issues, income and profits therefrom, and from time to time apply the same or accumulate the same for application, in such order and manner as the Trustee or the Beneficiary in its sole discretion shall consider advisable, to the following: costs of collecting the same, including the Trustee's reasonable fees in so doing; the necessary and proper costs of upkeep, maintenance, repair, and operation of the Property; the repayment of any sums theretofore or thereafter advanced pursuant to the terms of this Deed of Trust; the interest and principal then due or next to become due upon any indebtedness secured hereby; and the taxes and assessments upon the Property then due or next to become due.

b. The collection or receipt of Rents from the Property by the Trustee or the Beneficiary after declaration of default and election to cause the Property to be sold under and pursuant to the terms of this Deed of Trust shall not affect or impair such default or declaration of default or election to cause the Property to be sold or any sale proceedings predicated thereon, but such proceedings may be conducted and sale effected notwithstanding the receipt or collection of

any such Rents. Any such Rents in the possession of the Trustee or the Beneficiary at the time of sale and not theretofore applied as herein provided, shall be applied in the same manner and for the same purposes as the proceeds of the sale.

c. The Trustee and the Beneficiary shall not be under any obligation to make any of the payments or do any of the acts above mentioned, but, upon election so to do, employment of an attorney is authorized and payment of such attorney's fees and of all other necessary expenditures are hereby secured.

#### Section 14. Power of Sale

a. Should a Participation Agreement Default have occurred and be continuing under the Participation Agreement, or upon the breach by the Trustor of any of its covenants or agreements contained herein, in the Regulatory Agreement or in the Contract of Insurance, the Trustee, upon written request by the Beneficiary, shall declare all sums secured hereby immediately due and payable.

b. Having so declared, the Trustee shall provide and record such notices of default and of the election to cause the Property or any part of it to be sold as are required by law.

c. The Trustee, upon written request by the Beneficiary, from time to time before the Trustee's sale, may rescind any such notice of default and of election to cause to be sold the Property and may execute a written notice of such a rescission, which notice, when recorded, shall also constitute a cancellation of any prior declaration of default and demand for sale. The exercise of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring or impair the right of the Beneficiary to execute and deliver to the Trustee, as above provided, other requests for notices of default and of election to cause to be sold the Property to satisfy the obligations hereof, nor otherwise affect any provision, covenant or condition of this Deed of Trust or any of the rights, obligations or remedies of the parties hereunder.

d. Not less than the time then required by law having elapsed after recordation of notice of default, without demand on the Trustor, the Trustee, having first given notice of sale as then required by law, shall sell the interest of the Trustor in the Property in the manner provided by law at the time and place of sale fixed by it in the notice of sale, provided that the Trustee may postpone sale of all or any portion of the Property in the manner provided by law.

e. The Trustee shall deliver to the purchaser its deed conveying the Trustor's interest in the property so sold, but without any covenant or warranty, express or implied, and the recitals in such deed of any matters or facts affecting the regularity or validity of the sale shall be conclusive proof of the truthfulness thereof. Also, such deed shall be conclusive against all persons as to all matters or facts therein recited. Any person, including the Trustor, the Trustee and the Beneficiary, may purchase at such sale.

f. The Trustee shall apply the proceeds of any such sale to payment of: (1) all costs, fees, charges and expenses of the Trustee and of these trusts, and fees of any attorneys employed by the Trustee or the Beneficiary pursuant to the provisions hereof; (2) the Trustee's fees in connection with the sale, and all expenses of sale, including the cost of procuring evidence of title in

connection with the sale proceedings and revenue stamps on the Trustee's deed; and (3) all other sums secured hereby, including interest on each of the foregoing items, all in such manner and order of priority or preference as the Beneficiary may in its sole and absolute discretion direct. The remainder, if any, of such proceeds, shall be paid to the person or persons legally entitled thereto, upon proof satisfactory to the Trustee of such right.

