



CITY OF ESCONDIDO

201 North Broadway
Escondido, CA 92025

Oversight Board to the Successor Agency of the Escondido Redevelopment Agency

**Tuesday
February 10, 2015**

10:00 AM

Mitchell Room

1. **Approval of Minutes:** [September 9, 2014](#)

2. **Oral Communications**

“Under State law, all items under Oral Communications can have no action and will be referred to the staff for administrative action or scheduled on a subsequent agenda.”

This is the opportunity for members of the public to address the subcommittee on any item of business within the jurisdiction of the subcommittee.

3. **[Adoption of Resolution No. OB 2015-01 Approving Recognized Obligation Payment Schedule \(ROPS 15-16A\) for July 2015 thru December 2015](#)**

Resolution No. OB 2015-01

4. **[Adoption of Resolution No. OB 2015-02 Approving a Lease Agreement with Custom Blow Molding at 480 N. Spruce Street](#)**

Resolution No. OB 2015-02

5. **Adjournment**

CITY OF ESCONDIDO

**DRAFT MINUTES OF THE REGULAR MEETING
OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF
THE ESCONDIDO REDEVELOPMENT AGENCY**

September 9, 2014

The regular meeting of the Oversight Board of the Successor Agency of the Escondido Redevelopment Agency was called to order at 10:00 a.m., by Chairman Phillips in the Mitchell Room at City Hall, 201 North Broadway, Escondido, California.

Board Members Present: Chairman Phillips, Boardmember Simonson, Boardmember McNamara, Boardmember Yerxa, Boardmember Bennett, Boardmember Baker, and Boardmember Baranowski.

Commissioners absent: None.

Staff present: Jeffrey Epp, City Attorney; Joan Ryan, Finance Manager; Debra Lundy, Revenue Manager; and Ty Paulson, Minutes Clerk.

MINUTES:

Moved by Boardmember Simonson, seconded by Boardmember Yerxa, to approve the minutes of the July 8, 2014 meeting. Motion carried unanimously.

ORAL COMMUNICATIONS: None.

3. Adoption of Resolution No. OB 2014-04 Approving Recognized Obligation Payment Schedule (ROPS 14-15B) for January 2015 thru June 2015

Resolution No. OB 2014-04

Joan Ryan, Finance Manager, referenced the staff report and noted staff recommended that the Oversight Board adopt Resolution No. OB 2014-04 approving the Recognized Obligation Payment Schedule (ROPS 14-15B) for January 2015 thru June 2015.

Boardmember Baranowski questioned whether the funds were currently available to make the subject payments. Ms. Ryan noted that the funds would be available at the time payment was due.

ACTION:

Moved by Boardmember Baranowski, seconded by Boardmember Baker, to approve staff's recommendation. Motion carried unanimously.

The Board requested staff place updates on the agenda regarding the Redevelopment Dissolution Litigation.

ADJOURNMENT:

Chairman Phillips adjourned the meeting at 10:04 am.

Clay Phillips, Chairman

Ty Paulson, Minutes Clerk

**OVERSIGHT BOARD TO THE
SUCCESSOR AGENCY OF THE
ESCONDIDO REDEVELOPMENT AGENCY**

Agenda Item No.: 3

Date: February 10, 2015

TO: Members of the Oversight Board

FROM: Joan Ryan, Finance Manager

SUBJECT: Adoption of Resolution No. OB 2015-01 Approving Recognized Obligation Payment Schedule (ROPS 15-16A) for July 2015 thru December 2015

RECOMMENDATION:

It is requested that the Oversight Board approve Resolution No. OB 2015-01 to adopt the Recognized Obligation Payment Schedule (ROPS 15-16A) so that the Successor Agency may continue to make payments due for enforceable obligations.

FISCAL ANALYSIS:

The Oversight Board is responsible for approving the Successor Agency payment schedule for obligations of the Redevelopment Agency and forwarding this schedule to the State for additional approval. Once approved by the State, the County of San Diego will fund the payments from the County Redevelopment Property Tax Trust Fund (RPTTF).

BACKGROUND:

As part of the State of California's Dissolution of Redevelopment, the City as Successor Agency is required to adopt a Recognized Obligation Payment schedule and have it approved by the Oversight Board. This Obligation schedule lists payments to be made in the July 2015 to December 2015 period. These payments are for the following: 2007A and B Lease Revenue Bonds (\$6,762,292), bond expenses (\$9,500), Successor Agency property utilities (\$14,000), and administrative costs (\$131,000) of the City.

