DISPOSITION AND DEVELOPMENT AGREEMENT (5255 MOUNT ETNA DRIVE)

by and between

The County of San Diego

"COUNTY"

and

Chelsea Investment Corporation

"DEVELOPER"

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DISPOSITION AND DEVELOPMENT AGREEMENT

This Disposition and Development Agreement ("Agreement") is entered into by and between the County of San Diego, a political subdivision of the State of California ("County"), and Chelsea Investment Corporation, a California corporation (the "Developer") as of _______, 2020 ("Effective Date"). County and Developer agree as follows:

PART 1. SUBJECT OF AGREEMENT

SECTION 101 Purpose of the Agreement

The County is the owner of that certain real property located at 5255 Mount Etna Drive in San Diego, California, as described more specifically in Section 103 ("Property"). The purpose of this Agreement is to provide for the development of the Property as set forth in the Scope of Development (Attachment No. 3), under Ground Leases with the County, which shall be constructed and operated as three rental housing projects that are affordable to households of income levels specified in the County Regulatory Agreements (each, a "Project" and collectively, the "Master Development"), substantially consistent with the proposal submitted by the Developer in response to the Request for Proposals issued by the County with respect to development of the Property in accordance with California Government Code section 25515 et seq., and as more specifically described in this Agreement. The development and use of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the County of San Diego and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements. Upon the consummation of the Project Structuring described in Section 212, the terms of this DDA shall apply separately to each Project.

SECTION 102 Definitions

For purposes of this Agreement, the following capitalized terms shall have the following meanings:

"Acquisition and Development Costs" means the total cost of leasing the Property and developing and constructing the Improvements, as set forth in the Project Budget

"Affiliate" means (1) any Person directly or indirectly controlling, controlled by or under common control with another Person; (2) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other Person; or (3) if that other Person is an officer, director, member or partner, or any company for which such Person acts in any such capacity. The term "control" as used in the immediately preceding sentence, means the power to direct the management or the power to control election of the board of directors. It shall be a presumption that control with respect to a corporation or limited liability company is the right to exercise or control, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity. It shall also be a

presumption that the administrative general partner of a limited partnership controls the limited partnership.

"Affordable Units" means the approximately 404 residential apartment units to be constructed on the Property by Developer in accordance with this Agreement, the Ground Lease and the County Regulatory Agreement (excluding the Manager's Units).

"Approvals" means any license, permit, approval, consent, certificate, ruling, variance, authorization, conditional use permit, or amendment to any of the foregoing, as shall be necessary or appropriate under any Law to commence, perform or complete the construction of the Project on the Property.

"Claims" is defined in Section 309 1(e).

"Closing" or "Close of Escrow" means the point in time when the Escrow Agent has filed all of the documents set forth in Section 203(k) with the County for recording in the Official Records in accordance with Section 205 and the County has delivered possession of the Property to Developer.

"Closing Date" means the date on which the Closing occurs.

"Community Space" means the space to be designated for community uses for the Affordable Units, in accordance with the Scope of Development (Attachment No. 3).

"Construction Lender" means the maker of any Construction Loan or beneficiary of any Construction Loan Deed of Trust.

"Construction Loan" means, collectively, the Source of Financing in the form of one or more loans made to the Developer at the time of the Closing for construction of the Improvements, secured against the Leasehold by one or more Construction Loan Deeds of Trust.

"Construction Loan Deed of Trust" means the deeds of trust securing the Construction Loan.

"Contingencies" is defined in Section 203.

"Control" means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of equity interests, by contract, through election of the members of the Board or Directors, or otherwise. It shall be a presumption that Control with respect to a corporation or limited liability company is the right to exercise or Control, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the Controlled corporation or limited liability company, and that the administrative general partner of a limited partnership Controls the limited partnership.

"Conversion" means the date upon which the Construction Loan is repaid or converted to the Permanent Loan.

"Contractor" is defined in Section 203(e).

"County" means the County of San Diego, a political subdivision of the State of California and any assignee or successor to County's rights, powers and responsibilities authorized under this Agreement.

"County Parties" is defined in Section 309(a).

"County Property" means real property described in <u>Section 103</u> of this Agreement.

"County Regulatory Agreement" means the Memorandum of Restrictive Covenants and Regulatory Agreement to be recorded upon the occurrence of the Closing, substantially in the form attached to this Agreement as Attachment No. 6.

"Covenant Period" means the ninety-nine (99) year period commencing upon Closing, during which time the Affordable Units on the Property will be subject to the covenants, conditions, and restrictions in the County Regulatory Agreement.

"Developer" refers to Chelsea Investment Corporation, and any assignee or other successor to its rights, powers, and responsibilities of Developer authorized under this Agreement.

"Developer's Proposal" refers to the proposal submitted by Developer in response to the Request for Proposals issued by the County with respect to development of the Property, which proposal is attached to this Agreement as Attachment No. 11 in accordance with California Government Code section 25515.2(h).

"Director" means the County's Director, Department of General Services.

"Due Diligence Certificate" means that certificate to be executed by Developer pursuant to Section 201, substantially in the form attached to this Agreement as Attachment No. 9.

"Effective Date" means the date set forth in the introductory paragraph of this Agreement, which shall be a date after all of the following have occurred: (a) County has received three (3) counterpart originals of this Agreement signed by the authorized representative(s) of Developer; (b) this Agreement has been approved by the County Board of Supervisors; (c) the County Board of Supervisors has adopted an ordinance approving this Agreement, and thirty days have passed since the adoption of that ordinance, (d) this Agreement has been signed by the authorized representative of County; and (e) this Agreement has been approved as to form and legality by County Counsel.

"Escrow Agent" means First American Title Company or an escrow agent mutually acceptable to County and Developer.

"Exculpation Provisions" is defined in Section 309(b).

"Final Construction Drawings" is defined in Section 305.

"Force Majuere" is defined in Section 602.

"Four Percent Tax Credit(s)" or "4% Tax Credit(s)" shall mean the federal tax credit allocated to the Project by the California Tax Credit Allocation Committee (CTCAC). "Four Percent" refers to the applicable percentage of the qualified basis for a building that is not federally subsidized, as provided in Internal Revenue Code Section 42.

"Ground Lease" means the ground lease or leases (if there is more than one owner) to be executed by County and Affiliates of Developer substantially in the form as attached to this Agreement as Attachment No. 7.

"Hazardous Materials" is defined in Section 210.1(b).

"Hazardous Materials Indemnity Obligations" is defined in Section 210.2(c).

"Hazardous Material Laws" is defined in Section 210.1(a).

"Improvements" means the improvements more particularly described in the Scope of Development (Attachment No. 3), including, more generally, the Affordable Units, the Community Space, the Retail Space, and the Parking.

"Initial Rent Payment" means the Three Million Two Hundred Fifty Thousand Dollar (\$3,250,000) rent payment to be made by Developer to County at the Closings for the Projects. Under the current Project Financing Structure, a portion of the Initial Rent Payment would be made at the Closing for each Project as follows: \$1,670,891 at the first Closing, \$818,441 at the second Closing, and \$760,668 at the third Closing, which allocation is subject to change based on changes to the Project Structure as approved by County under Section 212. This allocation includes a \$259,802 deduction from the payment at the first Closing, a \$134,653 addition to the payment at the second Closing, and a \$125,149 addition to the payment at the third Closing, all in consideration of the acquisition costs for the SDGE Easement defined in Section 103 to be paid by Chelsea. If sufficient funding is available at the first and/or second Closings, these incremental Initial Rent Payments may be accelerated to the extent possible with available funding.

"Investor Limited Partner Capital Contribution" means funds provided to Developer by the Tax Credit Equity Investor in consideration of the Low Income Housing Tax Credits.

"Leasehold" means that leasehold estate in the Property created by the execution of the Ground Lease.

"Legal Description" means the legal description of the Property attached to this Agreement as Attachment No. 2.

"Low Income Housing Tax Credit(s)" shall mean the federal tax credit(s) (including both the Four Percent Tax Credits and the Nine Percent Tax Credits) authorized by the Tax Reform Act of 1986 and governed by Internal Revenue Code Section 42, to be allocated by CTCAC toward the Project and to be purchased by the Tax Credit Equity Investor.

"Manager Units" refers collectively to the manager or employee units in the Project anticipated to be designated for on-site residential managers and/or maintenance personnel of the

Affordable Units as set forth in the Scope of Development (Attachment No. 3), which shall remain unrestricted in terms of income or affordability levels.

"Master Development" refers to the construction and operation of the Improvements on the Property as three Projects.

"Memorandum of Ground Lease" means that document substantially in the form attached to the Ground Lease as Attachment No. H.

"Nine Percent Tax Credit(s)" or "9% Tax Credits" shall mean the federal tax credit allocated to the Project by CTCAC. "Nine Percent" refers to the applicable percentage of the qualified basis for a building that is not federally subsidized, as provided in Internal Revenue Code Section 42.

"Notice of Completion" shall have the same definition as set forth in California Civil Code section 3093.

"Official Records" means the Official Records of the Office of the County Recorder for San Diego County, California.

"Parking" means the parking garage or lot to be constructed on the Property as part of the Improvements. The Parking shall comply with the Scope of Development (Attachment No. 3) all applicable parking requirements.

"Permanent Loan" means the Source of Financing in the form of one or more permanent loans to be made to the Developer at Conversion, secured against the Leasehold by the Permanent Loan Deed of Trust.

"Permanent Loan Deed of Trust" means the deed(s) of trust securing the Permanent Loan.

"Permitted Exceptions" means the exceptions listed in the Title Report (Attachment No. 8) and all covenants, conditions, restrictions, and easements arising out of this Agreement.

"Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, domestic or foreign.

"Plans" is defined in Section 305.

"Pre-Construction Conditions" is defined in Section 202(b).

"Pre-Construction Period" is defined in Section 202.

"Project" refers individually to one of the three projects within the Master Development.

"Project Budget" means the schedule of sources and uses attached to this Agreement as Attachment No. 5.

"Property" means the real property described in Section 103.

"Community Space" refers to the community space/senior center to be constructed on the Property, as set forth in the Scope of Development.

"Schedule of Performance" means the document attached to this Agreement as Attachment No. 4.

"Scope of Development" means the document attached to this Agreement as Attachment No. 3.

"SDGE Property" means the real property designated with Assessor's Parcel Number 361-051-04 and the northerly 300 feet of Assessor's Parcel Number 419-010-14.

"Silver LEED Certification" means the Silver Leadership in Energy and Environmental Design Certification provided by the U.S. Green Building Council.

"Site Map" means the document which is attached to this Agreement as Attachment No. 1. "Source of Financing" means a source of financing for the Project identified in this Agreement.

"Tax Credit Equity Investor" means a Person who will be a limited partner in the Developer and will contribute equity to Developer in consideration of the Low Income Housing Tax Credits.

"TCAC" shall mean the California Tax Credit Allocation Committee.

"Title Company" means First American Title Company.

"Title Insurance Policy" means and includes any of the following, as appropriate: (i) a leasehold policy of title insurance in favor of Developer with respect to the Leasehold in an amount as reasonably requested by Developer (the "Leasehold Title Policy"), and (ii) lender's policies of title insurance in favor of any Project lender.

"Title Report" means the Preliminary Report number NHSC-6088447 (06) issued by First American Title Company, dated November 6, 2019, attached to this Agreement as Attachment No. 8.

SECTION 103 The Property

The "County Property" is located at 5255 Mount Etna Drive, San Diego, California, with Assessor's Parcel Number 361-661-12 depicted on the Site Map attached hereto as Attachment No. 1. The legal description of the County Property is set forth in the Legal Description attached hereto as Attachment No. 2. In the event that Developer subdivides the Property, each parcel within the subdivision shall be subject to the rights and obligations under this Agreement, and the Legal Description referenced herein for the Property shall be modified to reflect the legal descriptions associated with each parcel.

In addition to the County Property, the Property may include an easement over the SDG&E Property for Project Parking and ingress and egress ("SDGE Easement"). Developer intends to enter into an Easement Option Agreement with San Diego Gas & Electric Company ("SDGE

Option") to obtain the SDGE Easement. Developer shall assign the SDGE Option to the County prior to the Close of Escrow, but shall retain all obligations to pay all costs and expenses of the optionee under the SDGE Option, including but not limited to the SDGE Easement purchase price. If the Property will include the SDGE Easement, the County shall exercise the SDGE Option to acquire the SDGE Easement and Chelsea shall pay all costs and expenses to acquire the SDGE Easement through escrow concurrently with the Close of Escrow, which Easement shall then become part of the Leasehold transferred to the Developer.

SECTION 104 County

The address of the County for purposes of receiving notices pursuant to this Agreement shall be:

County of San Diego, Department of General Services 5560 Overland Ave. #410 San Diego, CA 92123 ATTN: Director

SECTION 105 <u>Developer</u>

The address of Developer for purposes of receiving notices pursuant to this Agreement is as follows:

Chelsea Investment Corporation 6339 Paseo del Lago Carlsbad, CA 92011 Attn: Cheri Hoffman

b. "Developer" as used in this Agreement is Chelsea Investment Corporation and any assignee or other successor to its rights, powers, and responsibilities, subject to the assignment and transfer restrictions of Section 106 below and the Ground Lease.

SECTION 106 <u>Assignments and Transfers</u>

a. Developer represents, warrants, and agrees that its undertakings pursuant to this Agreement are for the purpose of redeveloping the Property and providing affordable rental housing, not for speculation in land holding. Developer further recognizes that the qualifications and identity of Developer are of particular concern to the County, in light of the importance of the development of the Property to the general welfare of the community and the fact that a change in ownership or control of Developer or any other act or transaction involving or resulting in a significant change in ownership or control of Developer, is for practical purposes a transfer or disposition of the property then owned by Developer. Developer further recognizes that it is because of such qualifications and identity that the County is entering into the Agreement with Developer. Therefore, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly permitted under this Agreement.

- b. Prior to the Close of Escrow, Developer shall not make any Transfer except that Developer is hereby authorized and permitted to assign this Agreement to one or more limited partnerships whose administrative general partner is an Affiliate of Developer. The term "Transfer" includes any of the following, whether voluntary or involuntary, direct or indirect: (i) assignment of all or any part of this Agreement, or any interest in this Agreement, and (ii) any change in Control of Developer. Chelsea Investment Corporation will be released from this Agreement to the extent of each transfer to an Affiliate under this section and each respective Affiliate assignee(s) shall be a "Developer".
- c. Following or concurrently with the Close of Escrow, Developer may make Transfers as set forth in Article 14 of the Ground Lease.

SECTION 107 Pre-Construction Insurance Requirements

Prior to the Effective Date, Developer shall have submitted to the County evidence of the insurance policies required for the Pre-Construction Period (defined in Section 202) under this Agreement, as set forth in Attachment No. 10, and the Ground Lease, naming as additional insureds the following: "The County of San Diego, and its officers, employees, contractors and agents."

PART 2. PRE-CONSTRUCTION PERIOD AND DISPOSITION OF LEASEHOLD

SECTION 201 Due Diligence Period

The County intends to demolish the improvements on the County Property (the "Demolition"). Developer understands and agrees that the Demolition will include demolition of the existing improvements on the County Property. The County shall cause the Demolition to comply with all governmental rules, regulations, laws and building codes (including safety requirements). The County will diligently pursue completion of Demolition by December 31, 2020. Following the Effective Date and prior to commencement of Demolition, Developer shall, commence its due diligence investigations of the physical condition and title condition of the County Property to determine its suitability for development of the Master Development, including investigation of the environmental and geotechnical suitability of the County Property, as deemed appropriate in the reasonable discretion of Developer, all at the sole cost and expense of Developer ("Due Diligence Investigations"). Within ninety 90 days following notice from County of completion of the Demolition ("Due Diligence Period"), Developer will complete its Due Diligence Investigations. The Due Diligence Period is included within the Pre-Construction Period (defined in Section 202 below). Developer shall have access to the County Property to conduct all tests and inspections reasonably required by Developer to evaluate the County Property, including, without limitation, invasive environmental and geotechnical testing. If Developer does not unconditionally accept the condition of the Property by delivery of a fully executed Due Diligence Certificate in the form attached to Agreement as Attachment No. 9 prior to the end of the Due Diligence Period, Developer shall be deemed to have accepted the condition of the Property. If the condition of the Property is rejected by Developer, then either County or Developer shall have the right to terminate this Agreement without liability to the other party, by delivery of a notice of termination to the other party, except that County will be entitled to and will retain all payments required to be made by Developer to County prior to the date of termination. Following Developer's delivery of a fully

executed Due Diligence Certificate, the County will continue to provide reasonable access to the County Property for Developer's ongoing investigations and pre-construction activities.

Developer will also perform its Due Diligence Investigations for the SDGE Easement prior to the expiration of the Due Diligence Period.

SECTION 202 Pre-Construction Period. The "Pre-Construction Period" shall begin on the Effective Date and, subject to the early termination provisions in this Section 202 and the extension provisions of Section 211, shall expire on the earlier of (a) forty-eight (48) complete calendar months after the Effective Date, or (b) satisfaction of the Pre-Construction Conditions. The Pre-Construction Period will be extended, without cost to Developer if the Demolition is not completed by December 31, 2020). The County will provide written notice to the Developer upon completion of Demolition.

- a. <u>Project Phasing</u>. To accommodate the Project Structure, the timeline for satisfaction of the Pre-Construction Conditions shall be phased for the three Projects as follows ("Phased Timeline"):
- (1) Developer shall satisfy the Pre-Construction Conditions for the first Project within thirty (30) months after the Effective Date;
- (2) Developer shall satisfy the Pre-Construction Conditions for the second Project within thirty-six (36) months after the Effective Date; and
- (3) Developer shall satisfy the Pre-Construction Conditions for the third Project prior to the expiration of the Pre-Construction Period.

This phasing is subject to change based on changes to the Project Structure as approved by the County under Section 212, and subject to extensions, with County approval, to reasonably accommodate financing.