Section 15. Satisfaction and Reconveyance

Upon written request of the Beneficiary stating that all sums secured hereby have been paid, and upon surrender to the Trustee of this Deed of Trust and upon payment of its fees, the Trustee shall reconvey and release, without warranty, the Property, it being further agreed that the recitals in such reconveyance and release of any matters or facts shall be conclusive proof of the truthfulness thereof and that the grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

Section 16. Additional Security

The Trustee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or under any other agreement or any laws now or hereafter in force, notwithstanding that some or all of the indebtedness and obligations secured hereby are now or shall hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise; and neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect the Trustee's or the Beneficiary's right to realize upon or enforce any other security now or hereafter held by the Trustee or the Beneficiary, it being agreed either that the Trustee or the Beneficiary shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by the Beneficiary or the Trustee in such order and manner as it may in its uncontrolled discretion determine.

Section 17. Notice of Actions

The Trustee shall be under no obligation to notify any party hereto of any action or proceeding of any kind in which the Trustor, the Beneficiary or the Trustee shall be a party, unless brought by the Trustee, or of any pending sale under any other deed of trust.

Section 18. Charge for Provision of Statement

For any statement regarding the obligations secured hereby, a charge, which the Trustor agrees to pay, may be made in an amount not exceeding the maximum allowed by law at the time any such statement is requested.

Section 19. Waiver of Statute of Limitations

The right to plead any and all statutes of limitations as a defense to any demand secured by this Deed of Trust is hereby waived.

Section 20. Irrevocable by the Trustor

The trust created hereby is irrevocable by the Trustor.

Section 21. Substitution of Trustee

The Beneficiary may substitute a successor Trustee from time to time by recording at the places required by law an instrument stating the election by the Beneficiary to make such substitution and identifying this Deed of Trust.

Section 22. [Reserved]

Section 23. [Reserved]

Section 24. Notices

All notices, requests or communications required or permitted to be given in this Deed of Trust, including any notice of default and any notice of sale to the Trustor under this Deed of Trust, shall be in writing and, mailed or delivered to the respective party as follows:

Trustor:                   Urbn Restaurants, Inc.  
8335 Prestwick Drive  
La Jolla, CA 92037  
Attention: Jonathan L. Mangini

Trustee:                   City of El Cajon  
200 Civic Center Way  
El Cajon, CA 92020  
Attention: Douglas Williford

Agency:                   City of El Cajon as Successor Agency to the Former El Cajon  
Redevelopment Agency  
200 Civic Center Way  
El Cajon CA 92020  
Attention: Douglas Williford

The Trustor, the Trustee and the Agency may, by notice given hereunder, designate any further or different address to which subsequent notices, notice of default, notice of sale, statements and other communications shall be sent.

Section 25. Successors Bound

This Deed of Trust shall bind, and the benefits shall inure to, the respective parties hereto, the Beneficiary, their legal representatives, successors in office or interest, and assigns.



Section 26. Severability of Invalid Provisions

If any provision of this Deed of Trust should be held unenforceable or void, in whole or in part, then such unenforceable or void provision or part shall be deemed separable from the remaining provisions and shall in no way affect the validity of the remainder of this Deed of Trust.

Section 27. Amendments; Releases or Reconveyances

a. This Deed of Trust may be amended, changed, modified or terminated at any time with the written consent of the Agency, which is, at all times, subject to the approval of both the Oversight Board to the Agency and the California Department of Finance.

b. Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any property not then or theretofore released as security for the full amount of all unpaid obligations, the Trustee may, upon written request by the Office in accordance with the Participation Agreement, from time to time, and without notice to the Trustor, release any person other than the Trustor so liable, extend the maturity or alter any of the terms of any such obligation, or grant other indulgences, release or reconvey, or cause to be released or reconveyed, any portion or all of the Property, release any other or additional security for any obligation herein mentioned, or make compositions or other arrangements with debtors in relation thereto; and if the Trustee at any time holds any additional security for any obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same at its option, either before or concurrently herewith or after a sale is made hereunder.