Respectfully submitted,



Joan Ryan,
Assistant Finance Director

RESOLUTION NO. OB 2015-01

A RESOLUTION OF THE REDEVELOPMENT
OVERSIGHT BOARD APPROVING A
RECOGNIZED OBLIGATION PAYMENT
SCHEDULE FOR JULY 2015 THRU
DECEMBER 2015 PURSUANT TO HEALTH
AND SAFETY CODE SECTION 34177

WHEREAS, pursuant to authorizing Resolution No. 2012-16, the City Council of the City of Escondido elected to serve as the Successor Agency and Successor Housing Agency to the Escondido Redevelopment Agency; and

WHEREAS, pursuant to Health and Safety Code Section 34177, successor agencies are required to make payments due for enforceable obligations and adopt a Recognized Obligation Payment Schedule ("ROPS") and submit this schedule to an Oversight Board; and

WHEREAS, the Oversight Board is to approve the ROPS and forward to the State Department of Finance

NOW, THEREFORE, THE OVERSIGHT BOARD OF THE CITY OF ESCONDIDO, CALIFORNIA, RESOLVES AS FOLLOWS:

1. That the above recitations are true.
2. That the Oversight Board to the Escondido Redevelopment Successor Agency, hereby approves the ROPS for the period of July 2015 to December 2015, which is attached hereto as Exhibit "A" and incorporated by this reference.

Recognized Obligation Payment Schedule (ROPS 15-16A) - Summary

Filed for the July 1, 2015 through December 31, 2015 Period

Name of Successor Agency: Escondido
 Name of County: San Diego

<u>Current Period Requested Funding for Outstanding Debt or Obligation</u>		<u>Six-Month Total</u>
A	Enforceable Obligations Funded with Non-Redevelopment Property Tax Trust Fund (RPTTF) Funding Sources (B+C+D):	\$ 14,000
B	Bond Proceeds Funding (ROPS Detail)	-
C	Reserve Balance Funding (ROPS Detail)	-
D	Other Funding (ROPS Detail)	14,000
E	Enforceable Obligations Funded with RPTTF Funding (F+G):	\$ 6,902,792
F	Non-Administrative Costs (ROPS Detail)	6,771,792
G	Administrative Costs (ROPS Detail)	131,000
H	Current Period Enforceable Obligations (A+E):	\$ 6,916,792

Successor Agency Self-Reported Prior Period Adjustment to Current Period RPTTF Requested Funding

I	Enforceable Obligations funded with RPTTF (E):	6,902,792
J	Less Prior Period Adjustment (Report of Prior Period Adjustments Column S)	(96,125)
K	Adjusted Current Period RPTTF Requested Funding (I-J)	\$ 6,806,667

County Auditor Controller Reported Prior Period Adjustment to Current Period RPTTF Requested Funding

L	Enforceable Obligations funded with RPTTF (E):	6,902,792
M	Less Prior Period Adjustment (Report of Prior Period Adjustments Column AA)	-
N	Adjusted Current Period RPTTF Requested Funding (L-M)	6,902,792

Certification of Oversight Board Chairman:
 Pursuant to Section 34177 (m) of the Health and Safety code, I hereby certify that the above is a true and accurate Recognized Obligation Payment Schedule for the above named agency.

 Name Title
 /s/ _____
 Signature Date



**OVERSIGHT BOARD TO THE
SUCCESSOR AGENCY OF THE
ESCONDIDO REDEVELOPMENT AGENCY**

Agenda Item No.: 4
Date: February 10, 2015

TO: Members of the Oversight Board
FROM: Debra Lundy, Real Property Manager
SUBJECT: Adoption of Resolution No. OB 2015-02

RECOMMENDATION:

It is requested that the Oversight Board adopt Resolution No. OB 2015-02 approving a Lease Agreement with Custom Blow Molding at 480 N. Spruce Street.

FISCAL ANALYSIS:

Rent revenue in the amount of \$18,686.80/month will be generated from this lease after an initial rent credit for tenant improvements up to \$132,334 (7 months) and payment of commission to the brokers.