- b. <u>Pre-Construction Obligations and Conditions.</u> During the Pre-Construction Period, Developer shall make diligent and good faith efforts to obtain the Approvals and all financing commitments necessary for construction and lease-up of the Project. The following are the "Pre-Construction Conditions" to be satisfied within the timeframes in the Phased Timeline:
 - (i) Developer shall have obtained all Approvals.
- (ii) Developer shall have obtained all financing commitments, in a form and substance satisfactory to Developer and County, necessary for the construction and lease-up of all Projects within the Master Development, and Developer shall have closed on all financing for each Project within the Master Development.

Developer shall provide prompt written Notice to County of the satisfaction of the Pre-Construction Conditions in accordance with <u>Section 601</u>.

c. <u>Failure of Conditions</u>. If, despite Developer's diligent and good faith efforts, any of the Pre-Construction Conditions are not satisfied within the time period set forth in this <u>Section 202</u>, including any County-approved extension, County or Developer may terminate this Agreement by providing notice in accordance with <u>Section 601</u>, and upon such termination neither County nor Developer shall have any further remedies against the other for termination of this Agreement under this provision. If during the Pre-Construction Period, Developer determines that, despite its diligent and good faith efforts, it will not be able satisfy one or more of the Pre-Construction Conditions, Developer may terminate this Agreement by providing written notice of termination in accordance with <u>Section 601</u>, and in the event of such termination, neither County nor Developer shall have any further remedies against the other for termination of this Agreement under this provision.

SECTION 203 Conveyance of the Leasehold

At such time as all condition's precedent to the conveyance of the Leasehold have been satisfied, as set forth in this Section, County shall convey the Leasehold to Developer on such terms and conditions as are contained in the Ground Lease. The Director may, in his or her discretion, approve changes to this Agreement and its attachments, including the Ground Lease Schedule of Performance, Scope of Development, and the Regulatory Agreement: (1) to facilitate the multi-project tax credit financing structure as set forth in Section 212, or (2) as reasonably requested by the Developer to help obtain a Construction Loan or other Project financing, provided that the requested changes do not increase or decrease the term of the Ground Lease, decrease the overall compensation to be paid to County, or otherwise have, in the determination of the Director, a substantial adverse impact to the County's interests. The Director may approve any such proposed changes administratively, or in his or her discretion, refer any such proposed changes for consideration by County Board of Supervisors.

Upon satisfaction or waiver by the benefitted party (identified below) of the contingencies described below (the "Contingencies"), on a date mutually agreed by County and Developer, in no event more than 30 days after the date of satisfaction of the Contingencies, unless mutually agreed by County and Developer: the Developer shall pay the Initial Rent Payment to County, County and Developer shall execute the Ground Lease, and Developer shall take possession of the leasehold under the Ground Lease. The Contingencies include all of the following:

- a. <u>Limited Partnership Agreement(s)</u> (benefits County and Developer). Developer shall have delivered the limited partnership agreement for any tax credit partnership that will own the Project to County for review, which review shall be limited to confirmation that the partnership agreement is consistent with the DDA and Ground Lease requirements.
- b. <u>Developer's Formation Documents (benefits County)</u>. Developer shall have delivered documentation relating to the corporate, partnership, limited liability or other similar status of Developer and its general partner(s) and other constituent entities, including, without limitation and as applicable: limited partnership agreements and any amendments thereto; articles of incorporation; Limited Liability Company Articles of Incorporation (LLC-1); Statement of Information and Operating Agreement (including any amendments thereto); copies of all resolutions or other necessary actions taken by such entity to authorize the execution of the DDA and related documents; a certificate of status issued by the California Secretary of State; and a copy

of any Fictitious Business Name Statement, if any, as published and filed with the Clerk of San Diego County.

- c. <u>Final Construction Drawings (benefits County and Developer)</u>. Developer shall have submitted and County shall have approved Final Construction Drawings (as defined in <u>Section 305</u>).
- d. <u>Project Budget (benefits County and Developer)</u>. Developer shall have delivered to the County final revisions to the Project Budget, which have been approved by the County, demonstrating to the satisfaction of the County the availability of sufficient funds to pay all Acquisition and Development Costs ("Final Project Budget").
- e. <u>Contract for Construction (benefits County and Developer)</u>. Developer shall have delivered to the County one or more general construction contracts between the Developer and Emmerson Construction, Inc., an Affiliate of the Developer ("Contractor"), covering all construction required by this Agreement and the approved Final Construction Drawings, in an amount that is consistent with the Final Project Budget, together with a construction schedule showing a detailed trade by trade breakdown of the estimated periods of commencement and completion of construction and complete fixturization of the Project, demonstrating that construction will be completed within the time provided in the Schedule of Performance. The Contractor must meet all licensing and insurance requirements of the State of California. The items set forth below shall be incorporated into the contract between Developer and Contractor (with a copy of the contract to be furnished to County for County's reasonable approval prior to the commencement of construction of the Improvements):
- (1) Contractor shall be responsible for the repair, replacement and cleanup of any damage done by Contractor to others' property.
- (2) Contractor shall contain its storage of materials and its operations within the Property and other off-site space as Contractor may be assigned by Developer.
- (3) All trash and surplus construction materials shall be stored within the Property or other off-site spaces as may be approved by Developer. Trash and surplus construction materials shall be promptly removed from the Property at the sole cost of the Contractor.
- (4) Contractor (or Developer at its option) shall provide temporary utilities, portable toilet facilities and potable drinking water as required for its work within the Property or at an off-site construction location staging location approved by Developer.
- (5) Contractor shall notify the County's Lease Administrator (defined in Ground Lease) of any planned work to be performed on weekends or other than regular job hours.
- (6) Contractor shall be responsible for compliance with all applicable codes and regulations of duly constituted authorities having jurisdiction insofar as the performance of the work and completed improvements are concerned for all work performed by Contractor, and all applicable safety regulations, and Contractor shall save and hold County harmless for the work as provided in this Agreement.

- (7) Any signs posted by Contractor or subcontractors on any part of the Property must comply will all applicable laws and regulations.
- f. <u>Guaranty (benefits County)</u>. Developer shall have delivered an executed Completion and Payment Guaranty in the form attached as Exhibit "12".
- g. <u>Evidence of Financing (benefits County and Developer)</u>. The Developer has met the conditions set forth in <u>Section 213</u>. All documents required to be executed in connection with the Construction Loans shall have been duly executed, acknowledged and delivered. Developer has provided evidence that the Initial Rent Payment is ready and available for payment to County.
- h. <u>Insurance (benefits County and Developer)</u>. Developer shall have submitted to the County evidence of the insurance policies required by this Agreement, as set forth in Attachment No. 10, and the Ground Lease, naming as additional insureds the following: "The County of San Diego, and its officers, employees, contractors and agents."
- i. <u>Approvals (benefits County and Developer)</u>. Developer shall have demonstrated that all Approvals have been obtained and that all conditions for the issuance of all necessary permits have been satisfied (with the exception of payment of fees, which payment is provided for in the approved Project Budget). For purposes of clarification, this Contingency can be satisfied without issuance of building permits if the City of San Diego provides a letter stating that all necessary permits are ready to be issued.
- j. <u>Recording Instructions (benefits County and Developer)</u>. Escrow Agent shall have received such supplemental recording instructions as may have been prepared on behalf of the County and Developer that are consistent with and effectuate the intent of this Agreement.
- k. <u>Documents (benefits County and Developer).</u> County, Developer and/or other parties, as appropriate, shall have executed, and filed or recorded as appropriate, the following documents:
 - (1) County Regulatory Agreement;
 - (2) Ground Lease;
 - (3) Memorandum or Memoranda of Ground Lease;
 - (4) Any Reciprocal Easement or Covenant, Conditions and Restrictions that may be necessary for the operation of the Project, as approved by County and Developer.
- l. <u>Title Insurance (benefits Developer)</u>. The Title Company is irrevocably committed to issue (i) the Leasehold Title Policy in favor of Developer showing Developer as the insured holder of the leasehold interest in the Ground Lease and subject only to the Permitted Exceptions or as otherwise approved by Developer.
 - m. <u>Condition of Property (benefits Developer)</u>. The Property shall be free and clear of

all tenants and other third-party occupancy rights and in a physical condition substantially the same as on the date Developer submitted the Due Diligence Certificate, excluding ordinary wear and tear and any changes caused directly or indirectly by any activities of Developer.

n. <u>Proposition M Approval Letter (benefits County)</u>. Developer shall have submitted a written determination from the City of San Diego or the San Diego Housing Commission, approved as to legality by the entity's attorney and in a form reasonably approved by County, stating that the affordable units to be developed are authorized by Measure M, approved by the voters of the City of San Diego at the November 2016 General Election.

SECTION 204 Escrow

County and Developer will open an escrow for the conveyance of each Leasehold with Escrow Agent at such time as is appropriate for completion of conveyance of the Leasehold in accordance with this Agreement.

Sections 204 through 208 (inclusive) of this Agreement shall constitute the joint escrow instructions of County and Developer with respect to the conveyance of each Leasehold, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of the escrow.

County and Developer shall provide such additional escrow instructions as shall be necessary to close the escrow with respect to the conveyance of each Leasehold, and consistent with this Agreement. The Escrow Agent is empowered to act under such instructions, and upon indicating its acceptance in writing, delivered to County and to Developer within five (5) days after the opening of the escrow, shall carry out its duties as Escrow Agent.

Upon receipt by the Escrow Agent of all executed and acknowledged documents listed in Section 204 and upon verbal confirmation of the County and Developer approving the Closing, the Escrow Agent shall record all documents in accordance with Section 205 of this Agreement. The Escrow Agent shall buy, affix and cancel any transfer stamps required by law. Any County insurance policies governing the Property are not to be transferred.

Developer shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified Developer of the amount of such fees, charges and costs, but not earlier than one (1) day prior to the Closing Date for conveyance of the Leasehold from the County to the Developer:

- 1. Escrow fee;
- 2. Recording fees;
- 3. Notary fees:
- 4. Premiums for the title insurance policy or policies ordered by Developer as set forth in Section 207 of this Agreement.

County shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified County of the amount of such fees, charges and costs, but not earlier than one (1) day prior to the Closing Date for conveyance of the Leasehold from County to Developer:

- 1. Costs necessary to place the title in the condition required by the provisions of this Agreement;
- 2. Ad valorem taxes and any other taxes, assessments or impositions of any kind, if any, attributable to County's ownership of the Property prior to conveyance of the Leasehold.
- 3. State, County or other documentary stamps and transfer taxes, if any.

County shall timely and properly execute, acknowledge and deliver the Ground Lease evidencing County's conveyance of the Leasehold to Developer in accordance with the requirements of this Agreement, and if requested by Developer, together with an estoppel certificate certifying that Developer has completed all acts necessary to entitle Developer to acquire the Leasehold, if such be the fact.

The Escrow Agent is authorized to:

- 1. Pay, and charge County and Developer, respectively, for any fees, charges and costs payable under this <u>Section 205</u>. Before such payments are made, the Escrow Agent shall notify County and Developer of the fees, charges and costs necessary to clear title and convey the Leasehold;
- 2. Disburse funds and deliver the Ground Lease and other documents to the parties entitled thereto when the conditions of the escrow have been fulfilled by County and Developer; and
- 3. Record any instruments delivered through the escrow if necessary or proper to vest the applicable interests in Developer and County in accordance with the terms and provisions of this Agreement.

All funds received in the escrow shall be deposited by the Escrow Agent in an interestbearing account for the benefit of the depositing party as directed by the depositing party.

If escrow is not in condition to close on or before the Closing Date set forth in the Schedule of Performance, either party who has fully performed the acts to be performed before the Closing Date may, in writing, demand the return of its money, papers or documents. No demand for return shall be recognized until ten (10) days after the Escrow Agent shall have mailed copies of such demand to the other party at the address of its principal place of business. Objections, if any, shall be raised by written notice to the Escrow Agent and to the other party within the ten- (10) day period. If any objections are raised within the ten- (10) day period, the Escrow Agent is authorized to hold the money, paper and documents until instructed by mutual agreement of the parties or, upon failure thereof, by a court of competent jurisdiction. Notwithstanding the foregoing, the termination rights of County and Developer and other rights and remedies on default are governed

by <u>Sections 501 through 512</u>, inclusive, of this Agreement, and no demand for such return shall affect such rights or remedies. If no such demands are made, the escrow shall be closed as soon as possible.

The Escrow Agent shall not be obligated to return any such money, papers or documents except upon the written instructions of both County and Developer, or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction.

Any amendments to these escrow instructions shall be in writing and signed by both County and Developer. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as escrow agent under such amendment.

All communications from the Escrow Agent to County or Developer shall be directed to the addresses and in the manner established in <u>Section 601</u> of this Agreement for notices, demands, and communications between County and Developer.

The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under <u>Sections 204 through 208</u>, inclusive of this Agreement.

SECTION 205 Recordation of Documents

County and Developer, respectively, agree to perform all acts necessary to achieve recordation and delivery of documents in sufficient time for escrow to be closed in accordance with the foregoing provisions.

a. The following documents shall be recorded in the following order ("Recorded Documents"). Other documents shall be added as determined by County and Developer, however, the County Regulatory Agreement shall not be subordinated to any interest, except as may be required by law (including the published government agency policies or regulations) in connection with Project financing provided by a government agency.

ORDER OF RECORDATION	DOCUMENT NAME
1	SDGE Easement (only in connection with the first Project Closing)
2	Memorandum of Ground Lease
3	County Regulatory Agreement
4	Mortgage security instruments

- b. All documents to be recorded shall be recorded in the Official Records.
- c. In the event that Developer subdivides the Property, the Recorded Documents shall be recorded against each parcel that comprises the vertical subdivision in the same order as set forth under subsection (a), above.

SECTION 206 <u>Possession of Leasehold; Condition of Title</u>

Possession of the Leasehold shall be delivered to Developer concurrently with Close of Escrow. Subject to the terms and conditions of this Agreement, the County shall convey to the Developer the Leasehold free and clear of all (1) occupants, parties in possession, and (2) liens, encumbrances, covenants, conditions, restrictions, easements, leases, taxes and other defects, except for any and all Permitted Exceptions.

SECTION 207 Title Insurance

Concurrently with the recordation of the Memorandum of Ground Lease, Title Company shall provide and deliver to Developer one or more Title Insurance Policies, issued by First American Title Company insuring that the Leasehold to be conveyed is vested in Developer in the condition required by Section 206 of this Agreement ("Leasehold Title Policy"). The Title Company shall provide County with a copy of the Leasehold Title Policy. The Leasehold Title Policy shall be in the amount specified by Developer.

If Developer elects to secure an A.L.T.A. owner's policy or to secure an A.L.T.A. lender's policy for the benefit of any lender for which a mortgage or leasehold mortgage will or is intended to be granted covering the Leasehold as permitted by the terms of this Agreement, County shall cooperate with Developer to obtain such policies by providing existing surveys and engineering studies in its possession which relate to or affect a condition of title or a geological condition. In providing such surveys and engineering studies, County does not warrant the accuracy or sufficiency of such material. The responsibility of County assumed by this paragraph is limited to cooperating in good faith with Developer, and does not require County to create or obtain any new surveys or studies. Notwithstanding the forgoing, if the Title Company is unable or unwilling to deliver said ALTA owner's or lender's policy consistent with the provisions of this Agreement, then in addition to any other rights or remedies of Developer, Developer may terminate this Agreement pursuant to Section 508. County shall have no obligation to incur any cost or to take any action necessary to help Developer obtain an A.L.T.A. policy. Developer shall pay for all premiums for all Title Insurance Policies and coverage and special endorsements with respect to the Leasehold, except as otherwise set forth in this Agreement.

SECTION 208 Notice of Possessory Interest; Payment of Taxes and Assessments on Value of Entire Property

a. Responsibility for Payment of Taxes and Assessments. County shall not pay any taxes or assessments accruing against Developer on the Property or any interest of Developer in the Property before, during, or after the term of the Ground Lease, and all such tax payments and assessments shall be the sole responsibility of Developer. Developer shall be solely responsible for payment of any taxes or assessments levied upon any Improvements, fixtures or personal property located on the Property, to the extent that the taxes or assessments result from the business or other activities of Developer upon, or in connection with, the Property. Developer shall pay all taxes prior to delinquency, and shall not allow any taxes, assessments or fees to become a lien against the Property or any Improvements on the Property from and after the Closing. Developer shall not be prevented or prohibited from contesting the validity of any tax, assessment or fee in a manner authorized by law and the County shall cooperate with Developer in connection with such

contest.

- b. <u>Definition of "Taxes"</u>. As used in this Agreement, the term "taxes" means all taxes, governmental bonds, special assessments, Mello-Roos assessments, charges, rent income or transfer taxes, license and transaction fees, including, but not limited to, (i) any state, local, federal, personal or corporate income tax, or any real property or personal property tax, (ii) any estate inheritance taxes, (iii) any franchise, succession or transfer taxes, (iv) interest on taxes or penalties resulting from Developer's failure to pay taxes, (v) any increases in taxes attributable to the sale of Developer's leasehold interest in the Property, or (vi) any taxes which are essentially payments to a governmental agency for the right to make improvements to the Property.
- c. <u>Section 107.6 Statement</u>. Pursuant to California Revenue and Taxation Code Section 107.6, Developer is notified that the terms of this Agreement may result in the creation of a possessory interest, and if a possessory interest is vested in Developer, Developer may be subjected to the payment of real property taxes levied on the possessory interest.

SECTION 209 Occupants of the Leasehold

The Leasehold shall be conveyed free of any possession or right of possession, except that of Developer, unless waived in writing by Developer.

SECTION 210 Condition of the Property

SECTION 210.1 Hazardous Materials

- a. <u>Hazardous Materials Laws Definition.</u> As used in this section, the term "Hazardous Materials Laws" means any and all federal, state or local laws, rules, decrees, orders, regulations or court decisions (including "common law"), including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., §9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C., §1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., §6901 et seq.), the California Hazardous Waste Control Act and the Carpenter-Presley-Tanner Hazardous Substance Act, State of California Health and Safety Code Section 25100, et seq., and Section 25300, et seq., the California Environmental Quality Act of 1970, and the Porter-Cologne Water Quality Control Act, Cal. Water Code Section 13000, et seq. relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Property, soil and ground water conditions or other similar substances or conditions.
- b. <u>Hazardous Materials Definition</u>. As used in this Agreement the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that:
 - (i) Is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;
 - (ii) Is controlled, referred to, designated in or governed by any Hazardous Materials Laws;

- (iii) Gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws; or
- (iv) Is any other material or substance giving rise to any liability, responsibility or duty upon the County or Developer with respect to any third person under any Hazardous Materials Law. Developer hereby represents and warrants that the development, construction and uses of the Leasehold permitted under this Agreement (i) will comply with all applicable environmental laws; and (ii) do not require the presence of any Hazardous Materials on the Property.