Section 28. Headings and References

The headings or titles of the several sections, subsections and subdivisions hereof shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Deed of Trust. All references herein to "sections," "subsections" and other subdivisions are to the corresponding sections, subsections or subdivisions of this Deed of Trust. The words "herein," "hereof" "hereby," "hereunder" and other words of similar import refer to this Deed of Trust as a whole and not to any particular section, subsection or subdivision hereof Words of the masculine gender shall mean and include words of the feminine and neuter genders.

Section 29. Governing Law; Venue

The laws of the State of California shall govern this Deed of Trust, the interpretation thereof and any right or liability arising hereunder. Any action or proceeding to enforce or interpret any provision of this Deed of Trust shall be brought, commenced or prosecuted in San Diego County, California, except as may otherwise be required to provide jurisdiction.

Section 30. Attorneys' Fees

In the event of any action at law or in equity between the parties hereto to interpret or enforce any of the provisions of this Deed of Trust, the non-prevailing party or parties to such litigation shall pay to the prevailing party or parties all costs and expenses, including actual attorneys' fees,

incurred therein by such prevailing party or parties; and if such prevailing party or parties shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees may be included in and as part of such judgment. The prevailing party shall be the party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment. A party not entitled to recover its costs of suit shall not recover attorneys' fees.

URBN RESTAURANTS, INC.

By: \_\_\_\_\_  
Jonathan L. Mangini, President

CITY OF EL CAJON hereby accepts the trusts created by the foregoing deed of trust and agrees to the terms hereof.

CITY OF EL CAJON

By: \_\_\_\_\_  
Douglas Williford, City Manager

[Insert Notary Acknowledgements for Signatories]

## EXHIBIT A

### Property Legal Description

That real property located in the State of California, County of San Diego, City of El Cajon, and described as follows:

#### PARCEL A:

PARCEL 2 OF PARCEL MAP NO. 17766, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 15, 1996 AS FILE NO. 1996-0521646 OF OFFICIAL RECORDS.

#### PARCEL B:

NON-EXCLUSIVE EASEMENTS AND RIGHT TO USE THE COMMON AREAS FOR THE PURPOSES FOR WHICH THEY ARE PROVIDED AND INTENDED, INCLUDING, BUT NOT LIMITED TO, INGRESS, EGRESS, ACCESS, DIRECTIONAL SIGNS, AND PARKING FOR VEHICULAR OR PEDESTRIAN TRAFFIC UPON OR ACROSS THE PARKING AREAS, ENTRANCES, EXITS, DRIVEWAYS, WALKS OR SERVICE DRIVES LOCATED WITHIN THE COMMON AREAS AND THE USE OF THE STORM DRAINAGE AND RETENTION FACILITIES, LANDSCAPING, AND PUBLIC RESTROOMS, THE COMMON AREA SHALL BE USED FOR ROADWAYS, WALKWAYS, INGRESS AND EGRESS, PARKING OF MOTOR VEHICLES. LOADING AND UNLOADING OF COMMERCIAL AND OTHER VEHICLES FOR DRIVEWAY PURPOSES, AND FOR THE COMFORT AND CONVENIENCE OF CUSTOMERS, INVITEES AND EMPLOYEES FOR ALL BUSINESSES AND OCCUPANTS OF THE BUILDINGS CONSTRUCTED ON THE BUILDING AREAS DEFINED THEREIN, AS CONVEYED, SET FORTH AND DESCRIBED IN THE CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS RECORDED NOVEMBER 3, 1993, AS FILE NO. 1993-0739849 OF OFFICIAL RECORDS.