PREVIOUS ACTION:

On January 8, 2013 via Resolution No. OB 2013-02-R, the Oversight Board approved the use of rental income collected by the Successor Agency to provide all maintenance of properties owned by the Successor Agency. The Board action was ratified by the Department of Finance on January 25, 2013.

BACKGROUND:

The City of Escondido, as the Successor Agency to the Escondido Redevelopment Agency, received a Finding of Completion from the State on May 24, 2013. Thereafter, a Long Range Property Management Plan was submitted to the Department of Finance on November 18, 2013, having first been approved by the Escondido City Council acting as the Successor Agency on October 2, 2013 and the Oversight Board on October 8, 2013.

The Long Range Property Management Plan ("Plan") was subsequently revised on June 11, 2014 and is presently undergoing review by the Department of Finance. The City has received verbal initial approval for the subject site, 480 N. Spruce Street, indicating that the Successor Agency will be permitted to hold the property for Future Development, while leasing the property in the interim in order to maintain its value. Any leasing activity at this Site will be subject to receipt of an approved Long Range Property Management Plan.

The present status of the City's Business Park Project lends well to a longer term lease of the subject site, while the City focuses its efforts on relocating its Public Works Yard out of the redevelopment area.

The 33,976 sf M-1 building has been marketed for several months and is being partially rented short-term for dry storage to two companies in the interim. The City recently received an offer from a local company, Custom Blow Molding ("CBM"), with its headquarters in Escondido, to lease the entire property (less the \$15,000 sf metal out-structure) for a period of three (3) years, with two additional 3-year options, for warehousing of plastic products manufactured at their main facility in Escondido. The proposed base rent is \$18,686.80/month (.55/psf/NNN), with annual 3% increases, which represents fair market value.


Due to the condition of the property, it will be necessary for certain tenant improvements to be performed in order for CBM to occupy the leased premises. CBM proposes to make all necessary improvements and to seek reimbursement via a rent credit from the City up to \$132,334 (7 months free rent). As of the effective date of the lease, CBM would take over all utilities payments.

The parties were each represented by a broker in the proposed transaction and the Successor Agency would owe a total of \$35,741.98 in commission, based on 5.5% of first and second annual rents and 4.5% of the third year's rent. Commission is not paid for option terms.

Year one of the lease would yield \$63,360.26 after commission and TI credit are paid;
Year two of the lease would yield \$230,968.85; and
Year three of the lease would yield \$237,8997.91.

Once the Long Range Property Management Plan receives approval from the State Department of Finance, the City will enter into Compensation Agreements with the Taxing Entities. In the meantime, all rent revenue generated from this proposed lease will be reported on the ROPS schedule as "Other Funds" and will be used for property maintenance in accordance with current Board policy.

Respectfully submitted,



Debra Lundy
Real Property Manager

RESOLUTION NO. OB 2015-02

A RESOLUTION OF THE REDEVELOPMENT
OVERSIGHT BOARD APPROVING A LEASE
AGREEMENT WITH CUSTOM BLOW
MOLDING AT 480 N. SPRUCE STREET

WHEREAS, in accordance with the Health and Safety Code, the City of Escondido as the Successor Agency received the necessary Finding of Completion from the Department of Finance on May 23, 2013; and

WHEREAS, the City of Escondido as the Successor Agency submitted a proposed Long Term Property Management Plan ("Original Plan") on November 18, 2013 for approval by the Department of Finance, which plan had first been approved by the City Council acting as the Successor Agency on October 2, 2013 and by the Oversight Board on October 8, 2013; and

WHEREAS, the Department of Finance provided some preliminary feedback to the Original Plan a Revised Plan was approved by the City Council, as the Successor Agency to the Escondido Redevelopment Agency, on June 11, 2014 via Resolution 2014-69, and by the Oversight Board on July 8, 2014 via Resolution OB 2014-03, with submittal to the Department of Finance on July 9, 2014; and

WHEREAS, the subject site, 480 N. Spruce Street, has been identified as a key asset within the City's Business Park Redevelopment Area and has been designated Hold for Future Development with interim leasing in order to retain its value; and

WHEREAS, the Oversight Board adopted Resolution No. OB 2013-02R authorizing all rental revenue from Successor Agency properties to be used for maintenance costs of Successor Agency assets; and

WHEREAS, an offer to lease the subject site has been received from Custom Blow Molding to rent the property at fair market value for three years, subject to final approval of the Long Range Property Management Plan; and

WHEREAS, the City Council as the Successor Agency is scheduled to rule on the lease on March 4, 2015.