Hazardous Materials do not include any substances customarily used in construction, development, operation, or maintenance of residential real estate, provided such substances are used in accordance with all applicable laws.

c. Within ten (10) days of request by Developer, County shall deliver to Developer, if not previously delivered, all documents relevant to the condition of the Property within the County's possession or control, including, without limitation, a preliminary title report with underlying exceptions, environmental reports, studies, surveys, and all other relevant documents within the County's possession or control (collectively referenced as "Documents"). County does not warrant the accuracy of these Documents or that these Documents constitute all documents that may exist regarding the conditions of the Property, and Developer has been cautioned to conduct its own inquiry to determine if more information is available.

SECTION 210.2 <u>Suitability of the Property</u>

- a. Prior to Closing, Developer shall have the right to engage, at its sole cost and expense, its own environmental consultant ("Developer's Environmental Consultant"), to make such investigations as Developer deems necessary, including without limitation any "Phase 1" and "Phase 2" (if applicable) investigations of the Property or any portion thereof, and the County shall promptly be provided a copy of all reports and test results provided by Developer's Environmental Consultant (the "Environmental Reports"). Developer shall execute the Due Diligence Certificate upon Developer's completion of such investigations, signifying its completion of due diligence with respect to the environmental condition of the Property.
- b. The Leasehold shall be delivered from County to Developer in an "as is" physical condition, with no warranty, express or implied by County as to the presence of Hazardous Materials, or the condition of the soil, its geology or the presence of known or unknown faults. From and after the effective date of the Ground Lease, if the condition of the Leasehold is not in all respects entirely suitable for the use or uses to which such Leasehold will be put, then it is the sole responsibility and obligation of Developer to place the Leasehold in all respects in a condition entirely suitable for the development of the Project, solely at Developer's expense.
- c. From and after the Closing, Developer, its successors, and assigns, shall protect, indemnify, defend (with counsel selected by County), reimburse and hold County and its elected officials, officers, employees and agents harmless (collectively, the "Hazardous Materials Indemnity Obligations") from any Claims (defined in Section 309), judgments, damages, penalties, fines, costs or expenses (known or unknown, contingent or otherwise), liabilities (including sums

paid in settlement of Claims), personal injury (including wrongful death), property damage (real or personal) or loss, including any attorneys' fees, consultant fees, and expert fees (consultants and experts to be selected by County) which arise from or in connection with the presence or suspected presence of Hazardous Materials, including the soil, ground water, or soil vapor on or under the Property or the Improvements. Without limitation of the preceding sentence, the Hazardous Materials Indemnity Obligations apply to costs incurred in connection with investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any Hazardous Materials Laws because of: (a) the presence of Hazardous Materials in the soil, ground water, or soil vapor on the Property, regardless of the source or original location of such Hazardous Materials, except for any such Hazardous Materials that are present on the Property as a result of activities of County, its employees, contractors, or agents that occurred during the period from the acceptance of the condition of the Property by Developer under Section 201 to the Closing, and (b) any release, discharge, exposure, or displacement, or migration of Hazardous Materials caused by any act or omission of Developer. The Hazardous Materials Indemnity Obligations shall survive the expiration or earlier termination of this Agreement until all Claims involving any of the indemnified matters are fully, finally, and absolutely barred by the applicable statutes of limitations.

d. On and after the Effective Date, Developer hereby waives, releases and discharges the County and its respective members, officers, employees, agents, contractors and consultants, from any and all present and future Claims, demands, suits, legal and administrative proceedings, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys' fees) arising out of or in any way connected with the County's or Developer's use, maintenance, ownership or operation of the Property, any Hazardous Materials on the Property, or the existence of Hazardous Materials contamination in any state on the Property, however the Hazardous Materials came to be placed there, except that arising out of the gross negligence or willful misconduct of the County or its employees, officers or agents. Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

To the extent of the release set forth in this <u>Section 210.2</u>, Developer waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

SECTION 211 Sources of Financing.

The Acquisition and Development Costs shall be financed with a combination of "Sources of Financing" Developer anticipates will include include the following: federal and state Low Income Housing Tax Credits and related equity, private (bank) construction and permanent financing (which may include bond financing), Project Based Vouchers, soft loans from the San Diego Housing Commission, funding from the State of California Department of Housing and Community Development (which may include MHP and AHSC financing), Innovative Housing

Trust Funds, Affordable Housing Program Funds and other gap financing sources. Developer shall use best efforts to procure the above referenced Sources of Financing or portions thereof needed to allow for a financially feasible development of the Project in accordance with the Schedule of Performance. For purposes of this Section, "best efforts" means Developer has submitted an application for each of the Sources of Financing by each of the deadlines required by (i) those respective Sources of Financing and (ii) the Schedule of Performance, and has used diligent efforts to submit applications that are complete and responsive. Developer shall not have any obligation to apply for any of the Sources of Financing until such time as Developer reasonably determines that the Project meets the threshold criteria for such financing and will be competitive in any application for such financing.

In the event that the Developer is not able to obtain the Sources of Financing, despite its best efforts, or in the event the Developer reasonably determines that all or any portion of the Master Development is infeasible, despite Developer's best efforts, Developer may terminate this Agreement pursuant to Section 508, and upon such termination, neither County nor Developer shall have any further remedies against the other for termination of this Agreement. The Sources of Financing listed here and in the Schedule of Performance may be revised from time to time by the Developer, subject to the approval of the County which will not be unreasonably withheld, conditioned, or delayed.

SECTION 212 <u>Structuring to Facilitate Financial Feasibility.</u>

In order to facilitate the financial feasibility of the Master Development, Developer intends to obtain three awards of 4% and/or 9% Low Income Housing Tax Credits to finance the Projects within the Master Development. To utilize three awards of both 4% and/or 9% Low Income Housing Tax Credits, the Master Development will need to be structured as three projects under separate ownership to include up to six separate Ground Leases ("Project Structuring"). In order to implement the structuring of the Master Development, which will be legally and financially structured as multiple separate projects, the County will, in its reasonable discretion, partially assign this DDA to such separate Project owners and/or make amendments and/or modifications to the DDA, including its attachments, that are reasonably necessary to reflect the Project Structuring, including, but not necessarily limited to, (i) amending and duplicating the Ground Lease such that each Project is leased to Developer under multiple separate ground leases with different legal descriptions, so long as such amendments substantially conform in form and substance to the attached form of Ground Lease; (ii) amending and duplicating the Regulatory Agreement such that each Project is regulated by a separate Regulatory Agreement so long as such amendments substantially conform in form and substance to the attached form of Regulatory Agreement; (iii) attaching separate Schedules of Performance to the DDA for each Project by an amendment to the DDA; (iv) attaching separate Scopes of Development to the DDA for each Project by an amendment to the DDA; and (v) allocating the Initial Rent Payment obligation among the Project owners as set forth in the definition of Initial Rent Payment in Section 102, or as otherwise agreed to by County and Developer, and accelerating the incremental Initial Rent Payments set forth in Section 102 if and to the extent possible with available Project funding. The Master Development is currently structured as three Projects, but such structuring may be changed as needed to facilitate successful Project financing, subject to County approval. The Director may administratively approve any proposed changes, modifications, or amendments contemplated under this Section, or in his or her discretion, refer any such proposed changes, modifications, or amendments for consideration by County Board of Supervisors.

SECTION 213 <u>Evidence of Financing</u>

- a. Not later than fifteen (15) days prior to the scheduled Closing Date, and in no event later than as provided in the Schedule of Performance, Developer shall submit to the County evidence satisfactory to the County that Developer has obtained the financing necessary for the acquisition of the Property and development of a Project in accordance with this Agreement. Such evidence of financing shall include the following:
 - 1. Substantially final drafts of all loan documents relating to the Construction Loan, including a final Project Budget approved by the Construction Lender (except that the final Project Budget may be provided any time prior to Closing if it is not yet available fifteen days prior to the schedule Closing Date), certified by Developer to be a true and correct copy or copies;
 - 2. A copy of loan commitments evidencing that Permanent Loan(s) will be available at Project completion, certified by Developer to be a true and correct copy or copies;
 - 3. Documentation of the tax exempt bond allocation for any 4% Low Income Housing Tax Credit component of the Project, and a substantially final draft of the limited partnership agreement or other documentation acceptable to County demonstrating the commitment of the Tax Credit Equity Investor(s) to provide the Investor Limited Partner Capital Contribution(s), to demonstrate that Developer has adequate equity funds committed to provide the amount of Developer equity necessary to finance the Project;
 - 4. A copy of all other financing commitments evidencing that Developer has obtained the financing necessary for the acquisition and development of the Property in accordance with this Agreement, including without limitation copies of all commitments from all Sources of Financing; and
 - 5. A copy of the contract between Developer and the general contractor for the construction of the Improvements, certified by Developer to be a true and correct copy.
- b. The County shall approve or disapprove such evidence of financing within the time established in the Schedule of Performance. Such approval shall not be unreasonably withheld. If the County shall disapprove any such evidence of financing, the County shall do so by written notice to Developer stating the reasons for such disapproval.
- c. Final versions of all documents required above shall be provided by Developer to County concurrently with the Closing.

PART 3. DEVELOPMENT OF THE PROPERTY

SECTION 301 <u>Land Use Approvals</u>

It is the responsibility of Developer, without cost to County, to ensure that zoning of the Property and all applicable land use requirements will permit development of the Property and construction of the Improvements and the use, operation, and maintenance of such Improvements in accordance with the provisions of this Agreement. The following shall be conditions of the Closing and shall be accomplished by the date set forth in the Schedule of Performance: (A) Developer shall submit and County shall approve complete Final Construction Drawings; (B) Developer shall obtain all Approvals, and (C) Developer shall satisfy all other conditions precedent to the Closing as set forth in this Agreement. Nothing contained herein shall be deemed to entitle Developer to any permit or other County approval necessary for the development of the Property or waive any applicable County requirements. This Agreement does not (a) grant any land use entitlement to Developer, (b) supersede, nullify or amend any condition which may be imposed by the County in connection with approval of the Project, (c) guarantee to Developer or any other party any profits from the development of the Property, or (d) amend any County laws, codes or rules. This is not a Development Agreement as provided in Government Code Section 65864. Without cost to County, County shall provide appropriate technical assistance to Developer in connection with Developer's obtaining all necessary permits and approvals for the construction of the Improvements.

SECTION 302 Scope of Development

The Property shall be developed in accordance with and within the parameters established in the Scope of Development.

SECTION 303 Basic Concept and Schematic Drawings

- a. Developer shall prepare and submit basic concept and schematic drawings and related documents for the development of the Property to the County for review and written approval within the time established in the Schedule of Performance. Basic concept and schematic drawings shall include a site plan, elevations and sections of the Improvements as they are to be developed and constructed on the Property. The County's review of the concept and schematic drawings shall be limited to the exterior appearance of the Project and consistency of the basic concept and schematic drawings with this Agreement and Developer's Proposal. Developer shall make a public presentation of the basic concept and schematic drawings to solicit community input.
- b. The Property shall be developed in a manner consistent with the basic concept and schematic drawings and related documents except as changes may be mutually agreed upon between Developer and County. Any such changes shall be within the limitations of the Scope of Development.

SECTION 304 Landscaping Plans

a. Developer shall prepare and submit to the County for its approval preliminary and final landscaping plans for the Property. These plans shall be prepared and submitted within the times established in the Schedule of Performance.

b. The landscaping plans shall be prepared by a professional landscape architect. Such landscape architect may be the same firm as Developer's architect. Within the times established in the Schedule of Performance, Developer shall submit to the County for approval the name and qualifications of its landscape architect.

SECTION 305 Construction Drawings and Related Documents

- a. Developer shall prepare and submit construction drawings and related documents (collectively called the "Plans") to the County for review (including but not limited to architectural review), and written approval in the times established in the Schedule of Performance. Such construction drawings and related documents shall be submitted as 50% and Final Construction Drawings. Final Construction Drawings are hereby defined as those in sufficient detail to obtain a building permit.
- b. Approval of progressively more detailed Plans will be promptly granted by the County if developed as a logical evolution of Plans theretofore approved. Any items so submitted and approved by the County shall not be subject to subsequent disapproval. In addition, the County's review and approval of the Plans will be limited to the portion of the Plans pertaining to the exterior of the Project.
- c. During the preparation of all Plans, the County and Developer shall hold regular progress meetings to coordinate the preparation of, submission to, and review of Plans and related documents by the County. The County and Developer shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any documents to the County can receive prompt and speedy consideration.
- d. If any revisions or corrections of Plans approved by the County shall be required by any government official, County, department, or bureau having jurisdiction over the development of the Property, Developer and the County shall cooperate in efforts to obtain waiver of such requirements or to develop a mutually acceptable alternative.

SECTION 306 <u>County Approval of Plans</u>

- a. Subject to the terms of this Agreement including <u>Section 305</u>, the County shall have the right to review (including without limitation architectural review) and approve or disapprove all Plans and submissions, including any proposed substantial changes to any such Plans or submissions approved by County. Upon receipt of any disapproval, Developer shall revise the Plans, and shall resubmit to the County as soon as possible after receipt of the notice of disapproval. The County shall approve or disapprove the Plans referred to in <u>Sections 303, 304 and 305</u> of this Agreement within the times established in the Schedule of Performance. Any disapproval shall state in writing the reasons for disapproval and the changes which the County requests to be made. Such reasons and such changes must be consistent with the Scope of Development. Developer, upon receipt of a disapproval based upon powers reserved by the County hereunder, shall revise the Plans, and shall resubmit to the County as soon as possible after receipt of the notice of disapproval, and the process for review and approval of the Plans shall continue until such time as the County has approved the Plans.
 - b. If Developer desires to make any substantial change in the Final Construction

Drawings after their approval, such proposed change shall be submitted to the County for approval. For purposes of this Section, "substantial" shall mean any material change in the exterior building materials or equipment, exterior specifications, or the exterior structural or exterior architectural design or exterior appearance of the Project. Nothing herein shall be interpreted as altering, modifying, waiving, amending, or reducing any requirements of any governmental permit required by any local, state or federal permitting authority for the Project.

SECTION 307 Cost of Construction

The cost of developing the Property and constructing the Improvements, including any offsite or onsite improvements required by the County in connection therewith, shall be the responsibility of Developer, without any cost to County, subject to the terms of this Agreement.

SECTION 308 Schedule of Performance

- a. Each party to this Agreement shall perform the obligations to be performed by such party pursuant to this Agreement within the respective times provided in the Schedule of Performance or elsewhere in this Agreement, and if no such time is provided, within a reasonable time. The Schedule of Performance shall be subject to amendment from time to time upon the mutual agreement of County and Developer.
- b. After the Closing, Developer shall promptly begin and thereafter diligently pursue completion of the construction of the Improvements.
- c. During periods of construction, Developer shall submit to the County a written report of the progress of construction when, and as reasonably requested by the County, but not more frequently than once every quarter. The report shall be in such form and detail as may be reasonably required by the County and shall include a reasonable number of construction photographs (if requested) taken since the last report by Developer. Copies of construction draw documents in the forms submitted to the Project lenders and tax credit investor shall be accepted as written reports of the progress of construction. If County utilizes the services of a construction monitor, Developer shall reasonably cooperate with the County's monitor to coordinate inspections without expense or cost to Developer.

SECTION 309 Indemnification, Exculpation, and Insurance

- a. <u>Definition of "County Parties" and "Developer Parties"</u>. The term "County Parties" refers singularly and collectively to County and its elected officials, officers, directors, affiliated entities, agents, volunteers, and employees. The term "Developer Parties" refers singularly and collectively to Developer and its officers, members, partners, affiliates, agents, employees, contractors, investors, and lenders.
- b. <u>Exculpation</u>. The following exculpation provisions ("Exculpation Provisions") shall apply.
- 1. Except as otherwise provided in this Agreement and to the fullest extent permitted by law, Developer, on its behalf and on behalf of all Developer Parties knowingly and voluntarily assumes the risk of, waives all Claims (in law, equity, or otherwise) against County

Parties arising out of, and agrees that County Parties shall not be liable to Developer Parties for: (a) injury to or death of any person, or (b) loss of, injury or damage to, or destruction of any tangible or intangible property, including the resulting loss of use, economic losses, and consequential or resulting damage of any kind from any cause in connection with this Agreement, the Ground Lease, the Leasehold, or the Project; provided, however, that the County Parties shall not be exculpated from liabilities arising out of the gross negligence or willful misconduct of any County Party.

- 2. No County Party, other than the County, shall have any personal liability or responsibility for any of the responsibilities or liabilities of County under this Agreement.
- 3 These Exculpation Provisions shall survive the expiration or earlier termination of this Agreement until all Claims within the scope of the Exculpation Provisions are fully, finally, and absolutely barred by the applicable statutes of limitations.
- 4. Developer acknowledges that the Exculpation Provisions of this Agreement were negotiated with County, that the consideration for the Exculpation Provisions is fair and adequate, and that Developer had a fair opportunity to negotiate, accept, reject, modify, or alter the Exculpation Provisions of this Agreement.
- 5. The Exculpation Provisions of this Agreement may not be interpreted or construed as an attempt by County to be relieved of liability arising out of a non-delegable duty on the part of County.
- c. <u>Waiver of Civil Code Section 1542</u>. With respect to the Exculpation Provisions of this Agreement, Developer waives the benefits of State of California Civil Code Section 1542, which provides:
 - "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Notwithstanding anything to the contrary here, the release and exculpation in favor of the County Parties hereunder shall not apply to Claims arising from or related to (1) any claim arising from the County's use of or access to the Property, or (2) County Parties gross negligence or willful misconduct.