APN:487-192-56-0

## EXHIBIT B

### Description of Collateral

All right, title and interest that Urbn Restaurants, Inc., a California corporation, which is defined as "Trustor" in that certain Deed of Trust with Fixture Filing and Security Agreement dated as of \_\_\_\_\_, 2013 ("Deed of Trust") now has or may hereafter acquire in:

(i) All buildings, structures, improvements, fixtures, equipment and appurtenances now and hereafter owned, constructed, located, erected, installed or affixed by or on behalf of the Trustor upon or appurtenant to the Land (as defined in the Deed of Trust) and all replacements and substitutions therefor ("**Facilities**");

(ii) All appurtenances, improvements, easements, pipes, transmission lines or wires and other rights used in connection with the Land or as a means of access thereto, whether now or hereafter owned or constructed or placed upon or in the Land or Facilities ("**Appurtenances**");

(iii) All machinery, equipment, goods and other personal property of the Trustor whether moveable or not, if the same is (a) now owned or hereafter acquired by the Trustor, (b) now or hereafter located at or used in connection with the Facilities, (c) financed with the proceeds of the loan from the City of El Cajon as Successor Agency to the former El Cajon Redevelopment Agency to Trustor, and all improvements, restorations, replacements, repairs, additions, accessions or substitutions thereto or therefor, including, without limitation, all machinery, equipment, material, furnishings and appliances for generation or distribution of air, water, heat, electricity, light, fuel or refrigeration, for purposes of ventilation, sanitation or drainage, for exclusion of vermin or insects, for removal or disposal of dust, refuse or garbage; all elevators, awnings, window coverings, floor covering, laundry equipment, kitchen equipment, cabinets, furniture and furnishings; all fixed and moveable equipment now or hereafter installed or placed upon or in the Land or Facilities for use in a micro brewery and restaurant and proceeds from any and all such property; all the estate, interest, right, title, property or other claim or demand of every nature whatsoever, in and to such property, including specifically, but without limitations deposits made with or other security given to utility companies by the Trustor with respect to such property and claims or demands relating to insurance or condemnation awards which the Trustor now has or may hereafter acquire ("**Equipment**");

(iv) All subleases with respect to the Land, Facilities, Appurtenances and Equipment ("**Leases**");

(v) All rentals or other payments which may now or hereafter accrue or otherwise become payable under the Leases to or for the benefit of the Trustor together with all other income, rents, revenues, issues, profits, reserves and royalties produced by the Land, Facilities, Appurtenances and Equipment or by all management or service contracts or other contracts affecting the Property, including but not limited to security deposits (collectively the "**Rents**");

(vi) All earnings, accounts, products, inventory, damages, indemnifications, insurance proceeds and any other proceeds from any and all of such Land, Facilities, Appurtenances, Equipment, Leases, Rents and Accounts including specifically, but without limitation, all deposits made with or other security given to utility companies and claims or demands relating to insurance or condemnation awards which the Trustor now has or may hereafter acquire, including all advance payments of insurance premiums made by the Trustor with respect thereto ("**Proceeds**");

(vii) All accounts, accounts receivable and other rights to payment of money now owned or hereafter acquired by the Trustor, whether due or to become due and whether or not earned by performance ("**Accounts**"), including without limitation the following:

(a) Any and all Accounts arising from any source, including without limitation operations of the Trustor or its agents at the Facilities, and at any other facility, including, but not limited to, a micro brewery and restaurant; and

(b) Any and all Accounts accruing from a micro brewery and restaurant and operations of the Trustor or its agents.

For purposes hereof, "Accounts" covered hereby shall include without limitation accounts, chattel paper, deposit accounts and instruments as defined by the California Commercial Code, and any amounts receivable from third party payors (including insurance companies) in connection with the foregoing; and

(viii) All right, title and interest of the Trustor in all the Trustor's inventory, work in process, finished goods and goods held for sale or lease or furnished under contracts of service, and all returned and repossessed goods, and all goods covered by documents of title, including warehouse receipts, bills of lading and all other documents of every type covering all or any part of the Property, now owned or hereafter acquired, whether held by the Trustor or any third party, which is located on, appurtenant to, relating to, or used by or useful in connection with the Property ("**Inventory**").

All of the Trustor's right, title and interest in the above referenced Land, Facilities, Appurtenances, Equipment, Leases, Rents, Proceeds, Accounts and Inventory as hereby conveyed to the Trustee or made subject to the security interest herein described is collectively referred to herein as the "**Property**."