NOW, THEREFORE, THE OVERSIGHT BOARD OF THE CITY OF ESCONDIDO, CALIFORNIA, RESOLVES AS FOLLOWS:

1. That the above recitations are true.
2. That the Oversight Board to the Escondido Redevelopment Successor Agency, hereby approves the Lease Agreement with Custom Blow Molding at 480 N. Spruce Street, which will be substantially in the form of Exhibit "A" and incorporated by this reference, subject to City Council as the Successor Agency approval of same on March 4, 2015.



480 N. Spruce Street Lease Agreement

**Lessee: Tri-Pack Enterprises, Inc. dba Custom
Blow Molding**

Term: 3 Years

Premises: 480 N. Spruce, Escondido, CA

Date:

Lease Agreement between the City of Escondido and Custom Blow Molding for use of the property at 480 N. Spruce, Escondido, CA 92025 for specific purposes as set forth below.



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CITY OF ESCONDIDO LEASE AGREEMENT

This Lease Agreement is made as of February____, 2015 between the City and Tri-Pack Enterprises, Inc. dba Custom Blow Molding, Inc.

Section 1 Definition of Terms

The following words in this Lease Agreement shall have the significance attached to them in this Section unless otherwise apparent from their context.

- City.** The City means the City of Escondido, a California general law City.
- Effective Date.** This Lease Agreement shall become effective as of the date it is signed by both parties. (Note: term and rent commencement dates differ, as described below).
- Lease.** Lease means this Lease Agreement.
- Lease Administrator.** The Lease Administrator means the City of Escondido Real Property Agent or, upon written notice to Lessee, such other person as shall be designated from time to time by City.
- Lessee.** Lessee means Tri-Pack Enterprises, Inc. dba Custom Blow Molding, and does not include its heirs, assigns, or successors-in-interest.
- Premises.** Premises means the real property commonly known as 480 North Spruce Street, Escondido, CA.

Section 2 Administration

This Lease will be administered on behalf of City by the Lease Administrator, whose address is:

City of Escondido
Real Property Manager
201 North Broadway
Escondido, CA 92025

and on behalf of Lessee by _____, whose address is:

Section 3 Term

3.1 The term of this Lease shall be **three (3) years**, commencing on completion of Tenant Improvements ("**Term Commencement Date**"), as more specifically described in the attached **Exhibit A**. Lessee shall submit all necessary applications to obtain

permits for the Tenant Improvements within 15 days of the Effective Date of the Lease. Completion of the Tenant Improvements shall not be unreasonably delayed.

3.2 Hold Over. The occupancy of the Premises by Lessee, after the expiration of the Term shall be construed as a month to month tenancy, and all other terms and conditions of this Lease Agreement shall continue in full force and effect, on a month to month basis. The City shall have the right to terminate the month to month tenancy without cause and for any reason by giving sixty (60) days prior notice to Lessee.

Section 4 Termination of Lease

4.1 Default. If the City discovers at any time during the Lease Term that the Lessee or any other party has used, is using, or will use the Premises in an unlawful manner or for an unlawful purpose, or in any manner that is inconsistent with any provision of this Lease, City may notify Lessee of the failure to perform and terminate the Lease in accordance with this Section.

4.2 Right to Cure. Lessee must cure any failure to perform any of the terms, conditions, or covenants of this Lease to be observed or performed by Lessee within thirty (30) days after receiving notice from the City of the default. The City may grant additional time to cure any failure to perform as may be reasonably required, as determined by the City which must be in writing.

4.3 Termination upon Default. Upon the occurrence and failure to cure a default of the Lease within the time period in Section 4.2, the City may, at its option, and in addition to any and all other rights to which it may be entitled under this Lease or applicable law, elect to terminate this Lease. Any such termination will be effective as of the date specified in such election.

Section 5 Options to Renew

Upon each expiration, and by providing the City with a written request at least three (3) months prior, upon City approval, Lessee shall have two (2) additional three-year options to renew the Lease.

Section 6 Vacation of Premises

Upon termination of this Lease for any reason, Lessee shall peaceably vacate and deliver the Premises to City in the same condition as Lessee found them upon its acceptance of the Premises hereunder, excepting ordinary wear and tear and conditions caused by acts of God.