- d. <u>Indemnification</u>. The following indemnification provisions ("Indemnification Provisions") shall apply from and after the Effective Date of this Agreement:
- 1. <u>Developer's Indemnification of County Parties</u>. To the fullest extent permitted by law, Developer shall, at Developer's sole expense and with counsel reasonably acceptable to County, indemnify, protect, defend, and hold harmless County Parties ("Developer Indemnification Obligations") from and against all Claims, from any cause, arising out of or relating (directly or indirectly) to the following; provided Developer shall not be responsible for (and such indemnity shall not apply to): (i) activities relating to the Demolition, or (iii) to the extent of any gross negligence or willful misconduct of any County Party:

- (a) Activities of Developer Parties in connection with this Agreement;
- (b) Any plans or designs for Improvements prepared by or on behalf of Developer Parties, including without limitation, errors or omissions with respect to such plans or designs;
- (c) Any loss or damage to County resulting from any inaccuracy in or breach of any representation or warranty of Developer, or resulting from any breach or default by Developer under this Agreement;
- (d) Any accident, personal injury, or casualty on the Property resulting from acts or omissions of Developer Parties.
- (e) Any Claim based on allegations this Agreement or the Ground Lease violates Article XXXIV of the California Constitution, or its implementing statues and regulations.

For purposes of this Agreement, "Claims" means any and all claims, losses, costs, damage, expenses, liabilities, liens, actions, causes of action (whether in tort or contract, law or equity, or otherwise), charges, assessments, fines, and penalties of any kind (including consultant and expert expenses, court costs, and attorneys' fees actually incurred).

The Developer Indemnification Obligations in this section are in addition to any other indemnification and related obligations under this Agreement and the Ground Lease.

- 2. Type of Injury or Loss. Developer's Indemnification Obligations extend to and include Claims for:
- (a) Injury to any persons (including death at any time resulting from that injury);
- (b) Loss of, injury or damage to, or destruction of property (including all loss of use resulting from that loss, injury, damage, or destruction);
 - (c) All economic losses and consequential damage of any kind.
- 3. Active or Passive Negligence; Strict Liability. Except as provided in this section, the Developer Indemnification Obligations shall apply, without limitation, to Claims caused by the concurrent negligent act or omission, whether active or passive, of County Parties, and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on County Parties. Developer Indemnification Obligations shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a Claim was caused solely by the gross negligence or willful misconduct of a County Party.
- 4. <u>Indemnification Independent of Insurance Obligations</u>. The Developer Indemnification Obligation provisions may not be construed or interpreted as in any way restricting, limiting, or modifying Developer's insurance or other obligations and is independent of Developer's insurance and other obligations. Developer's compliance with the insurance

requirements and other obligations of this Agreement shall not in any way restrict, limit, or modify the Developer Indemnification Obligations.

- 5. <u>Survival of Indemnification</u>. The Developer Indemnification Obligations shall survive the expiration or earlier termination of this Agreement until all Claims against County Parties involving any of the indemnified matters are fully, finally, and absolutely barred by the applicable statutes of limitations.
- 6. <u>Duty to Defend</u>. Developer's duty to defend County Parties is separate and independent of Developer's duty to indemnify County Parties. The duty to defend includes Claims for which County Parties may be liable without fault or strictly liable. The duty to defend applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of Developer Parties have been determined. The duty to defend applies immediately, regardless of whether County Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of County and Developer that County Parties be entitled to obtain summary adjudication or summary judgment regarding Developer's duty to defend County Parties at any stage of any claim or suit within the scope of the Developer Indemnification Obligations. Notwithstanding the forgoing, the County shall be responsible for defense costs to the extent that a final judgment of a court of competent jurisdiction establishes that a Claim was caused by the gross negligence or willful misconduct of a County Party.
- 7. <u>Insurance Requirements</u>. Developer shall meet all insurance requirements set forth in Attachment No. 10 to this Agreement.
- 8. <u>No Punitive or Consequential Damages</u>. Neither County nor Developer shall be entitled to any punitive or consequential damage award against the other party in any action or proceeding arising out of or related to this Agreement.
- 9. <u>County Indemnity.</u> The County will indemnify the Developer Parties for any Claims arising from or related to the Demolition, but not for any such Claim that is proximately or contributorily caused by any act or omission of Developer.

SECTION 310 Prevailing Wages

Work performed by Developer or its contractor(s) may be a "public work" for prevailing wage purposes. Developer hereby expressly acknowledges and agrees that County has never previously represented to the Developer or its contractor(s) for the Improvements in writing or otherwise, that any work under this Agreement is not a "public work," as defined in Section 1720 of the Labor Code. It is not the intent of this Agreement to impose an obligation to pay prevailing wages on work otherwise exempt from State of California prevailing wage laws. Developer is solely responsible for ensuring prevailing wages are paid when required. Projects subject to the payment of prevailing wages are subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations, among other requirements. Developer is solely responsible for ensuring all required job site postings and all certified payroll and other reporting applicable to it as an awarding body are completed, and all other requirements are met in accordance with State of California prevailing wage regulations. Information regarding prevailing

wage requirements can be obtained from the Director, Department of Industrial Relations at www.dir.ca.gov, State of California Labor Code Section 1720, et seq., and Title 8 of the State of California Code of Regulations, Section 16000, et seq.

In connection with the development and construction (as defined by applicable law) of the Improvements, including, without limitation, any public work (as defined by applicable law), if any, Developer shall bear all risks of payment or non-payment of state prevailing wages and compliance with all requirements under State of California Labor Code Section 1720, et seq., and Title 8 of the State of California Code of Regulations, Section 16000, et seq., and all related statutes, regulations, and policies.

In addition to and without limiting any other indemnification and related provisions of this Agreement, to the fullest extent permitted by law, Developer shall indemnify, protect, defend and hold harmless the County its officers, employees, contractors, agents and attorneys, with counsel reasonably acceptable to County, from and against any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (including labor costs, penalties, reasonable attorney's fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development and/or construction (as defined by applicable law) of the Improvements, including, without limitation, any and all public works (if any) (as defined by applicable law), results or arises in any way from noncompliance with any requirements under State of California Labor Code Section 1720, et seq., and Title 8 of the State of California Code of Regulations, Section 16000, et seq., and all related statutes, regulations, and policies.

The foregoing indemnity shall survive completion of the Project and termination or expiration of this Agreement.

SECTION 311 Notice of Non-Responsibility

County shall, at any and all times during the term of this Agreement, have the right to post and maintain on the Property, and record against the Property, as required by law, any notice or notices of non-responsibility provided for by the mechanics' lien laws of the State of California; provided, however, that Developer shall, on behalf of the County, post and maintain on the Property, and record against the Property, all notices of non-responsibility provided for by the mechanics' lien laws of the State of California.

SECTION 312 Permits

Before commencement of construction or development of any buildings, structures or other work of improvement upon any portion of the Property, Developer shall, at its own expense, secure or cause to be secured, any and all permits which may be required by the City of San Diego or any other governmental agency affected by such construction, development or work.

SECTION 313 Rights of Access

Commencing upon the Closing, representatives of the County shall have the reasonable right of access to the Property, upon 24 hours' written notice to Developer (except in the case of an emergency, in which case County shall provide such notice as may be practical under the circumstances), without charges or fees, at normal construction hours during the period of

construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Improvements. Such representatives of the County shall be those who are so identified in writing by the County.

The Developer has the right to designate representatives to accompany the County representatives on such inspections. The County agrees to coordinate with Developer to schedule such inspections so that Developer's representative may attend the inspections, in the discretion of Developer.

SECTION 314 Disclaimer of Responsibility by County

The County neither undertakes nor assumes nor will have any responsibility or duty to Developer or to any third party to review, inspect, supervise, pass judgment upon or inform Developer or any third party of any matter in connection with the development or construction of the Improvements, whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Property, any person furnishing the same, or otherwise. Developer and all third parties shall rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Developer or to any third party by the County in connection with such matter is for the public purpose of redeveloping the Property, and neither Developer (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon. County shall not be responsible for any of the work of construction, improvement or development of the Property.

SECTION 315 <u>Taxes, Assessments, Encumbrances and Liens</u>

Commencing upon the Closing, Developer shall pay, when due, all real estate taxes and assessments assessed and levied on or against the Property or any portion thereof. Developer shall not place, or allow to be placed, against the Leasehold Property or any portion thereof, any mortgage, trust deed, encumbrance or lien not authorized by this Agreement or the Ground Lease. In addition, Developer shall remove, or shall have removed, any levy or attachment made on title to the Leasehold and/or Property (or any portion thereof), or shall assure the satisfaction thereof within a reasonable time but in any event prior to a sale thereunder.

PART 4. USE OF THE PROPERTY

SECTION 401 <u>Uses</u>

Developer and its successors and assigns shall use the Property only as set forth in the Ground Lease and the County Regulatory Agreement.

SECTION 402 Effect and Duration of Covenants

The covenants established in this Part 4 shall run with the land, without regard to technical classification and designation, and shall be for the benefit and in favor of and enforceable against the original Developer and successors in interest by the County. Unless set forth otherwise, the covenants described in this Part 4 shall commence upon the Closing and shall be set forth in the County Regulatory Agreement and shall remain in effect during the Covenant Period.

SECTION 403 <u>County Regulatory Agreement</u>

Concurrently with each Closing, Developer and County shall execute and cause the recordation of a County Regulatory Agreement, which shall be and remain senior to any security instruments recorded for any Construction Loan or other financing (except as provided in Section 205(a). Prior to Closing, the parties will meet and confer regarding the affordability provisions of the Regulatory Agreement. Based on such meet and confer, the Developer may then request modifications to the income limits and unit mix described in Regulatory Agreement, which the County, through the Director with concurrence from the Director of the Housing and Community Development Services Department, shall approve or disapprove. The County will not unreasonably withhold approval of such changes. Without limiting the forgoing, the County will approve of modifications to the above described unit mix if such modifications are necessary to the financial feasibility to the Project (which shall include facilitating Lessee's ability to ensure compliance with the true debt test) taking into consideration all Project Expenses (as defined the Ground Lease) and are substantially in accord with Lessee's proposal attached to the DDA and Ground Lease.

PART 5. DEFAULTS AND REMEDIES

SECTION 501 Defaults - General

- a. Subject to the extensions of time for Force Majeure as set forth in <u>Section 602</u>, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who fails or delays must commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.
- b. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, 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. Delays by either party in asserting any of its rights and remedies shall not deprive either 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.
- c. If a monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default written notice of such default. The party in default shall have a period of ten (10) calendar days after such notice is received or deemed received within which to cure the default prior to exercise of remedies by the injured party.
- d. If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, the party in default shall have such period to effect a cure prior to exercise of remedies by the injured party. If the default is such that it is not reasonably capable of being cured within thirty (30) days after such notice is received, and the party in default (1) initiates corrective

action within said period, and (2) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in default shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the injured party, but in any event no more than one hundred and twenty (120) days of receipt of such notice of default from the injured party.

e. After Developer gives written notice to County of the admission to Developer's limited partnership of the Tax Credit Equity Investor, County shall send to the Tax Credit Equity Investor a copy of all notices of default and all other notices that County sends to Developer, at the address for the Tax Credit Equity Investor as provided by written notice to County by Developer. Any cure of an event of default by Developer hereunder made or tendered by the Tax Credit Equity Investor shall be accepted or rejected on the same basis as if made by Developer. Notices will also be provided to any Project lender in accordance with the Ground Lease.

SECTION 502 <u>Institution of Legal Actions</u>

In addition to any other rights or remedies (and except as otherwise provided in this Agreement), either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California, in any other appropriate court of that county, or in the United States District Court for the Southern District of California.

SECTION 503 Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

SECTION 504 <u>Acceptance of Service of Process</u>

- a. In the event that any legal action is commenced by Developer against the County, service of process on the County shall be made by personal service upon the County, or in such other manner as may be provided by law.
- b. In the event that any legal action is commenced by the County against Developer, service of process on Developer shall be made by personal service upon Developer at its statutory agent for service of process within the State of California, or in such manner as may be provided by law.

SECTION 505 Rights and Remedies Are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive 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.

SECTION 506 <u>Damages</u>

a. Subject to the notice and cure provisions of <u>Section 501</u>, if either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within the time provided in <u>Section 501</u>, the defaulting party shall be liable to the non-defaulting party for any damages caused by such default, and the non-defaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default. Neither the County nor the Developer shall be entitled to, and each hereby waives, any right to seek special or consequential damages of any kind or nature arising out of or in connection with this Agreement.

b. <u>Limitation of Damages Recoverable From County</u>

Any provision to the contrary notwithstanding, any money judgment resulting from any default or other claim arising under this Agreement shall be satisfied only out of the current rents, issues, profits and other income County receives under this Agreement, net of all current operating expenses, liabilities, reserves and debt service associated with the Property (for purposes of this only, "Net Income"), (b) no other assets or real, personal or mixed property of County, wherever located, shall be subject to levy on any judgment obtained against County, (c) if the Net Income is insufficient to satisfy the judgment, Developer will not institute any further action, suit, claim or demand, in law or in equity, against County for or on the account of the deficiency, and (d) the neglect or failure shall not constitute consent by County for Developer to perform or observe the terms, covenants or conditions of this Agreement at County's expense. Developer waives, to the extent permitted under law, any right to satisfy any money judgment against County except from Net Income.

SECTION 507 Specific Performance

Subject to the notice and cure provisions of <u>Section 501</u>, if either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written Notice of such default upon the defaulting party. If the default is not cured within the time provided in <u>Section 501</u>, the non-defaulting party, at its option, may thereafter (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such default.

SECTION 508 <u>No-Fault Termination</u>

Prior to the first Closing hereunder, either party shall have the right to terminate this Agreement, by providing written Notice to the other party, in the event of a failure of any Pre-Construction Condition or any of the Contingencies, provided that such condition is outside the reasonable control of the party seeking to terminate this Agreement, whereupon neither County nor Developer shall have any further rights against or liability to the other under this Agreement. After the first Closing hereunder, any termination of this Agreement pursuant to this Section shall only apply to any Project within the Master Development for which a Closing has not yet occurred.

SECTION 509 <u>Termination by Developer</u>

Prior to the first Closing hereunder, subject to the notice and cure provisions of <u>Section 501</u>, Developer shall have the right to terminate this Agreement, by providing written notice to County, in the event of a default by County pursuant to this Agreement. After the first Closing hereunder, any termination of this Agreement pursuant to this Section shall only apply to any Project within the Master Development for which a Closing has not yet occurred.

SECTION 510 <u>Termination by County</u>

- a. Subject to the notice and cure provisions of <u>Section 501</u>, County shall have the right, prior to the first Closing hereunder, to terminate this Agreement in the event of a default by Developer, including but not limited to the following:
 - 1. Developer fails comply with Section 213; or
- 2. Developer (or any successor in interest) assigns or attempts to assign the Property or any of Developer's rights in and to the Property or any portion thereof or interest therein, or this Agreement or any portion of it, except as permitted by this Agreement or the Ground Lease; or
- 3. There is substantial change in the ownership of Developer, or with respect to the identity of the parties in control of Developer, or the degree thereof contrary to the provisions of Section 106, except as permitted by this Agreement or the Ground Lease;
- 4. Developer fails to submit any of the plans, drawings and related documents required by this Agreement by the respective dates provided in this Agreement;
- 5. Developer fails to acquire the Leasehold within the time required by the Schedule of Performance; or
- 6. There is any other material default by Developer under the terms of this Agreement which is not cured within the time provided.

After the first Closing hereunder, County may Terminate this Agreement pursuant to this Section with respect to any Project within the Master Development for which a Closing has not yet occurred.

b. This Agreement shall be subject to termination with respect to a Project for which a Closing has occurred in accordance with the termination provisions of the Ground Lease.

PART 6. GENERAL PROVISIONS

SECTION 601 Notices

All notices, demands, requests or other communication required or permitted to be given or served under this Agreement ("Notice" or "Notices") shall be in writing, and (i) delivered in person to an officer or authorized representative of the other party at the addresses shown in

Section 104 and 105 (or as updated in writing by the respective party), (ii) sent by United States Postal Service First Class Mail, postage prepaid, (iii) sent by courier delivery service with proof of service, or (iv) delivered by electronic mail, with the original document subsequently delivered by United States Postal Service First Class Mail, postage prepaid to the other party at the addresses specified in ARTICLE 1 of this Agreement. Notices mailed by the United States Postal Services or sent by a courier delivery service shall be deemed to have been given, delivered and received three (3) business days after the date the Notice is postmarked by the United States Postal Service or the date of the proof of delivery by the courier delivery service. All other Notices or other communications shall be deemed given, delivered and received upon actual receipt. Either party may, by written Notice delivered pursuant to this section, at any time designate a different address to which Notices shall be sent.

SECTION 602 Force Majeure

If County or Developer is prevented or delayed from performing any act or discharging any obligation under this Agreement, excluding any monetary obligations, because of any and all causes beyond either party's reasonable control, including unusual delays in deliveries, pandemics, abnormal adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, governmental restrictions, regulations or controls, any hostile government actions, civil commotion and fire or other casualty, legal actions attacking the validity of this Agreement or the Developer's occupancy of the Property, or any other casualties beyond the reasonable control of either party, except casualties directly or indirectly resulting from the acts or omissions the party ("Force Majeure"), performance of the act shall be excused for the period of the delay, and the period for performance of the act shall be extended for a period equivalent to the period of the delay. Force Majeure shall not include any bankruptcy, insolvency, or other financial inability by Developer.

SECTION 603 Conflict of Interest

- a. No member, official, or employee of County 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 or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested.
- b. Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

SECTION 604 Nonliability of County Officials and Employees

No member, official, agent, legal counsel or employee of County shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by County or for any amount which may become due to Developer or successor or on any obligation under the terms of this Agreement. No member, partner, official, agent, legal counsel, officer or employee of Developer shall be personally liable to County, or any successor in interest, in the event of any default or breach by Developer or for any amount which may become due to County or successor or on any obligation under the terms of this Agreement.

SECTION 605 <u>Inspection of Books and Records</u>

County shall have the right at all reasonable times to inspect and copy the books and records of Developer pertaining to the Property as pertinent to the purposes of this Agreement upon no less than 24 hour prior written notice. Developer shall also have the right at all reasonable times to inspect and copy books and records of County pertaining to the Property as pertinent to the purposes of this Agreement upon no less than 24 hour prior written notice.