ATTACHMENT NO. 9

GUARANTY AGREEMENT

## GUARANTY AGREEMENT

THIS GUARANTY (the "Guaranty" or "Agreement") is given by Jonathan L. Mangini, and [insert other individuals,] (each, a "Guarantor," collectively the "Guarantors") to the City of El Cajon as Successor Agency to the Former El Cajon Redevelopment Agency, a municipal corporation ("Obligee") to induce Obligee to extend credit in the form of a loan to URBN Restaurants, Inc., a California corporation ("Obligor").

**1. Obligation Guaranteed.** For valuable consideration, the undersigned Guarantors jointly and severally unconditionally guarantee to Obligee the following obligation of Obligor: The payment of any and all indebtedness of Obligor to Obligee. The word "indebtedness" is used in its most comprehensive sense and includes any and all advances, debts, obligations, and liabilities of Obligor, whenever made, incurred, or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether Obligor may be liable individually or jointly with others, or whether recovery may be or become barred by any statute of limitations or otherwise become unenforceable.

**2. Death, Insolvency, or Bankruptcy.** Guarantors jointly and severally unconditionally guarantee the payment of any and all indebtedness of Obligor to Obligee, whether or not due or payable by Obligor, on (a) the death, dissolution, insolvency, or business failure of, or any assignment for the benefit of creditors by, or commencement of any bankruptcy, reorganization, arrangement, moratorium, or other debtor relief proceedings by or against, Obligor or Guarantors, or (b) the appointment of a receiver for, or the attachment, restraint of, or making or levying of any court order or legal process affecting, the property of Obligor or Guarantors, and jointly and severally unconditionally promise to pay this indebtedness to Obligee or order, on demand, in lawful money of the United States.

**3. Extent of Liability.** The joint and several liability of Guarantors shall not exceed at any one time the sum of \$300,000.00 for principal, together with all interest on the indebtedness or any part not exceeding the foregoing limitation, and attorneys' fees, costs, and expenses as provided in Paragraph 9 of this Agreement. This Guaranty may be terminated with regard to future transactions provided Guarantors give written notice of termination to Obligee. Notice shall be deemed effective as of noon of the next succeeding business day following receipt of notice by Obligee. No notice of termination shall release Guarantors, whether or not giving the notice, from any liability as to any guaranteed indebtedness that may be owing to or held by Obligee or in which Obligee may have an interest or for which Obligee may be obligated at the time of receiving notice, and all extensions or renewals. The liability of Guarantors under this Agreement is exclusive and independent of any security for or other guarantee of the indebtedness of Obligor, whether executed by Guarantors or any other party, and the liability of Guarantors under this Agreement is not affected or impaired by any of the following:

- (a) Any indebtedness exceeding Guarantors' liability;
- (b) Any direction of application by Obligor or any other party;
- (c) Any other continuing or other guaranty, undertaking, or maximum liability of Guarantors or of any other party as to the indebtedness of Obligor;

- (d) Any payment on or in reduction of any other guaranty or undertaking;
- (e) Any notice of termination of this Agreement as to future transactions given by, or the death or termination of, or the revocation or release of any obligations under this Agreement of, any other of the Guarantors;
- (f) Any dissolution, termination, or increase, decrease, or changes of personnel of any of the Guarantors; or
- (g) Any payment made to the Obligee on the indebtedness that Obligee repays to Obligor pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium, or other debtor relief proceeding. Guarantors waive any right to the deferral or modification of Guarantor's obligations by virtue of any such proceeding.

**4. Joinder of Parties.** The obligations of Guarantors are joint and several, and independent of the obligations of Obligor. Obligee who may bring and prosecute a separate action or actions against Guarantors, whether it brings an action against Obligor or joins Obligor in any action or actions commenced. Guarantors waive, to the fullest extent permitted by law, the benefit of any statute of limitations affecting their liability under this agreement or the enforcement of this Agreement. Any payment by Obligor or other circumstance that operates to toll any statute of limitations as to Obligor shall also operate to toll the statute of limitations as to Guarantors. Any Guarantor who is a married person agrees that recourse may be had against his or her separate property for his or her obligations under this Agreement.