Upon such termination, Lessee shall immediately:

- A. Arrange and pay for the disconnection of all utilities and services

ordered by Lessee;

- B. Provide a written statement to the Lease Administrator of Lessee's new address for purpose of refunding monies, if any, due Lessee under this Lease; and
- C. Deliver any keys for the Premises to the Administrator or send said keys by certified mail to the City.

Section 7 Rent

7.1 Base Rental Rate. In consideration of the possession and use of the Premises, Lessee shall deliver and pay rent to City \$18,686.80 on or prior to the first day of each month. The Rent shall commence upon completion of the Tenant Improvements listed in Exhibit A ("**Rent Commencement Date**"). Rent shall increase by 3% annually on each anniversary of the Rent Commencement Date.

7.2 Rent Abatement. As consideration for performance of the Tenant Improvements listed in the attached Exhibit A, rent shall be abated for the first seven (7) months from the Rent Commencement Date, equaling a total rent credit of \$132,333.78.

7.3 Hold Over Rental Rate. The rent payments for any Hold Over will be equal to the previous year's Rental Rate plus ten percent (10%).

Section 8 Security Deposit

Lessee shall pay a security deposit in the amount of \$18,686.80 at lease signing.

Section 9 Late Payment

Rent payments received after the 5th day of any month will be charged an additional 20% late payment fee.

Section 10 Utilities Payments

As of the Effective Date of this Lease, Lessee agrees to provide and pay for all utilities and services necessary for the occupancy and use of the Premises, including, but not limited to: gas, water, electricity, sewage charges or septic service, trash and any telecommunications services.

Section 11 Taxes, Assessments and Fees

The terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in Lessee, Lessee may be subjected to the payment of personal property taxes levied on such interest. Lessee shall be responsible for the

payment of, and shall pay before delinquent, all taxes, assessments, and fees assessed or levied upon Lessee, on said Premises or any interest therein, on any buildings, structures, machines, appliances, or other improvements of any nature whatsoever, or on any interest therein.

Lessee further agrees not to allow such taxes, assessments, or fees to become a lien against said premises or any improvement thereon. Nothing herein contained shall be deemed to prevent or prohibit Lessee from contesting the validity of amount of any such tax, assessment, or fee in any manner authorized by law.

Section 12 Acceptance and Maintenance

Lessee hereby acknowledges that Lessee has inspected the Premises, that Lessee accepts said Premises "as is" and "where is," that the Premises are in a good and sanitary order, condition, and repair and suitable for the uses as specified in this Lease.

Lessee agrees to maintain the Premises in good condition and in compliance with all applicable property maintenance and related laws. Lessee releases the City from the obligation to maintain any portion of the Premises. Said release is part of the consideration for the rental of the Premises, and Lessee therefore waives all rights it may otherwise have under Sections 1941 and 1942 of the Civil Code.

In the event Lessee fails to properly maintain the premises as required by City, City may notify Lessee in writing of said failure. In the event Lessee fails to perform said maintenance within thirty (30) days after such notice by City, City may perform such maintenance, and any costs including, but not limited to, the cost of labor, material, and equipment, shall be paid by Lessee to City within ten (10) days from receipt by Lessee of an invoice from City.

Section 13 Alterations

Other than those items expressly agreed to in the attached Exhibit A, Lessee shall not paint, alter, cut, add to, or otherwise change the appearance, structure, or condition of the Premises without the prior written consent of the Lease Administrator and only after obtaining applicable permits.

Any tenant improvements, and additional improvements made with the consent of the Lease Administrator shall become a fixture to the realty and shall remain on and be surrendered with the Premises upon termination of this Lease.

Lessor or its representatives shall have the right to go upon and inspect the Demised Premises at all reasonable times and shall have the right to post and keep posted thereon notices of nonresponsibility, or such other notices which the Lessor may deem to be proper for the protection of the Lessor's interest in the Demised Premises.

Section 14 Use

Lessee agrees to use the Premises for warehousing of plastic products manufactured at Lessee's main facility in accordance with the provisions and requirements contained in any permits required by the City of Escondido. Lessee shall not use, nor permit the use of, the Premises other than as described. In any case where Lessee is, or should reasonably be, in doubt as to the propriety of any particular use, Lessee may request, and will not be in breach or default if Lessee abides by, the written determination of the Lease Administrator that such use is or is not permitted.