SECTION 606 Approvals

- a. Except as otherwise expressly provided in this Agreement, approvals required of County or Developer in this Agreement, including the attachments, shall not be unreasonably withheld or delayed. All approvals shall be in writing. Failure by either party to approve a matter within the time provided for approval of the matter shall not be deemed a disapproval, and failure by either party to disapprove a matter within the time provided for approval of the matter shall not be deemed an approval.
- b. Except as otherwise expressly provided in this Agreement, approvals or consent required of County shall be deemed granted by the written approval of the Director in the Director's discretion. Notwithstanding the foregoing, the Director may, in his or her sole discretion, refer to the governing body of County any item requiring County approval; otherwise, "County approval" or "County consent" means and refers to approval or consent by the Director.

SECTION 607 Real Estate Commissions; Finder's Fee

County shall not be liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Agreement. County and Developer each represent that neither has engaged any broker, agent or finder in connection with this transaction.

SECTION 608 Construction and Interpretation of Agreement

- a. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.
- b. If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be

added as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

- c. The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.
- d. References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation, and/or undertaking "herein," "hereunder," or "pursuant hereto" (or language of like import) means, refer to, and include the covenants, obligations, and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, and attachments or other documents affixed to or expressly incorporated by reference in this instrument.
- e. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.
- f. To the extent that Developer compromises more than one Person, all obligations of Developer hereunder are joint and several.

SECTION 609 Time of Essence

Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement.

SECTION 610 No Partnership

Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, or any other similar relationship between the parties hereto or cause County to be responsible in any way for the debts or obligations of Developer or any other Person.

SECTION 611 Compliance with Law

Developer agrees to comply with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the development and use of the Property and the Improvements, as well as operations conducted thereon. The judgment of any court of competent jurisdiction, or the admission of Developer or any lessee or permittee in any action or proceeding against them, or any of them, whether County be a party thereto or not, that Developer, lessee or permittee has violated any such ordinance or statute in the development and use of the Property shall be conclusive of that fact as between County and Developer.

SECTION 612 Binding Effect

This Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

SECTION 613 <u>No Third Party Beneficiaries</u>

The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of County and Developer, and not for the benefit, directly or indirectly, of any other person or entity.

SECTION 614 <u>Authority to Sign</u>

Developer hereby represents that the persons executing this Agreement on behalf of Developer have full authority to do so and to bind Developer to perform pursuant to the terms and conditions of this Agreement.

SECTION 615 <u>Incorporation by Reference</u>

Each of the attachments and exhibits attached hereto is incorporated herein by this reference.

SECTION 616 Counterparts

This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument. A counterpart may be delivered electronically by facsimile, email, or other agreed upon means of electronic delivery. For purposes of proving the existence of this Agreement, a party shall be permitted to provide a copy of an electronically delivered counterpart without first being required to prove the unavailability of an original copy.

PART 7 ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

- a. This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement, including all of the Attachments appended hereto, constitutes the entire understanding and agreement of the parties.
- b. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.
- c. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of County or Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of County and Developer.

[Signatures on following page]

IN WITNESS WHEREOF, County and Owner have signed this Agreement as of the dates set opposite their signatures.

	COUNTY OF SAN DIEGO				
Dated:	By: MARKO MEDVED, Director Department of General Services				
APPROVED AS TO FORM AND LEGA	ALITY				
Nathan Slegers Senior Deputy County Counsel					
	DEVELOPER				
	Chelsea Investment Corporation, a California corporation				
Dated: 6/18/2020	By: Cheri Hoffman, President				

ATTACHMENT 1 - SITE MAP



ATTACHMENT 2 - LEGAL DESCRIPTION

LEGAL DESCRIPTION

Real property in the City of San Diego, County of San Diego, State of California, described as follows:

PARCEL 1 OF PARCEL MAP 9284, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, ON OCTOBER 23, 1979 AS FILE NO. 79-443936 OF OFFICIAL RECORDS.

APN: 361-661-12-00

ATTACHMENT NO. 3

SCOPE OF DEVELOPMENT

A. <u>Developer Responsibilities</u>

1. General

This is the Scope of Development attached to the Disposition and Development Agreement ("DDA") by and between the County of San Diego ("County") and Chelsea Investment Corporation ("Developer") pertaining to the Property. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the DDA.

The Improvements to be constructed by Developer on the Property shall be of high architectural quality, well landscaped, and effectively and aesthetically designed. The shape, scale, exterior design, and exterior finish of the Improvements must visually as well as physically relate to the adjacent properties. Developer shall be responsible for providing parking appropriate and necessary for the proposed development of the Property along with appropriate landscaping, all in accordance with applicable City requirements or current code.

Developer's plans, drawings and proposals submitted to the County for approval shall describe in reasonable detail the architectural character intended for the Improvements.

2. <u>Improvements</u>

Notwithstanding the generality of Section 1, above, the Developer shall construct, or cause to be constructed on the Property, approximately 404 affordable apartments ("Master Development") which shall be divided into three, separately financed developments owned by unique, separate limited partnerships ("Projects") which is currently anticipated to include: (i) an 85-unit project restricted to residents who qualify as seniors over the age of 62 ("Senior"), (ii) a 79-unit Senior project, and (iii) a 240-unit project not restricted to seniors ("Family"). The Master Development will contain: (i) a total of approximately 400 Affordable Units and four (4) employee units ("Employee Unit"), (ii) no less than 3,600 square feet of indoor community space and approximately 10,000 square feet of outdoor open space ("Outdoor Space"), (iii) no less than 1,500 square feet of ground floor commercial space which can be used as a senior community center open to the public ("Commercial Space"), and (iv) approximately 417 parking spaces. Notwithstanding the forgoing or anything else in the DDA or this Exhibit, the Commercial Space and Outdoor Space may be modified or reduced, and the manner in which the Master Development is structured into multiple projects may be modified subject to Section 212 of the DDA, subject to County approval and provided that any such modifications are consistent with the applicable City building and planning approvals.

The following is a summary of the scope of development for the Master Development as currently anticipated, which shall be updated from time to time by the Lessee as it finalizes its construction plans and financing sources, subject to County approval. In addition, a unit and

affordability matrix based on the current Project Structure in attached as Exhibit "A":

Site Area	4.09 Acres/178,160 sq. ft.
Height Limit	70 feet or as allowed by code and
	law
Amount of Commercial Space	Not less than 1,500 sq. ft.
Type of Housing	Affordable Rental Apartments
Total Number of Units / Total Above Grade Square	Approximately 404 units/ 364,600
Footage	Gross Residential SF
Types of Units	10 Studios
	272 one-bedroom units
	58 two-bedroom units (incl.
	employee unit)
	64 three-bedroom units
Parking Spaces	Approximately 417 spaces
Assessor's Parcel No.	361-661-12

^{**}Types of Units may be modified if required by TCAC or other public project lenders, subject to the County's approval.

2. <u>Ground Floor Commercial Space</u>

The ground floor of one of the Senior projects shall have not less than 1,500 square feet of commercial space which can be a senior community center open to the public ("Commercial Space").

3. Green Building

The Project shall achieve Silver LEED certification, or equivalent. Costs for the proposed green building features, including photovoltaic panels, are incorporated into the Project Budget.

4. Amenities

The Master Development shall include not less than 3,600 square feet of common indoor community space including lounge, and community rooms, and approximately 10,000 square feet of common outdoor open space at the ground level.

5. Parking

The Development shall include approximately 417 parking spaces or a lesser number of spaces as permitted by the San Diego Municipal Code subject to County approval and provided

Attachment No. 3 Page 2 of 3 that any such modifications are consistent with all applicable City building and planning approvals. All spaces shall be designed to City of San Diego requirements. Visitor and/or public parking spaces shall be identified with appropriate signage.

7. Required Permits/Compliance with Laws

The Property shall be developed in accordance with all applicable laws or current code.

ATTACH A to Scope of Development

Mt. Etna Master Development - Bedroom Matrix					
		Total Site	Family	Senior 1	Senior 2
Total Number of Units		404	240	85	79
Affordable Units		400	238	84	84
On-site Managers Units	2 BR units	4	2	1	1
0 BR		10	0	10	0
1BR		272	120	74	78
2 BR		58	56	1	1
3 BR		64	64	0	0

Mt. Etr	Mt. Etna Master Development - Rent Affordability Levels					
		Affordable Units				
Rent Level	Total	Family	Senior 1	Senior 2		
80% AMI						
70% AMI	62	62				
60% AMI	96		50	46		
50% AMI	126	126				
40% AMI	33		17	16		
30% AMI	83	50	17	16		
Total	400	238	84	78		

SCHEDULE OF PERFORMANCE

I. DESIGN, ENTITLEMENTS

1. <u>Submission – Basic Concept (Section 303).</u>
Developer shall prepare and submit to County the basic concept and site plan for the Property and the preliminary elevations of the Senior and Family buildings visible to public view (approximately 20% of schematic designs).

The later of: (i) within ninety (90) days of developer obtaining CPUC approval of the SDGE Easement; or (ii) September 30, 2021.

2. <u>Approve - Basic Concept.</u> County shall approve or disapprove the basic concept and site plan for the Property and the preliminary elevations of the Senior and Family buildings visible to public view (approximately 20% of schematic designs).

Within fifteen (15) business days after receipt by County.

3. <u>Submission - Schematic Drawings (Section 303)</u>. Developer shall prepare and submit to County the schematic drawings for the Property.

Within one-hundred twenty (120) days of the date the developer has (i) secured all Sources of Financing except Low Income Housing Tax Credit financing and tax-exempt bonds for the first phase Project, and (ii) received CPUC approval of the granting of the SDGE Easement, or December 1, 2021, whichever is later.

4. <u>Approval – Schematic Drawings</u>. County shall approve or disapprove the schematic drawings for the Property.

Within fifteen (15) business days after receipt by County.

5. <u>Submission – 50% Construction Drawings</u> and Preliminary Landscaping Plans (Sections 304 and 305). Developer shall prepare and submit to County 50% construction drawings and preliminary landscaping plans for each Project.

With respect to each Project, within sixty (60) days after receiving an award of Low Income Housing Tax Credits or state Low Income Housing Tax Credits and tax-exempt bonds for such Project.

6. <u>Approval – 50% Construction Drawings and Preliminary Landscaping Plans.</u> County shall approve or disapprove the 50%

Within thirty (30) days after receipt by County.

construction drawings and preliminary landscaping plans for each Project.

5. <u>Submission - Final Construction Drawings</u> and Final Landscaping Plans (Sections 304 and 305). Developer shall prepare and submit the final construction drawings and the final landscaping plans for each Project.

Thirty (30) business days prior to Closing for each Project.

6. <u>Approval - Final Construction Drawings and Final Landscaping Plans</u>. County shall approve or disapprove the final construction drawings and the final landscaping plans for each Project.

Within fifteen (15) days after receipt by County and in any event prior to Closing.

7. Receipt of Entitlements. The City of San Diego's approval of the Mt. Etna Community Plan Amendment shall satisfy all entitlement requirements for the development of the Property.

N/A

III. <u>FINANCING</u>

As set forth in Section 211 of the DDA, the sources of funding and timelines set forth in this Section III may be updated from time to time by Developer with the consent of the County and apply separately to each Project within the Master Development.

- 1. Applications for Project Based Section 8
 Contract (if applicable) and gap financing
 with San Diego Housing Commission
 ("SDHC") and application for gap financing
 with the County of San Diego.
- 2. Applications for Affordable Housing
 Sustainable Communities (AHSC) and/or
 Transit Oriented Development (TOD) and/or
 Multi-family Housing Program (MHP)
 Funding from California Department of
 Housing and Community Development
 ("HCD").

First NOFA round following the Effective Date in which a Project in the Master Development will be eligible to apply and be competitive for said financing under the NOFA guidelines.

First NOFA round that a Project in the Master Development will be eligible to apply and be competitive for said financing under the NOFA guidelines after the Effective Date, and, if local funds are required for a Project to be competitive for said program, following

the receipt of local commitments of funds.

3. <u>Applications for other federal, state, county, city, or private funds which may become available and discoverable in public notices.</u>

First application round that each Project in the Master Development will be eligible to apply and be reasonably competitive to win said financing after the Effective Date, and if required to be competitive for said program, following the receipt of local commitments of funds for all other gap financing for the Project.

4. Applications for 9% Tax Credit Financing (if applicable). Developer shall submit its application for 9% tax credit financing to the California Tax Credit Allocation Committee ("TCAC").

First application round following each Project's receipt of commitments for all gap financing for the Project.

5. Applications for 4% Federal and State Tax Credit Financing. Developer shall submit its application for 4% tax credit financing to the California Tax Credit Allocation Committee ("TCAC").

First application round following each Project's receipt of commitments for all gap financing for the Project.

6. <u>Applications for Tax-Exempt Bonds.</u>
Developer shall submit its application for tax-exempt bonds from the California Debt Limit Allocation Committee (CDLAC).

In conjunction with applications for tax credits in #5 above.

7. <u>Application for Affordable Housing Program</u> (AHP) Funding. Developer shall submit its application for AHP funding.

First NOFA round following the Effective Date for which Project will be eligible and reasonably competitive to win, and if local funds are required to be competitive for said program, following the receipt of local commitments of funds for all other gap financing for the Project.

8. <u>Evidence of Financing</u>. Developer shall submit to County for approval the Evidence of Financing for the Property required by Section 213 of the DDA.

At least fifteen (15) days prior to the Closing.

9. <u>Approval of Financing</u>. County shall approve or disapprove each submission of Developer's Evidence of Financing for the Property.

Within ten (10) days after receipt of such submission by County.

10. <u>Closing/Construction Financing Event.</u>
Developer shall have satisfied all conditions precedent to Close of Escrow for the Property, as required by the DDA.

Within the time period set forth in Section 202 of the DDA, subject to the extensions provided in the DDA.

IV. DEVELOPMENT

1. <u>Commencement of Construction</u>. Developer shall commence construction of each Project as required by the DDA and Ground Lease (Attachment No. 7).

Within thirty (30) days of each Closing.

2. <u>Completion of Construction</u>. Developer shall achieve Completion of the Master Development in accordance with the DDA and Ground Lease.

Within twenty-four (24) months after commencement of construction of the final Project.

3. <u>Management Plan</u>. Developer shall submit a Property Management Plan for each Project County approval pursuant to the County Regulatory Agreement.

At least ninety (90) days prior to Completion of each Project.

4. <u>Approval of Property Management Plan.</u> County shall approve or disapprove the Property Management Plan for each Project.

Within ten (10) days after receipt of such submission by County.

5. <u>Developer shall send County copies of draw</u> requests, Section 103, and prevailing wage reports, if applicable, for review.

On a monthly basis after the first draw meeting for each Project occurs.

6. Approval of monthly reports including draw requests, Section 103, and prevailing wage reports, if applicable.

Within ten (10) days after receipt of such submission by County.

Attachment No. 5 Project Budget

Mt. Etna - Family Project		4% Tax Credits		ts
Number of Apartments				240
I. Direct Costs (1)		<u>Totals</u>		Per Unit
Off-Site Improvements	\$	643,680	\$	2,682
On-Site Improvements	\$	3,013,768	\$	12,557
Parking Garage	\$	3,178,630	\$	13,244
Vertical Buildings		49,846,371	\$	207,693
Site and Structures Subtotal	\$	56,682,449	\$	236,177
Overhead/Gen Conditions/Profit	\$	7,408,277	\$	30,868
Owner Contingency	\$	3,204,537	\$	13,352
Add: Impact of Prevailing Wages				
Total Direct Costs	\$	67,295,263	\$	280,397
II. Indirect Costs				
Architecture & Engineering	\$	1,851,198	\$	7,713
Permits	\$	425,000	\$	1,771
Development Impact Fees	\$ \$ \$ \$	4,785,000	\$	19,938
Legal	\$	315,000	\$	1,313
Taxes & Insurance	\$	257,500	\$	1,073
Developer Fee	\$	12,034,659	\$	50,144
Marketing/Lease Up	\$ \$	220,000	\$	917
Contingency		361,698	\$	1,507
Total Indirect Costs	\$	20,250,055	\$	84,375
III. Financing Costs				
Loan Fees		1,819,742	\$	7,582
Interest During Construction	\$	4,258,580	\$	17,744
Interest During Lease Up	\$	2,024,532	\$	8,436
Title/Recording/Escrow	\$	60,000	\$	250
TCAC/Syndication Fees	\$	137,521	\$	573
Other Fees, Accounting, Misc	\$	167,807	\$	699
Operating Lease-Up/Reserves	\$	684,675	\$	2,853
Total Financing Costs	\$	9,152,857	\$	38,137
			\$	-
IV. Total Costs - Excluding Acquisition	\$	96,698,175	\$	402,909
V. Land Acquisition Costs	\$	2,310,891	\$	9,629
VI. Total Costs - Including Acquisition	\$	99,009,066	\$	412,538

⁽¹⁾ Assumes payment of prevailing wages (state, federal) are NOT required.