**5. Change of Obligation.** (a) Guarantors authorize Obligee, (whether or not after revocation or termination of this Guaranty) without notice or demand (except any notice or demand that is required by statute and cannot be waived) and without affecting or impairing their liability, from time to time to do any of the following:

- (a) Renew, compromise, extend, accelerate, or otherwise change the time for performance of, or otherwise change the terms of the obligation;
- (b) Take and hold security for the performance of this Guaranty or the obligation guaranteed, and exchange, enforce, waive, and release any security;
- (c) Apply security and direct the order or manner of sale of security as Obligee in its discretion may determine;
- (d) Release or substitute any one or more of the Guarantors; and
- (e) Assign this Guaranty in whole or in part.

**6. Capacity and Authority.** If Obligor is a corporation, partnership or other entity, Obligee need not inquire into or verify the powers of Obligor or the authority of those acting or purporting to act on behalf of Obligor, and this Guaranty shall be enforceable with respect to any indebtedness Obligee grants or extends to Obligor in reliance on the purported exercise of those powers or authority.



7. **Subordination.** Any indebtedness of Obligor now or later held by Guarantors is subordinated to the indebtedness of Obligor to Obligee, and all indebtedness of Obligor to Guarantors, if Obligee so requests, shall be collected, enforced, and received by Guarantors as trustees for Obligee and be paid over to Obligee on account of the indebtedness of Obligor to Obligee, without affecting or impairing in any manner the liability of Guarantors under the other provisions of this Guaranty. Any instruments now or later evidencing any indebtedness of Obligor to the undersigned shall be marked with a legend that they are subject to this Guaranty, and, if Obligee so requests, shall be delivered to Obligee.

8. **Waiver of Defenses.** (a) Guarantors waive any right to require Obligee to (1) proceed against Obligor; (2) proceed against or exhaust any security held from Obligor; or (3) pursue any other remedy in Obligee's power whatsoever.
- (b) Guarantors waive any defense based on or arising out of any defense of Obligor other than payment in full of the indebtedness, including without limitation any defense based on or arising out of the disability of Obligor, the unenforceability of the indebtedness from any cause, or the cessation from any cause of the liability of Obligor other than payment in full of the indebtedness.
- (c) Obligee, at its election, may foreclose on any security held by Obligee by one or more judicial sales, whether or not every aspect of any sale is commercially reasonable, or exercise any other right or remedy Obligee may have against Obligor, or any security, without affecting or impairing in any way the liability of Guarantors under this Agreement, except to the extent that the indebtedness has been paid.
- (d) Guarantors waive all rights and defenses that Guarantors may have because Obligor's debt is secured by real or personal property. This means, among other things:
- (1) Obligee may collect from Guarantors without first foreclosing on any real or personal property collateral pledged by Obligor.
- (2) If Obligee forecloses on any real property collateral pledged by Obligor's:
- (A) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.
- (B) Obligee may collect from the Guarantors even if Obligee, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Obligor.

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Obligor's debt is secured by real or personal property. These rights and defenses include, but are not limited to, any rights and defenses based on Code of Civil Procedure Sections 580a, 580b, 580d, and 726.

- (e) Guarantor waives all rights and defenses arising out of an election of remedies by Obligee, even though that election of remedies, such as nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Guarantor's rights of subrogation and reimbursement against the principal by operation of Code of Civil

Procedure Section 580d or otherwise.

- (f) Until all indebtedness of Obligor to Oblige is paid in full, even though that indebtedness is in excess of Guarantors' liability under this Agreement, Guarantors shall have no right of subrogation, shall waive any right to enforce any remedy that Oblige now has or may later have against Obligor, and shall waive any benefit of, and any right to, participation in any security now or later held by Obligor. Guarantors waive all presentments, demands for performance, notices of protest, notices of dishonor, notices of acceptances of this Guaranty, and notices of the existence, creation, or incurring of new or additional indebtedness.
- (g) Guarantors assume all responsibility for keeping themselves informed of Obligor's financial condition and assets, and of all other circumstances bearing on the risk of nonpayment of the indebtedness and the nature, scope, and extent of the risks that Guarantors assume and incur under this Agreement, and agree that Oblige shall have no duty to advise Guarantors of information known to it regarding those circumstances or risks.