Section 15 Occupancy, Assignment and Subletting

The Premises shall only be occupied by Lessee except with prior written consent of the Lease Administrator. Lessee may not assign or sublease any interest in this Lease to any other party, at any time, including a transferee of a controlling interest in Lessee without written consent from the Lease Administrator.

Section 16 Conduct

Lessee and guests of Lessee shall at all times conduct themselves in a quiet and dignified manner so as to cause no annoyance or inconvenience to neighbors of Lessee.

Lessee shall not violate, or permit the violation of, any City or County ordinance, or state or federal law, in or about the Premises.

Noncompliance by Lessee with any provision of this Section shall allow the Lease Administrator to terminate this Lease.

Section 17 Pets

No pets or livestock of any kind may be kept on the Premises without the prior written consent of the Lease Administrator.

Section 18 Notices

Any notice required or permitted to be given by this Lease must either be personally served on the other party or served by certified mail, return receipt requested, to the addressee. Notices served by mail shall be sent to the address listed above. A change of either party's address must also be immediately served in the manner described above.

Section 19 Right of Inspection

City reserves the right for its agents or employees to enter upon and inspect the Premises at any reasonable time to ascertain if Lessee is complying with the provisions of this Lease.

Section 20 Insurance

Lessee must have insurance in the following amounts at all times during this Agreement:

- A. General liability insurance with at least \$2 Million combined single-limit coverage per occurrence for bodily injury and property damage.
- B. Automobile liability insurance of \$1 Million combined single-limit per accident for bodily injury and property damage for any and all vehicles that are owned by the Lessee (if applicable).
- C. Workers' compensation and employer's liability insurance as required by the California Labor Code, as amended, or certificate of sole proprietorship.
- D. Commercial property insurance in an amount commensurate with the value of the improvements on the Premises.
- E. During the construction of Tenant Improvements, insurance in an amount no less than to cover construction risks, etc.

Each insurance policy required above must be acceptable to the City Attorney:

- F. Each policy must name the City specifically as an additional insured under the policy on a separate endorsement page, with the exception of the workers' compensation policy.
- G. Each policy must provide for written notice within no more than thirty (30) days if cancellation or termination of the policy occurs. Insurance coverage must be provided by an A.M. Best's A-rated, class V carrier or better, admitted in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers.
- H. All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.

Lessee agrees to deposit with City, on or before the effective date of this Lease, one certificate of insurance for each of the policy or policies necessary to satisfy the insurance provisions of this Lease and to keep such insurance in effect during the entire term of this Lease. This certificate must be reviewed by, and acceptable to, the City Attorney, prior to commencement of the Lease Term. Lessee will also deposit with the City within 60 days of the Effective Date of this Lease, an additional

insured endorsement naming City specifically and separately as an “additional insured”, with the exception of the worker’s compensation policy. The appropriate endorsements described above shall follow within sixty (60) days. Noncompliance by Lessee with any provision of this Section shall allow the Lease Administrator to terminate this Lease.

City shall retain the right at any time to review the coverage, form and amount of the insurance required hereby. If, in the opinion of the Lease Administrator, the insurance provisions in this Lease do not provide adequate protection for City and for members of the public using the Premises, City may require Lessee to obtain insurance sufficient in coverage, form and amount to provide adequate protection from and against the kind and extent of risks which exist or are foreseeable at the time a change in insurance is required. City's requirements shall be reasonable, but shall be designed to assure adequate protection of the City’s interests. The Lease Administrator shall notify Lessee in writing of changes in the insurance requirements and, if Lessee does not deposit with City within sixty (60) days of receipt of such notice a new Certificate of Insurance for each policy or policies of insurance incorporating such changes, this Lease shall be deemed in default without further notice to Lessee and may be forthwith terminated by the Lease Administrator.

The procuring of such required policy or policies of insurance shall not be construed to limit Lessee's liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policy or policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury or loss attributable to any act or omission of it or its agents, customers or guests in connection with this Lease or with use or occupancy of the Premises.

Noncompliance by Lessee with any provision of this Section shall allow the Lease Administrator to terminate this Lease.