Attachment No. 5 Project Budget

Mt. Etna - Messina - Senior Project #2		9% Tax Cı	edit	S
Number of Apartments				79
·		<u>Totals</u>		Per Unit
I. Direct Costs (1)			•	
Off-Site Improvements	\$	171,680	\$	2,173
On-Site Improvements	\$	1,043,447	\$	13,208
Vertical Buildings	\$	11,552,186	\$	146,230
Site and Structures Subtotal	\$	12,767,313	\$	161,612
Contingency	\$	1,924,508	\$	24,361
Overhead/Gen Conditions/Profit	\$	1,876,795	\$	23,757
Owner Contingency	\$	828,431	\$	10,486
Add: Impact of Prevailing Wages	\$	-	\$	-
Total Direct Costs	\$	17,397,047	\$	220,216
II. Indirect Costs				
Architecture & Engineering	\$	828,000	\$	10,481
Permits	\$	205,207	\$	2,598
Development Impact Fees	\$	1,300,664	\$	16,464
Legal	\$	365,000	\$	4,620
Taxes & Insurance	\$	257,500	\$	3,259
Developer Fee	\$	2,200,000	\$	27,848
Marketing/Lease Up		200,000	\$	2,532
Contingency	\$ \$	139,928	\$	1,771
Total Indirect Costs	\$	5,496,300	\$	69,573
III. Financing Costs				
Loan Fees	\$	536,179	\$	6,787
Interest During Construction	\$	521,735	\$	6,604
Interest During Lease Up	\$	457,812	\$	5,795
Title/Recording/Escrow	\$	60,000	\$	759
TCAC/Syndication Fees	\$	100,336	\$	1,270
Other Fees, Accounting, Misc	\$	510,000	\$	6,456
Operating Lease-Up/Reserves	\$	188,500	\$	2,386
Total Financing Costs	\$	2,374,561	\$	30,058
IV. Total Costs - Excluding Acquisition	\$	25,267,908	\$	319,847
V. Land Acquisition Costs				
County Prepayment Ground Lease	\$	635,520	\$	8,045
SDG&E Easement Share	\$	125,149	\$	1,584
Remainder of Land Value Note	\$	6,012,995	\$	76,114
Total Land Acquisition Costs	\$	6,773,664	\$	85,743
			\$	-
VI. Total Costs - Including Acquisition	\$	32,041,572	\$	405,590

⁽¹⁾ Assumes payment of prevailing wages (state, federal) are NOT required.

Attachment No. 5 Project Budget

Mt. Etna - Messina - Senior Project #1		9% Tax Cı	edit	S
Number of Apartments	_			85
		<u>Totals</u>		Per Unit
I. Direct Costs (1)				
Off-Site Improvements	\$	184,720	\$	2,173
On-Site Improvements	\$	1,122,697	\$	13,208
Commercial space (senior center)	\$	950,000	\$	11,176
<u>Vertical Buildings</u>	\$	11,479,567	\$	135,054
Site and Structures Subtotal	\$	13,736,983	\$	161,612
Contingency	\$	1,720,976	\$	20,247
Overhead/Gen Conditions/Profit	\$	2,019,337	\$	23,757
Owner Contingency	\$	873,865	\$	10,281
Add: Impact of Prevailing Wages	ć	10 251 161	۲.	245.000
Total Direct Costs	\$	18,351,161	\$	215,896
II. Indirect Costs				
Architecture & Engineering	\$	828,000	\$	9,741
Permits	\$	220,793	\$	2,598
Development Impact Fees	\$	1,399,034	\$	16,459
Legal	\$	365,000	\$	4,294
Taxes & Insurance	\$	257,500	\$	3,029
Developer Fee	\$	2,200,000	\$	25,882
Marketing/Lease Up	\$	220,000	\$	2,588
Other Indirect	\$ \$	350,000	\$	4,118
Contingency	\$	143,629	\$	1,690
Total Indirect Costs	\$	5,983,955	\$	70,399
III. Financing Costs				
Loan Fees	\$	291,840	\$	3,433
Construction Loan Interest	\$	472,052	\$	5,554
Interest During Lease Up	\$	525,480	\$	6,182
Title/Recording/Escrow	\$ \$	60,000	\$	706
TCAC/Syndication Fees		103,443	\$	1,217
Other Fees, Accounting, Misc	\$	394,854	\$	4,645
Operating Lease-Up/Reserves	\$	202,958		2,388
Total Financing Costs	\$	2,050,627	\$	24,125
IV. Total Costs - Excluding Acquisition	\$	26,385,743	\$	310,421
V. Land Acquisition Costs				
County Ground Lease Payment	\$	683,787	\$	8,045
SDG&E Easement	\$	134,653	\$	1,584
Remainder of Land Value Note	\$	6,469,678	\$	76,114
Total Land Acquisition Costs	\$	7,288,118	\$	85,743
VI. Total Costs - Including Acquisition	\$	33,673,861	\$	396,163

⁽¹⁾ Assumes payment of prevailing wages (state, federal) are NOT required.

ATTACHMENT NO. 6

MEMORANDUM OF RESTRICTIVE COVENANTS AND REGULATORY AGREEMENT

WHEN RECORDED PLEASE MAIL TO:	
County of San Diego Housing and Community Development Services 3989 Ruffin Road San Diego, CA 92123-1890 Attn: Community Development Division	

COUNTY OF SAN DIEGO

SPACE ABOVE FOR RECORDER'S USE ONLY

MEMORANDUM OF RESTRICTIVE COVENANTS
AND REGULATORY AGREEMENT

This Memorandum of Restrictive Covenants and Regulatory Agreement ("Agreement") " 20 by and between the County of San Diego, a political is dated subdivision of the State of California ("County"), and [Mount Etna Family CIC, LP/Mount Etna Seniors CIC, LP], ("Lessee"). County owns that certain real property located at 5255 Mt Etna Drivein the City of San Diego, which is more particularly described in the attached Exhibit "A" ("Premises"). Pursuant to that certain Ground Lease Agreement dated by and between County and Lessee ("Ground Lease"), Lessee will own a leasehold interest in the Property for purposes of developing the Property with a affordable housing development, including at least [404] units available to extremently low-, very low- and low-income families, seniors and the developmentally disabled] in accordance with the terms of this Agreement ("Project"). As an inducement to the County to enter the Ground Lease, the Lessee has agreed b. to enter into and be regulated and restricted in accordance with this Agreement.

AGREEMENT

In consideration of the following mutual covenants and undertakings and other good and valuable

consideration, the parties contract and agree as follows.

ARTICLE 1 DEFINITIONS

The following terms shall have the respective meanings set forth below for purposes of this Agreement. Any capitalized term used in this Agreement that is not defined in this Agreement shall have the meaning set forth in the Ground Lease.

Affordability Period is the period of time during which the Lessee must comply with, and the Premises must be operated in accordance with, all requirements of this Agreement, commencing on issuance of a certificate of occupancy (including a termporary certificate of occupancy) for the Project and continuing until the expiration or earlier termination of the Ground Lease, and further extended for the length of any holdover period as defined in the Ground Lease.

Area Median Income or AMI is the Median household income for the area adjusted for household size, as published and updated annually by HUD as published annually by TCAC. In the event that such income determinations are no longer determined and published by HUD or TCAC or are not updated for a period of at least 24 months from the date of the previous publication, County shall provide Lessee with other income determinations that are reasonably similar with respect to previous methods of calculations by TCAC.

Eligible Household is a household, which, at the time of the initial lease:

- i. Has an adjusted income not greater than the Income Limit applicable to the unit within the Project in which such household resides (or, with respect to an applicant household, proposed to reside); and
- ii. Whose lease (or, with respect to an applicant household, proposed lease) with the Lessee specifies a Rent that (when increased by the amount of any applicable Utility Allowance) does not exceed the Rent; and
- iii. With respect to an applicant household, is acceptable to the Lessee in accordance with the Lessee's resident selection criteria.

HUD is the United Stated Department of Housing and Urban Development.

Income Household means a household meeting the specific income limit at the time of initial occupancy of a Restricted Unit.

Income Limit is the maximum amount of income a household can earn to qualify for Restricted Units as described pursuant to Section 3.1 upon initial occupancy of a given Restricted Unit.

Regulatory Agreement or **Agreement** means this Regulatory Agreement and Memorandum of Restrictive Covenants, as it may be amended from time to time.

Rent is the total of monthly payments by the Tenant of a Restricted Unit for all the following:

- i. Use and occupancy of Restricted Unit and land and all facilities associated with the Restricted Unit, including but not limited to parking, bicycle storage, storage lockers, and use of all common areas;
- ii. Any separately charged fees or service charges assessed by the Lessee which are required of all tenants of Units in the project, except security deposits;
- iii. If the Tenant pays utilities directly, Rent shall include aUtility Allowance; and
- iv. Any other interest, taxes, fees or charges for use of the land or associated facilities that are assessed by a public or private entity other than the Lessee and paid by the Tenant.

Restricted Units means any unit that is subject to Rent and occupancy restrictions herein.

Senior Resident means those authorized by California Civil Code section 51.3, as it may be amended from time to time. If state or federal law changes or state or federal funding sources set a stricter standard, Senior Resident shall refer to senior citizens as defined by federal and state law or required by such funder of the project, except that if such change of law applies prospectively to new residential tenancies, residents lawfully admitted to the Premises prior to the change in law are permitted.

TCAC is the California Tax Credit Allocation Committee

Tenant is a household legally occupying a Restricted Unit pursuant to a valid lease or rental agreement with Lessee.

Utility Allowance is the amount designated by the San Diego Housing Commission as a reasonable allowance to cover monthly utility bills or such other utility allowance acceptable to the County, and the County will not unreasonably withhold its consent to an alternate allowance schedule if such schedule reflects reduced utility costs due to energy efficient improvements or appliances.

ARTICLE 2 TERM OF AGREEMENT

2.1 TERM OF REGULATORY AGREEMENT

The term of this Agreement shall commence on the Commencement Date of the Ground Lease and shall continue until the expiration of the Affordability Period.

ARTICLE 3 USE, OCCUPANCY AND RENT RESTRICTIONS AND COVENANTS

3.1 OCCUPANCY REQUIREMENTS

Lessee, and its successors and assignees, shall utilize no less than [approximately 404] of the units located on the Premises (excluding the __ manager's units) solely as Restricted Units for the purpose of providing affordable housing to Eligible Households in accordance with the provisions of this Agreement. [The target population for approximately 50% of the Restricted Units (but no

less than 45%) will be Senior Residents.] [Add language re: # of units for developmentally disabled]. Unless otherwise agreed in writing by the parties, __ units will be reserved for occupancy by a resident manager and will not be restricted as a Restricted Unit. All Tenants of the Restricted Units shall be Eligible Households who are at or below the Income Limit. Lessee shall ensure that all Eligible Households who are selected as Tenants of Restricted Units meet the following income restrictions for the duration of the Affordability Period, unless otherwise approved by the County in writing [This Regulatory Agreement will be duplicated, and the income restrictions allocated to each Project accordingly, to accommodate the Project Structure as defined in Section 212 of the DDA. The anticipated income restrictions for each Project in the Master Developer are attached to this Agreement as Exhibit "A" as a placeholder. These are subject to change prior to Closing in accordance with Section 403 of the DDA]:

- a. Except for the manager's units, Lessee shall ensure that all Restricted Units are occupied by Eligible Households such that the Income Limit of a Restricted Unit does not exceed the following Income Limits: 83 of the Restricted Units will be for 30% Income Households, as defined by TCAC, 159 of the Restricted Units will be available for 31% to 50% Income Households as defined by TCAC, 96 of the Restricted Units will be available to 60% Income Households, and 62 of the Restricted Units will be available to 61% to 80% Income Households as defined by TCAC. At the time of any resyndication of tax credits for the Project in connection with a proposed rehabilitation of the Project (or refinance of existing debt to fund rehabilitation), the Lessor and Lessee will meet and confer to consider changes to these Income Limits that may be necessary to ensure that the Project remains financially feasible (which shall include facilitating Lessee's ability to ensure compliance with the true debt test) taking into consideration all Project Expenses (as defined in the Ground Lease), and to accommodate additional financing to ensure reasonable repairs and upkeep of the Project (collectively, the "Resyndication Conditions"). Following such meet and confer, Lessee may modify the Income Limits set forth in this Agreement to address the Resyndication Conditions, subject to the approval of the Director (as defined in the Ground Lease), with concurrence from the Director of the Housing and Community Development Services Department, which approval and concurrence shall not be unreasonably withheld or delayed.
- b. At the time of initial occupancy of the Restricted Units and continuing throughout the Affordability Period, Lessee shall charge only that Rent permitted hereunder or approved by TCAC for such Restricted Unit at the Income Limit specified in this Agreement (as may be modified in accordance with subsection (a) above).

3.2 MAXIMUM OCCUPANCY

Maximum Occupancy of Restricted Units shall be according to the chart below, but shall be subject to compliance with fair housing laws in all respects:

	Studio	One Bedroom	Two Bedroom	Three Bedroom
Maximum	2	4	6	8

3.3 RENT RESTRICTIONS

For all Restricted Units, Tenants shall be charged no more Rent than allowed under Section 3.1(b).

3.4 RESIDENT SELECTION AND ELIGIBILITY PROCEDURES

Lessee shall select Eligible Households in accordance with the procedure set forth in the Management Plan (defined in Section 7.1). If a local preference is required or authorized by Project financing, such local preference shall also be considered when selecting Eligible Households. At initial lease up and during the Affordability Period, Lessee or its agents or employees shall make all efforts to ensure all Restricted Units are occupied by Eligible Households, and document the same as outlined in the Management Plan.

3.5 LEASE AND OCCUPANCY PROCEDURES

Each Eligible Household selected to occupy a Restricted Unit shall enter into a written occupancy agreement ("Tenant Lease") with the Lessee, the form of which shall have been approved by the County and which shall contain provisions required by this Agreement. The County's right to review and approve the Tenant Lease shall be limited to confirming that the Tenant Lease is consistent with the terms and conditions of this Agreement and the Ground Lease. The Tenant Lease shall provide for, among other things, good cause eviction and appeal and grievance procedures, all of which shall be in accordance with all applicable laws and regulations.

- a. Lessee shall establish reasonable rules of conduct and occupancy that shall be consistent with local, state and federal laws. The rules shall be in writing and shall be given to each Tenant. Except as required by law, any amendment shall be effective no less than 30 days after giving written notice thereof to each Tenant.
- b. Tenant Leases and the landlord-tenant relationship shall be subject to all applicable local, State, and Federal laws and the provisions of this Agreement.

3.6 TERMINATION OF TENANT LEASE

Any termination of occupancy rights, and the payment of Rent and refund of any unused Rent shall be in accordance with applicable California law and the provisions of the Tenant Lease, and any Project funding source.

3.7 REPLACEMENT CHARGES

The charges to Tenants covering damages to the Project or the Premises attributable to the Tenant or his or her household shall be based on Lessee's actual expenses paid to repair such damage which costs shall be evidenced to the Tenant at the time such charges are made..

ARTICLE 4
OPERATION OF PROJECT

4.1 RESIDENTIAL USE

The Restricted Units shall be used only for residential purposes consistent with this Agreement and the Lease, and the Restricted Units shall be operated and maintained as rental residences for the Affordability Period. No part of the Restricted Units shall be operated as transient housing in which the term of occupancy is less than thirty (30) days, nor shall the Lessee convert or apply to convert the Project to residential condominium or cooperative ownership or to a community apartment project or sell residential condominium or cooperative conversion rights in the Project or the rights to convert the Project to residential condominium or cooperative ownership or as a community apartment project. Nothing herein from subdividing the Premises as required to effectuate the bifurcated ownership of the improvements for purposes of tax credit financing as authorized in the DDA and Ground Lease.

4.2 RELIGIOUS AND SECULAR ACTIVITIES

- a. On the Premises or the Project, Lessee, its agents, and employees may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the funding or services funded herein, nor may Lessee use these funds for the acquisition, construction, or rehabilitation of such structures to the extent that these structures are used for inherently religious activities.
- b. The Project will be used exclusively by Lessee for secular purposes and will be available to all persons regardless of religious affiliation. There will be no religious or membership criteria for Tenants of the Project.

4.3 LESSEE RESPONSIBILITIES

Lessee shall provide administrative, fiscal, and management services, employ staff (or retain a management company) and purchase, rent, and use supplies and materials as needed to operate, maintain, and protect the Project in accordance with this Agreement.

ARTICLE 5 COMPLIANCE WITH THE LAW

5.1 COMPLIANCE WITH LAWS AND REGULATIONS

Lessee agrees that at all times its acts regarding the Project shall be in conformity with all applicable local, state, and federal laws and regulations.

5.2. LESSEE'S PERMITS AND LICENSE

Lessee shall obtain and maintain, at no cost to the County, all approvals, permissions, permits, licenses, and other forms of documentation applicable to the Project required in order to comply with all applicable laws. The County reserves the right to reasonably request and review all such

applications, permits, and licenses.

5.3 BOARD OF SUPERVISOR POLICIES

Lessee represents that it is familiar, and shall use its best efforts to comply, with all applicable County Board of Supervisors Policies, including but not limited to B-53, B-67, C-17, and C-25 to the extent applicable to the Project.

5.4 DEBARMENT AND SUSPENSION

The Lessee's general contractor for the initial construction of the Project and its property management company shall not be debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any county, state, or Federal Department or agency and Lessee hereby certifies to the best of its knowledge with respect to each:

- 5.4.2 that it has not within a 3-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen Premises;
- 5.4.3 that it is not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in the paragraph above; and
- 5.4.4 that it has not within a 3-year period preceding this Agreement had one or more public transaction (Federal, State, or local) terminated for cause or default.

5.5 DISPLAY OF FRAUD HOTLINE POSTER(S)

As a material term and condition of this Agreement, Lessee shall:

- 5.5.1 Prominently display in the Project public office area, if any, County of San Diego Office of Ethics and Compliance Ethics Hotline posters;
- 5.5.2 As of the date of execution of this Agreement, posters may be downloaded from the County Office of Ethics and Compliance at: https://www.sdcounty.ca.gov/cao/oia.html;
- 5.5.3 Additionally, if Lessee maintains a company website as a method of providing information to employees, Lessee shall display an electronic version of the poster(s) at the website; and
- 5.5.4 If Lessee has implemented a business ethics and conduct awareness program, including a reporting mechanism, Lessee need not display the County poster.

ARTICLE 6 OPERATING BUDGET AND RESERVES

6.1 FISCAL YEAR

The fiscal year for the Project shall be the same as the calendar year and commences on January 1 of each year after the issuance of a certificate of occupancy (including a temporary certificate of occupancy) and conclude on December 31 of each year.

6.2 REQUIRED RESERVES

Lessee will maintain reserves as required by TCAC and the Project's tax credit investor and lenders.

6.3 FEES

Commencing on date of initial occupancy of any Restricted Unit and subsequently on the anniversary date of such initial occupancy each year, Lessee shall pay to the County the compliance monitoring costs associated with this agreement ("Annual Monitoring Cost"). The Annual Monitoring Cost during the Affordability Period shall be \$4,000 with a 1% escalation each year. Fees may be amended from time to time by the County to correspond with the Consumer Price Index. The Annual Monitoring Cost will be part of the Base Rent to be paid by Lessee under the Ground Lease, meaning that the County shall deduct the Annual Monitoring Cost from the Base Rent.