**9. Attorneys' Fees and Costs.** In addition to the amounts guaranteed under this Agreement, Guarantors jointly and severally agree to pay reasonable attorneys' fees and all other costs and expenses incurred by Oblige in enforcing this Guaranty in any action or proceeding arising out of, or relating to, this Guaranty.

**10. Liens and Setoffs.** In addition to all liens on, and rights of setoff against the money, securities, or other property of Guarantors given to Oblige by law, Oblige shall have a lien on and a right of setoff against all money, securities, and other property of Guarantors now or later in the possession of Oblige, whether held in a general or special account, or for safekeeping or otherwise; and every lien and right of setoff may be exercised without demand on or notice to Guarantors.

**11. Nonwaiver of Rights of Oblige.** No right or power of Oblige under this Agreement shall be deemed to have been waived by any act or conduct on the part of Oblige, or by any neglect to exercise that right or power, or by any delay in so doing; and every right or power shall continue in full force and effect until specifically waived or released by an instrument in writing executed by Oblige.

**12. Singular and Plural.** In all cases when there is but a single Obligor or a single Guarantor, all words used in the plural shall be deemed to have been used in the singular if the context and construction so require; and when there is more than one Obligor, or when this Guaranty is executed by more than one Guarantor, the word "Obligor" and the word "Guarantor" respectively shall mean all and any one or more of them.

**13. Effect on Heirs and Assigns.** This Guaranty and the liability and obligations of Guarantors under this Agreement are binding on Guarantors and their respective heirs, executors, and assigns, and inure to the benefit of and are enforceable by Obligor and its successors, transferees, and assigns.

**14. Notices.** Any notice given by any party under this Guaranty shall be personally delivered or sent by United States mail, postage prepaid, and addressed to Oblige or Guarantors at

their respective addresses for notices indicated below. Guarantors and Obligee may change the place to which notices, requests, and other communications are to be sent to them by giving written notice of that change to the other.

**15. Governing Law and Venue; Modification.** This Guaranty shall be deemed to be made under, and shall be governed by, the laws of the State of California in all respects, including matters of construction, validity, performance, and enforcement. Any action to interpret or enforce the terms of this Agreement shall be brought in San Diego Superior Court, East County Branch. Guarantors hereby waive any right to remove the action from San Diego County as is otherwise permitted by California Code of Civil Procedure section 394. The terms and provisions of this guaranty may not be waived, altered, modified, or amended except in writing duly signed by an authorized officer of Obligee and by Guarantors.

**16. Invalidity.** If any provision of this Guaranty contravenes or is held invalid under the laws of any jurisdiction, this Guaranty shall be construed as though it did not contain that provision, and the rights and liabilities of the parties to this Agreement shall be construed and enforced accordingly.

**17. Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

**18. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Guaranty  
on \_\_\_\_\_, 2013.

GUARANTOR

\_\_\_\_\_  
Jonathan L. Mangini

Address for Notices to Guarantor:

\_\_\_\_\_  
\_\_\_\_\_  
ATTN: \_\_\_\_\_

GUARANTOR  
\_\_\_\_\_

Address for Notices to Guarantor:

\_\_\_\_\_  
\_\_\_\_\_

ATTN: \_\_\_\_\_

GUARANTOR

\_\_\_\_\_

Address for Notices to Guarantor:

\_\_\_\_\_  
\_\_\_\_\_

ATTN: \_\_\_\_\_

GUARANTOR

\_\_\_\_\_

Address for Notices to Guarantor:

\_\_\_\_\_  
\_\_\_\_\_

ATTN: \_\_\_\_\_

OBLIGOR

URBN RESTAURANTS, INC.  
a California Corporation

By: \_\_\_\_\_  
Jonathan L. Mangini, President

Address for Notices to Obligor:

\_\_\_\_\_

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ATTN: \_\_\_\_\_

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