Section 21 Indemnification

Lessee shall defend, indemnify, and hold harmless City, its officers, agents, and employees from and against any and all claims, demands, and liabilities for loss of any kind or nature which City, its officers, agents, or employees may sustain or incur or which may be imposed upon them or any of them for injury to or death of persons or damage to property as a result of, arising out of, or in any manner connected with this Agreement or with the occupancy and use of the Premises by Lessee, its invitees, visitors, or any other persons whatsoever. Lessee further agrees to pay any and all costs and expenses, including, but not limited to, court costs and reasonable attorney's fees incurred by City on account of any such claims, demands, or liabilities. However, the provisions of this Agreement shall not be construed to indemnify City for claims or acts arising from City’s sole negligence.



Section 22 Attorney’s Fees, Costs and Expenses

In the event legal action is brought to enforce the terms of or to declare a termination of this Lease for reason of breach thereof, the unsuccessful party shall pay all of the successful party’s costs of such action, together with reasonable attorney's fees, in an amount to be fixed by the court.

Section 23 Non-Discrimination

Lessee covenants that this Lease is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of physical or mental disabilities, race, color, creed, religion, sex, marital status, national origin or ancestry in the use, occupancy, tenure or enjoyment of the leased premises. Lessee shall not establish or permit any such practice of discrimination or segregation with reference to the selection, location, number, or use of occupancy by customers, tenants or vendees in the leased premises.

Section 24 Supersedure

This Lease, upon becoming effective, shall supersede any leases or rental agreements heretofore made or issued for the Premises between the City and Lessee.

Section 25 Hazardous and/or Contaminated Soil and Material

Lessee will not place or permit to be placed materials and/or contaminated soils on the premises which under federal, state, or local law, statute, ordinance, or regulations require special handling in collection, storage, treatment, and/or disposal. Lessee also hereby covenants and agrees that, if at any time it is determined there are materials and/or contaminated soils located on the premises which under any environmental requirement require special handling in collection, storage, treatment, or disposal, Lessee shall notify City. Within thirty (30) days after written notice to City or from City, Lessee shall commence to take and thereafter diligently complete, at Lessee's sole expense, such actions as may be necessary to comply with environmental requirements.

Section 26 Law to Govern; Venue

This Agreement is governed by the laws of the State of California. Venue for all actions arising from this Agreement must be exclusively in the North County Division of the San Diego County Superior Court or federal courts located in San Diego County, California.

Section 27 Special Provisions

Lessee hereby acknowledges that Lessee waives all rights to any form of relocation assistance provided for by local, state, or federal law to which Lessee may be entitled by reason of this Lease.



Section 28 Americans with Disabilities Act

It is the duty of the Lessee while operating under this Lease to comply with all local, state, and federal laws, including, but not limited to, the Americans with Disabilities Act and to indemnify City from any violation of any such law. Failure to comply with a provision of local, state, or federal law is grounds for the Lease Administrator's immediate termination of this Lease.

Section 29 Amendment

This Agreement may not be amended, modified, or supplemented except by a writing executed both Parties.

Section 30 Waiver

No waiver by a Party of any provision of this Agreement shall be considered a waiver of any other provision or any subsequent breach of the same or any other provision. The exercise by a Party of any right or remedy provided in this Agreement or provided by law shall not prevent the exercise by that Party of any other remedy provided in this Agreement or under the law.

IN WITNESS WHEREOF, the parties below are authorized to act on behalf of their organizations, and have executed this Agreement as of the date set forth below.

CITY OF ESCONDIDO

Date: _____

Debra Lundy, Real Property Manager

Date: _____

Diane Halverson, City Clerk

TRI-PACK ENTERPRISES, INC. DBA CUSTOM BLOW MOLDING

Date: _____

By: _____

Print Name/Title

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
JEFFREY R. EPP, City Attorney

By: _____

Exhibit A

Tenant at Tenants sole cost shall make the following Tenant Improvements **with all applicable City Planning permits and approvals:**

1. Demo all mezzanine in the warehouse.
2. Enlarge 2 warehouse openings to 12 ft. high.
3. Demo the non-load bearing wall and drop ceiling in the warehouse area.
4. Demo the catwalk in the warehouse area.
5. Paint warehouse walls
6. Upgrade warehouse lighting
7. New carpet and paint in office area
8. Replace broken ceiling tiles and lighting
9. Remove cubicles
10. Add window coverings
11. Basic clean-up of landscape
12. Parking lot lighting in good working order
13. Any and all improvements required by the city as a result of the city permitting and approval process. The extent of the work is cosmetic and demolition work. No new construction.

Estimated Cost: \$132,333.78