6.5 NO COUNTY FINANCIAL ASSISTANCE

Except as may be subsequently documented and agreed upon by Lessee and the County, Lessee acknowledges that the County will not provide financial assistance to Lessee in the form of operational or capital subsidies for the Project. If Project Income, including those rents charged pursuant to this Agreement and the Ground Lease, are insufficient to cover operating, maintenance, and capital costs, Lessee agrees to assume full financial responsibility for the operating and maintenance of the Project throughout the term of this Agreement.

ARTICLE 7 MANAGEMENT AND MAINTENANCE

7.1 MANAGEMENT PLAN

Lessee is responsible for operating the Project in accordance with the Management Plan submitted by the Lessee (the "Management Plan") and approved by County, which approval shall not be unreasonably withheld, conditioned, or delayed. All amendments to the Management Plan require prior written approval of the County. The Management Plan shall include at least the following:

- i. Detailed actions to be taken by Lessee to affirmatively market and rent all Restricted Units in a manner which ensures equal access to all persons in any category protected by federal, state, or local laws governing discrimination, and without regard to any arbitrary factor;
- ii. Specify reasonable criteria for determination of resident eligibility consistent with this Agreement;
- iii. Require that Eligible Households be selected based on the order of application, special preferences, lottery, or other reasonable method approved by County, which approval shall not be unreasanably withheld or delayed and outlined in this Agreement.
- iv. Require eligible applicants to be notified of eligibility and, based on turnover history, be notified of when a Restricted Unit may be available;
- v. Require ineligible applicants to be notified in writing of the reason for their ineligibility;
- vi. Specify procedures through which applicants deemed to be ineligible may appeal this determination;
- vii. Prohibit discrimination against any prospective resident in violation of any state, federal, or local law governing discrimination in rental housing; and
- viii. Address other selection issues provided for in the requirements of funding sources, the Lease and this Agreement.

7.2. MAINTENANCE OF PROJECT

Lessee is specifically responsible for all maintenance, repair, and management functions including, without limitation, the following: selection of residents, occupancy standards, complaint and grievance proceedings, if any, evictions, if any, collection of rents and security deposits, routine and extraordinary repairs, and replacement of capital items.

Lessee shall maintain units and common areas in a safe and sanitary manner in accordance with local health, building, and housing codes and the Management Plan.

a. Lessee shall contract with a management agent approved by the County for the performance of the services or duties outlined in this Agreement. However, such an arrangement does not relieve Lessee of responsibility for proper performance of these duties. County agrees that Lessee may contract with CICM Management, Inc. and/or ConAm Management Corporation. Such a contract shall be subject to prior written approval by the County, which approval shall not be unreasonably withheld, conditioned or delayed, and shall contain a provision allowing Lessee to terminate the contract without penalty upon 30 days' written notice. Upon a determination by the County and written notice to Lessee that the management agent performing the functions required in this Agreement has failed to operate the Project in accordance with this Agreement and the

approved Management Plan, Lessee shall if required by the County in writing and after meeting and conferring with the County about possible alternate and appropriate strategies for Project compliance, exercise such right to termination forthwith and shall make immediate arrangements, which shall be subject to County approval, for continuing performance of the functions required by this Agreement and the Management Plan.

- b. Failure of Lessee or its managment agent to operate the Project in accordance with this Agreement shall be a violation subject to the provisions of Article 11.
- c. Lessee agrees to assume full financial and management responsibility for all operating and maintenance costs, including all repairs, corrections and replacements necessary to maintain and preserve the Project in a safe and sanitary condition in accordance with standards prescribed by the County, all obligations of this Agreement, and all applicable local, state and federal laws and regulations.

ARTICLE 8 USE OF DOCUMENTS AND REPORTS

8.1 CONFIDENTIALITY

Lessee agrees to maintain the confidentiality of and take industry appropriate and legally required measures to prevent the unlawful disclosure of any information that is legally required to be kept confidential. Except as otherwise allowed by local, State or federal law or regulations and pursuant to this Agreement. Lessee agrees to only disclose confidential records where the holder of the privilege, whether the County or a third party, provides written permission authorizing the disclosure. Lessee understands that County must disclose certain records pursuant to the California Public Records Act ("the Act").

8.2 PUBLICATION, REPRODUCTION OR USE OF MATERIALS

County may publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared by Lessee under this Agreement, provided that the County will not disclose any of information that is not required, in Lessor's reasonable judgment, to be disclosed under the Public Records Act or court order.

8.3 INFORMATION.

Lessee shall promptly provide the County with a copy of any final annual audit of the Project which is not more than five (5) years old, when and as required by the Ground Lease. As reiterated in Section 9.2, Lessee will also promptly provide County with such information as may be reasonably requested by County to determine compliance with this Agreement.

ARTICLE 9 AUDIT AND INSPECTION OF PROJECT RECORDS

9.1 PROJECT RECORDS

Lessee shall maintain the following records for at least five years after creation or for a longer period when required by law.

- a. Records that demonstrate that the Project meets the Premises standards set forth herein;
- b. Records that demonstrate that the Project meets the requirements of this Agreement for the required Affordability Period for each Tenant assisted; and
- c. Records that demonstrate compliance with the requirements of this Agreement for Tenant and participant protections.

9.2 AUDITS AND INSPECTIONS

At any time during the term of this Agreement, and following 48 hours prior written notice to Lessee, the County or its designee may enter and inspect the physical premises and inspect all accounting and resident records pertaining to the Lessee's compliance with this Agreement. Upon a minimum 48-hour request by the County, Lessee shall notify residents of upcoming inspections of their units or records in accordance with California State law. The County may perform or cause to be performed audits of any and all phases of the Lessee's activities related to the Project. If Lessee has not otherwise prepared an audit in any given year, the County may request that Lessee prepare an audit. Provided that such audit is reasonably required for the County to verify Lessee's compliance with this Agreement, Lessee will prepare such audit at its own expense and provide a copy of the audit to the County. The County may request any other information that it deems necessary to monitor compliance with requirements set forth in this Agreement. Lessee shall promptly provide such information. Upon request of the County, Lessee will submit to the County certified copies of conflict of interest statements.

ARTICLE 10 INDEMNITY

The indemnification, defense, and hold harmless provisions of the Ground Lease shall apply with equal force to the provisions of and activities of Lessee Parties and County Parties under this Agreement.

ARTICLE 11 ENFORCEMENT

11.1 ENFORCEMENT OF REGULATORY AGREEMENT

Lessee shall carry out all of the provisions of this Agreement and all of the covenants in the Agreement shall run with the Premises. Any subsequent owner(s) shall assume all rights and responsibilities under this Agreement and be bound by the same. The covenants set forth in this Agreement shall apply without regard to the term of any loan or mortgage or the transfer of ownership.

11.2 VIOLATION OF REGULATORY AGREEMENT BY LESSEE

Prior to exercising any remedies for a violation of any of the covenants or provisions of this Agreement, County shall give Lessee notice of such default. If the default is reasonably capable of being cured within 60 days, Lessee shall have such period to accomplish a cure prior to exercise of remedies by County. If the default is such that it is not reasonably capable of being cured within 60 days, and Lessee (a) initiates corrective action within such 30-day period, and (b) diligently, continually, and in good faith works to accomplish a cure as soon as possible, then Lessee shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by County; provided, however that in no event shall County be precluded from exercising remedies (i) if the Premises or Project becomes or is about to become materially jeopardized by any failure to cure a default or (ii) if the default is not cured within ninety (90) days after the first notice of default is given.

(b) After Lessee gives written notice to County that the Tax Credit Equity Investor has been admitted to Lessee, County shall send to the Tax Credit Equity Investor a copy of all notices of default of Lessee at the address for the Tax Credit Equity Investor as provided by written notice to County by Lessee. The Tax Credit Equity Investor may take such action, including removing and replacing the general partner of Owner with a substitute general partner, who shall accomplish a cure within the cure period provided in this Article 11; provided, however that in no event shall County be precluded from exercising remedies (i) if the Premises or Project becomes or is about to become materially jeopardized by any failure to cure a default or (ii) if the default is not cured within ninety (90) days after the first notice of default is given. County agrees to accept cures tendered by the Tax Credit Equity Investor within the specified cure periods. In the event of a breach by Lessee of this Agreement, as more particularly set forth in the Lease, Lessee's lenders and investor shall have the right, but not the obligation, to cure such breach and do any other act or thing required of Lessee hereunder. The Tax Credit Equity Investor and Permitted Mortgagee will have the same notice and cure rights hereunder as are provided in the Ground Lease.

If a violation of any of the covenants or provisions of this Agreement remains uncured after the respective time period set forth above, County, without regard to whether County is an owner of any land or interest in land to which these covenants relate, may institute and prosecute any proceedings at law or in equity to abate, prevent or enjoin any such violation or attempted violation, compel specific performance by Owner of its obligations, or otherwise address such violation. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

Nothing in this Article limits the County's ability to seek any other remedies authorized by law or equity. However, in addition to any other remedy authorized by law or equity or the Lease, the County may apply to any court, state or federal, for specific performance of this Agreement; for the appointment of a receiver to take over and operate the Project or Premises in accordance with the terms of this Agreement, or for such other relief as may be appropriate, it being agreed by Lessee that the injury to the County arising from a default under any of the terms of this Agreement would be irreparable and that it would be extremely difficult to ascertain the amount of

compensation of the County which afford adequate relief in light of the purposes and policies of the Ground Lease.

11.3 COVENANTS RUN WITH THE LAND

In accordance with California Civil Code Section 1461 *et seq.*, all conditions, covenants and restrictions contained in this Regulatory Agreement are covenants running with the land. Lessee and County acknowledge and agree that the covenants and restrictions in this Agreement directly benefit the Premises and benefits property that County owns or will own (including, without limitation, underlying interests in streets) and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by County and its successors and assigns, against Lessee, its successors and assigns, to or of the Premises, or any portion of it or any interest in it, and any party in possession or occupancy of the Premises or any portion of it. In addition, County shall be deemed the beneficiary of this restriction both for and in its own right and for the purposes of protecting the interests of the citizens of the County of San Diego, and the covenants, conditions, and restrictions shall run in favor of County without regard to whether County remains the owner of any real property near the Premises.

11.4 BREACH OF GROUND LEASE

In addition to any other enforcement provisions herein, a breach by Lessee under this Agreement after the passage of applicable notice and cure periods shall be considered a breach of the Ground Lease.

ARTICLE 12 GENERAL PROVISIONS

12.1 PARTIAL INVALIDITY

If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

12.2 BINDING ON SUCCESSORS

This Agreement shall bind, and the benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in the office or interest, and assigns.

12.3 RECORDING AGREEMENT

This Agreement and any amendments thereof, shall, at the expense of Lessee, be acknowledged by each of the parties and promptly recorded or referenced by Lessee or its successor in the official records of the county in which the Project is situated.

12.4 ELECTION OF REMEDIES

The remedies of the County hereunder or under any other instrument providing for or evidencing the financial assistance provided herein are cumulative, and the exercise of one or more of such remedies shall not be deemed an election of remedies and shall not preclude the exercise by the County of any one or more of its other remedies.

12.5 WAIVER

No waiver by the County of any breach of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach or default hereunder.

12.6 CAPTIONS

The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the intent of this Regulatory Agreement.

12.7 GOVERNING LAW AND VENUE

This Agreement shall be construed in accordance with and governed by the laws of the State of California. Venue shall only be proper in the state or federal court in which the Premises are located, to wit, San Diego County Superior Court or the United States District Court for the Southern District of California.

12.8 AMENDMENTS TO LAWS AND REGULATIONS

If the Federal, State, County, or other governments with jurisdiction over the area where the Premises is located approve laws or regulations with more stringent requirements than are described in this Agreement, Lessee shall comply with the more stringent requirements.

12.9 FORECLOSURE

Notwithstanding any other covenant of this Agreement to the contrary, upon the acquisition by any holder of a mortgage or deed of trust encumbering the Premises or any designee thereof as permitted under the Ground Lease ("Permitted Mortgagee") by a foreclosure, deed in lieu of foreclosure, or, the acceptance of a new direct ground lease that is a direct result of a remedy taken by a Pemritted Mortgagee as authorized under the Ground Lease, the Income Limit of Eligible Households (1) in units reserved for 30% Income Households or 50% Income Households as defined by TCAC, may be increased to 60% Income Households as defined by TCAC and (2) in all other units, may be increased to 80% Income Households as defined by TCAC. The maximum annual rent for such Units will be increased to the amount that would be allowed by TCAC for such households at the adjusted Income Limits.

The affordability restrictions shall be revived according to the original terms if, during the original Affordability Period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the current or former Lessee, former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Project or Premises

(unless the construction lender and tax credit investor are related entities, in which event the forgoing shall not apply to the construction lender).

12.10 NOTICES

Written notices and other written communications by and between the parties hereto shall be addressed as follows unless and until a party hereto has in writing, communicated a different address to the other party hereto.

12.11 SENIORITY

I aggaa.

This Agreement shall be recoded in senior position with respect to all security interests enumbering the leasehold in connection with Project financing, and in no event shall this Agreement be subordinated to any such interest, except as may be required by law (including the published government agency policies or regulations) in connection with Project financing provided by a government agency.

Country

Ecsec.	County.
[Mount Etna Family CIC, LP/Mount Etna	County of San Diego
Seniors CIC, LP]	Housing and Community Development
6339 Paseo del Lago	Services
Carlsbad, CA 92011	3989 Ruffin Road
	San Diego, CA 92123
LESSEE:	COUNTY:
BY	BY
	APPROVED AS TO FORM AND LEGALITY
	By:

EXHIBIT A to Regulatory Agreement

Mt. Etna Master Development - Bedroom Matrix						
		Total Site	Family	Senior 1	Senior 2	
Total Number of Units		404	240	85	79	
Affordable Units		400	238	84	84	
On-site Managers Units	2 BR units	4	2	1	1	
0 BR		10	0	10	0	
1BR		272	120	74	78	
2 BR		58	56	1	1	
3 BR		64	64	0	0	

Mt. Etna Master Development - Rent Affordability Levels								
		Affordable Units						
Rent Level	Total	Total Family Senior 1 Senior 2						
80% AMI								
70% AMI	62	62						
60% AMI	96		50	46				
50% AMI	126	126						
40% AMI	33		17	16				
30% AMI	83	50	17	16				
Total	400	238	84	78				

ATTACHMENT 7

GROUND LEASE AGREEMENT

5255 Mt. Etna Drive San Diego, CA

APN: 361-661-12

LESSOR: County of San Diego

LESSEE: [MOUNT ETNA FAMILY CIC, LP/ MOUNT ETNA

SENIORS CIC, LP]

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GROUND LEASE AGREEMENT

This ground lease agreement ("Lease") is made and entered into, effective as of

("Commencement Date") by and between the County of San Diego, a political subdivision of the State of California ("County"), and [Mount Etna Family CIC, LP/Mount Etna Seniors CIC, LP] ("Lessee"). County leases to Lessee, and Lessee leases from County, the Premises described below upon the following terms and conditions:

ARTICLE 1. SUMMARY OF BASIC LEASE PROVISIONS

1.1 <u>Lessor</u>. County of San Diego

Address for notice:

County of San Diego Attention: Director Department of General Services 5560 Overland Avenue, Suite 410 San Diego, California 92123

1.2 <u>Lessee</u>. [Mount Etna Family CIC, LP/Mount Etna Seniors CIC, LP]

Address for notice:

[Mount Etna Family CIC, LP/Mount Etna Seniors CIC, LP] 6339 Paseo del Lago Carlsbad, CA 92011

- 1.3 <u>Premises</u>. The leased premises ("Premises") is defined in <u>Section 2.1</u> of and is further described and depicted on EXHIBIT "A" <u>DESCRIPTION OF PREMISES</u> attached to this Lease.
- 1.4 <u>DDA</u>. The County and Lessee are parties to that certain Disposition and Development Agreement dated ______ ("DDA") which provides for execution of this Ground Lease and development of the Improvements, subject to specified conditions, for the purpose of providing housing affordable to low- and very low-income households as set forth in the County Regulatory Agreement. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the DDA.
- 1.5 <u>County Regulatory Agreement</u>. The County and Lessee are parties to that certain County of San Diego Memorandum of Restrictive Covenants and Regulatory

Agreement recorded substantially concurrently with the execution of this Lease, which requires that the Premises be used for housing affordable to low- and very low-income households and other uses as specified (the "County Regulatory Agreement").

- 1.6 <u>County's and Lessee's Lease Administrators</u>. This Lease shall be administered on behalf of County by the Director, Department of General Services or a designee ("County's Lease Administrator"), and on behalf of Lessee by: _______, or by another person designated in writing by Lessee.
- 1.7 <u>Commencement Date</u>. The "Commencement Date" is the day on which all of the following have been completed: approval of this Lease by the County's Board of Supervisors, adoption of an ordinance authorizing this Lease, and execution of this Lease by the County's Director, Department of General Services and Lessee in accordance with the close of escrow provisions of the DDA, which date shall be added to the introductory paragraph of this Ground Lease.
- 1.8 <u>Term.</u> The "Construction Period" and "Operations Period" that comprise the "Term" are defined and set forth in <u>Section 3.1</u>.
- 1.9 Rent. The "Initial Rent", "Base Rent", and "Commercial Rent" are defined and set forth in Article 4 and are collectively referred to as "Rent" in this Lease.
- 1.10 <u>Additional Rent</u>. Any and all sums of money or charges other than the Rent required to be paid by Lessee to County pursuant to the provisions of this Lease shall be paid as "Additional Rent".
- 1.11 <u>Permitted Use</u>. Lessee is authorized to use the Premises only for those purposes set forth in <u>Section 6.2</u>.
- 1.12 <u>Leasehold Estate</u>. The "Leasehold Estate" is Lessee's leasehold estate in the Premises and all Lessee's rights, privileges, and options of any kind or nature under this this Lease, upon and subject to all of the terms and conditions of this Lease, and any part of such leasehold estate and direct or indirect interest in such leasehold estate, including ownership and exclusive title to the Improvements during the Term (as defined in <u>Section 3.1</u>).
- 1.13 <u>Leasehold Mortgage</u>. A "Leasehold Mortgage" is a mortgage, deed of trust, or other security instrument, including, without limitation, an assignment of the rents, issues and profits, which has been approved by County in accordance with <u>Article 15</u> and constitutes a lien on the Leasehold Estate and on any Improvements, including any modification or extension of the Leasehold Estate.
- 1.14 <u>Leasehold Mortgagee</u>. A "Leasehold Mortgagee" is the holder of a Leasehold Mortgage.

1.15 <u>Exhibits</u>. The following exhibits are attached to this Lease and made a part of this Lease by this reference:

EXHIBIT "A"	DESCRIPTION OF PREMISES
EXHIBIT "B"	INSURANCE REQUIREMENTS - CONSTRUCTION PERIOD
EXHIBIT "C"	INSURANCE REQUIREMENTS - OPERATIONS PERIOD
EXHIBIT "D"	FORM OF NON-DISTURBANCE AND ATTORNMENT AGREEMENT FOR SUBLEASES
EXHIBIT "E"	MEMORANDUM OF LEASE
EXHIBIT "F"	LESSEE'S RESPONSE TO REQUEST FOR PROPOSALS

1.16 <u>Construction of Lease Provisions</u>. The provisions of this Article summarize for convenience only certain key terms of this Lease that are delineated more fully in the Articles and Sections referenced in this Lease. If a conflict between the provisions of this Article and the balance of this Lease occurs, the balance of this Lease shall control.

ARTICLE 2. LEASE OF PREMISES

- 2.1 <u>Description of Premises</u>. County leases to Lessee and Lessee leases from County, for the Rent and Additional Rent and upon the covenants and conditions set forth in this Lease, approximately 4.09 acres of land located at 5255 Mt. Etna Drive, San Diego California ("Premises"). The Premises is further described in EXHIBIT "A" <u>DESCRIPTION</u> <u>OF PREMISES</u> of this Lease.
- 2.2 <u>Mineral Rights</u>. Notwithstanding any provision of this Lease to the contrary, County expressly reserves all rights, title and interest in and to any and all gas, oil, mineral and water deposits located beneath the surface of the Premises. In exercising the rights reserved under this <u>Section 2.2</u>, County shall have no right to enter upon or use the surface of the Premises at any time during the Term for the purpose of operating or maintaining drilling or other installations for the development of any gas, oil, mineral or water deposits. Nothing herein shall be construed to prevent County from exploring for, developing and/or producing the oil, gas and/or other minerals in and under, or that may be produced from, the Premises by pooling or by directional drilling under the Premises from sites located on other property.
- 2.3 <u>Easements and Reservations</u>. Lessee accepts the Premises subject to any and all existing easements, right-of-ways, reservations and encumbrances ("Existing

Easements"). County shall not unreasonably or substantially interfere with Lessee's use of the Premises as a result of exercising its rights under the Existing Easements.

ARTICLE 3. TERM

3.1 <u>Term.</u> The Term of this Lease shall be ninety-nine (99) years, beginning on the Commencement Date. The Term shall include the Construction Period and the Operations Period defined below. The term "Lease Year" as used in this Lease shall mean the 12-month period beginning on the Commencement Date and each succeeding 12-month period thereafter during the Term.

The "Construction Period" of the Term commences upon the Commencement Date and expires upon on the earlier of (i) twenty-four (24) months from the Commencement Date; (ii) the filing of the notice of completion for the development; or (iii) the issuance of a certificate of occupancy (including a temporary certificate of occupancy). County's Lease Administrator, at its sole discretion, may consider extensions of the Construction Period for additional six (6) month periods, but in no event for a period in excess of five (5) years from the Commencement Date, upon written request by Lessee.

The "Operations Period" of the Term commences upon the expiration of the Construction Period ("Operations Period Commencement Date") and continues until the expiration or earlier termination of this Lease.

- 3.2 <u>Holding Over</u>. If Lessee holds over in occupancy of the Premises after the expiration of the Term without the County's written consent, Lessee shall become a tenant from month to month at a rate of two hundred percent (200.0%) of the fair market rent at the highest and best use as determined by a certified appraiser selected by County. Lessee shall be responsible for the cost of such appraisal. Any holdover shall be subject to the terms and conditions of this Lease, as applicable, and shall be subject to termination by County with thirty (30) days written notice to Lessee.
- 3.3 <u>Ownership of Improvements; Surrender of the Premises; County</u> Possession of Premises.

3.3.1 Definitions.

- 3.3.1.1 <u>Fixtures</u>. "Fixtures" means all fixtures permanently attached to the Premises, and excludes trade fixtures, such as retail business trade equipment.
- 3.3.1.2 <u>Original Useful Life</u>. "Original Useful Life" means the expected number of years, starting from brand new condition, that each Fixture and item of Mechanical Equipment, as applicable, can be used at full capacity for its intended purpose, assuming no repairs or rehabilitation other than repairs or rehabilitation that would customarily be performed to address ordinary wear and tear.

- 3.3.1.3 <u>Remaining Useful Life</u>. The term "Remaining Useful Life" means: (i) with respect to the Improvements, the number of years that the Improvements can continue to be used at full capacity for their intended purpose, assuming no repairs or rehabilitation other than repairs or rehabilitation that would customarily be performed to address ordinary wear and tear, taking into consideration all aspects of the physical condition of the Improvements, all applicable Laws (defined in <u>Section 6.4.1</u>), and all other relevant factors, and (ii) with respect to the Fixtures and Mechanical Equipment, the percentage of the Original Useful Life remaining as determined by the Improvements Assessment.
- 3.3.1.4 <u>Mechanical Equipment</u>. "Mechanical Equipment" means all mechanical equipment serving the Improvements, including but not limited to, HVAC units, fans, vents, generators, elevator motors, and other equipment integral to the regular operations of the Improvements.
- 3.3.2 Ownership of Improvements During Term. Title to all Improvements constructed or placed on the Premises by Lessee are and shall be vested in Lessee until the expiration or earlier termination of this Lease. County and Lessee agree for themselves and all persons claiming under County and Lessee that the Improvements are real property. During the Term, Lessee shall have the exclusive right to all tax benefits arising from any and all Improvements.
- 3.3.3 Ownership of Improvements Upon the Expiration or Earlier Termination of Lease. Unless Restoration is required pursuant to Section 3.3.4, all Improvements on the Premises, including Fixtures and Mechanical Equipment, upon the expiration or earlier termination of this Lease shall, without payment to Lessee, become County's property free and clear of all Claims to or against them by Lessee and free and clear of all Leasehold Mortgages and any other taxes, liens, and Claims arising from Lessee's use and occupancy of the Premises as of the date of expiration or earlier termination of this Lease. Subject to the Restoration provisions of Section 3.3.4, and to the Casualty provisions of Article 19, Lessee shall, upon the expiration or earlier termination of this Lease, deliver the Premises and Improvements, including Fixtures and Mechanical Equipment, to County in good order, condition and state of repair, ordinary wear and tear excepted, and in accordance with the requirements of Section 3.3.4.
- 3.3.4 Improvements Assessment; Restoration of Premises. Not less than nine (9) years before the expiration of the Term, Lessee shall, at the Lessee's sole expense, provide County with a report prepared by a qualified independent engineering consultant, which consultant shall be subject to County's reasonable approval, assessing the condition of the Improvements ("Improvements Assessment"). The Improvements Assessment shall include the following: (a) an evaluation of the building structure, all building components, all Mechanical Equipment, and all Fixtures, (b) all repairs or replacements to the Improvements necessary to deliver the Improvements, including the Mechanical Equipment and Fixtures, to County in good order, condition, and state of repair, ordinary wear and tear excepted, and the costs of such repairs or replacements ("Good Condition Repairs"), (c) an evaluation of the estimated Remaining Useful Life of the Improvements, including the Mechanical Equipment and Fixtures, and (d) the following:

- (i) if the estimated Remaining Useful Life of the Improvements (excluding the Mechanical Equipment and Fixtures) is less than fifteen (15) years from the end of the Term, all repair, rehabilitation, or replacement of the Improvement necessary to deliver the Improvements to County with an estimated Remaining Useful Life of at least fifteen (15) years from the end of the Term ("<u>Useful Life Rehabilitation</u>"), and the costs of all such Useful Life Rehabilitation listed separately from the items in (b) above; and
- (ii) all repair, rehabilitation, or replacement of any Fixtures and Mechanical Equipment necessary to deliver all Fixtures and Mechanical Equipment to County with at least 45% of its Original Useful Life remaining at the end of the Term ("Fixtures and Mechanical Equipment Useful Life Rehabilitation"), and the costs of all such Fixtures and Mechanical Equipment Useful Life Rehabilitation listed separately from the items in (b) above.

County shall approve or disapprove the Improvements Assessment within one hundred and eighty (180) days after submittal of the Improvements Assessment, which approval shall not be unreasonably withheld. Any disapproval shall be given to the Lessee in writing with the reasons for disapproval and changes that would be sufficient to obtain approval. If County disapproves the Improvements Assessment, the Lessee shall resubmit for County approval the Improvements Assessment within sixty (60) days of County's disapproval. If the Lessee fails to resubmit an Improvements Assessment satisfactory to County within sixty (60) days of County's disapproval, the County's Lease Administrator shall decide any dispute concerning the Improvements Assessment and the Lessee shall be bound by the decision.

3.3.4.1 If the Improvements Assessment specifies that the Improvements do not meet the Minimum Remaining Useful Life Requirements (as defined below), the County may require, by written notice, the Lessee to restore the applicable Improvements (including any and all Fixtures and Mechanical Equipment) and portion of the Premises to a graded condition by demolishing the applicable Improvements, leveling the site, and compacting filled excavations to ninety percent (90.0%) compaction (the "Restoration"). If County elects to require the Lessee to complete the Restoration, County shall provide Lessee written notice within one hundred and eighty (180) days of County approval of the Improvements Assessment ("County Restoration Notice"), and the Lessee shall complete the Restoration within one complete calendar year after the expiration of the Term.

3.3.4.2 If the Improvements Assessment specifies that the applicable Improvements meet the Minimum Remaining Useful Life Requirements, then Lessee shall complete the Good Condition Repairs, Useful Life Rehabilitation, and Fixtures and Mechanical Equipment Useful Life Rehabilitation to County's reasonable satisfaction, at the Lessee's sole cost and expense, before the expiration of the Term.

3.3.4.3 The term "Minimum Remaining Useful Life

Requirements" means that the Improvements have an estimated Remaining Useful Life of at least fifteen (15) years from the end of the Term, as determined by the Improvements Assessment, or (b) the Improvements can be made to have an estimated Remaining Useful Life of at least fifteen (15) years from the end of the Term through Useful Life Rehabilitation, as determined by the Improvements Assessment. The preceding sentence notwithstanding, if the estimated costs of such Useful Life Rehabilitation exceeds fifteen percent (15%) of the then market value of the Improvement not taking into account any affordability restrictions as indicated in the Improvements Assessment, then Improvements shall be deemed to <u>not</u> meet Minimum Remaining Useful Life Requirements.

3.3.4.3.1 <u>Additional Requirements to Meet Minimum</u> Remaining Useful Life Requirements. In addition to the requirements set forth above, to meet

the Minimum Remaining Useful Life Requirements. In addition to the requirements set forth above, to meet the Minimum Remaining Useful Life Requirements, Lessee must comply with all of the following at the time of approval of the Improvements Assessment by the County, and throughout the remainder of the Term:

1) Lessee shall not have received any written notice which remains uncured in accordance with applicable law from any governmental body having jurisdiction over the Premises as to the violation of any laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, or requirements.

2) Lessee shall have received no written notice which remains uncured of any failure of the Premises to comply with any requirements of (i) the insurance company which issued any insurance policy insuring the Improvements; (ii) any board of fire underwriters or other body exercising similar functions; (iii) any bonding company; or (iv) any mortgagee having a security interest in the Improvements, which failure could adversely affect the insurability of the Improvements or cause the imposition of extraordinary premiums or charges therefor or result in the cancellation of any insurance policy insuring the Improvements.

3.3.4.4 Upon receipt of the County Restoration Notice, Lessee shall establish an account in favor of County with an Eligible Independent Trustee (defined in Section 15.1.12), containing by the time of Lease expiration sufficient funds to cover the Restoration of the Improvements ("Restoration Fund"). Within thirty (30) days after delivery of the County Restoration Notice, the Lessee shall secure bids from three (3) licensed contractors for the Restoration. The Lessee shall, on the first day of the second month after delivery of the County Restoration Notice commence making annual payments equal to one eighth (1/8th) of the average of the three bids for the Restoration into the Restoration Fund. The Restoration Fund shall be maintained until completion of the Restoration and expended solely for the Restoration. The Restoration Fund shall also be explicitly available to County until completion of the Restoration for any Restoration work not completed by Lessee, provided that Lessee may draw on the Restoration Fund to complete the Restoration, and the availability of the Restoration Fund to the County shall not impact Lessee's obligation to complete the Restoration. Interest earned on the Restoration Fund shall be added to the Restoration Fund. The amount by which the

Restoration Fund exceeds the actual cost of the Restoration shall be delivered to Lessee in accordance with applicable law after completion of the Restoration. If the actual cost of the Restoration exceeds the Restoration Fund, the Lessee shall be responsible for payment of any amounts in excess of the Restoration Fund.

3.3.4.5 If the Improvements Assessment specifies that Improvements meet the Minimum Remaining Useful Life Requirements, then upon receipt of the County-approved Improvements Assessment, Lessee shall establish an account in favor of County with an Eligible Independent Trustee (defined in Section 15.1.12), containing by the time of Lease expiration sufficient funds to cover the Good Condition Repairs, Useful Life Rehabilitation, and Fixtures and Mechanical Equipment Useful Life Rehabilitation (collectively, the "Rehabilitation") for the Improvements ("Rehabilitation Fund"). Within thirty (30) days after receipt of the Improvements Assessment, the Lessee shall secure bids from three (3) licensed contractors for the Rehabilitation. Lessee shall, on the first day of the second month after receipt of the Improvements Assessment commence making annual payments equal to one eighth (1/8th) of the average of the three bids for the Rehabilitation into the Rehabilitation Fund. The Rehabilitation Fund shall be maintained until completion of the Rehabilitation and expended solely for the Rehabilitation. The Rehabilitation Fund shall also be explicitly available to County until completion of the Rehabilitation for any Rehabilitation work not completed by Lessee provided that Lessee may draw on the Rehabilitation Fund to complete the Rehabilitation, and the availability of the Restoration Fund to the County shall not impact Lessee's obligation to complete the Restoration. Interest earned on the Rehabilitation Fund shall be added to the Rehabilitation Fund. The amount by which the Rehabilitation Fund exceeds the actual cost of the Rehabilitation shall be delivered to Lessee in accordance with applicable law after completion of the Rehabilitation. If the actual cost of the Rehabilitation exceeds the Rehabilitation Fund, the Lessee shall be responsible for payment of any amounts in excess of the Rehabilitation Fund.

3.3.4.6 The Lessee intends to seek to avoid having to make any payments into the Restoration Fund or Rehabilitation Fund by maintaining the Improvements in a condition that will not require Restoration or Rehabilitation under the terms of this Section. Subject to the provisions of <u>Article 14</u> and <u>Article 15</u>, County will not unreasonably withhold or delay consent to Lessee in connection with any refinancing or resyndication of the Improvements, the proceeds of which would be used to repair, rehabilitate, maintain, and improve the Improvements.

3.3.5 <u>Surrender of the Premises</u>. Subject to the requirements of <u>Section 3.3.4</u>, Lessee shall surrender possession of the Premises and Improvements (including Fixtures) (if any), to County upon expiration or earlier termination of this Lease. Upon the expiration or earlier termination of this Lease for any reason, including but not limited to termination because of default by Lessee, but after the expiration of any New Lease rights of a Leasehold Mortgagee under <u>Article 15</u>, Lessee shall execute, acknowledge and deliver to County, within ninety (90) days following receipt of written demand, a good and sufficient deed where Lessee quitclaims all right, title and interest in the Premises and Improvements to County. If Lessee fails or refuses to deliver the quitclaim deed to County, County may prepare and record a notice reciting the failure of Lessee to record a quitclaim Deed, and the notice shall be deemed conclusive evidence of the

termination of this Lease and of all right of Lessee or those claiming under Lessee to the Premises and Improvements. The foregoing sentence shall not apply in the event of a disputed termination of the Lease.

- 3.3.6 <u>Subleases</u>. At least 180 days prior to expiration of the Term, or immediately upon termination of the Lease, Lessee shall provide to County a current rent roll containing the contact information for all subtenants and other occupants and all subleases for such subtenants. Upon request by County prior to expiration of the Term, Lessee will provide all notices to subtenants required by applicable law with respect to expiration of the sublease term.
- 3.3.7 County Possession of Premises. If the manner or method employed by County to re-enter or take possession of the Premises pursuant to the provisions of this Lease gives Lessee a cause of action for damages or in forcible entry and detainer, the total amount of damages to which Lessee shall be entitled in any action shall be one dollar (\$1.00). This provision may be filed in any action brought by Lessee against County, and when filed shall constitute a stipulation by Lessee fixing the total damages to which Lessee is entitled in an action. Nothing in this Section shall preclude Lessee from seeking any equitable remedy including but not limited to (a) bringing an action to enjoin any County action or (b) requiring specific performance from the County.
- 3.3.8 <u>Personal Property</u>. Lessee's trade fixtures, furniture, furnishings, signs and other personal property (collectively, "Personal Property") not permanently affixed to the Premises or Improvements shall remain the property of the Lessee. Lessee shall, at its sole expense, immediately repair any damage caused to the Improvements or by reason of the Lessee's removal of any Personal Property.
- 3.3.9 <u>Fixtures and Mechanical Equipment</u>. Subject to <u>Section 3.3.4</u>, all Mechanical Equipment and Fixtures shall become the property of County upon expiration or earlier termination of this Lease.

ARTICLE 4. RENT

- 4.1 <u>Rent</u>. "Initial Rent", "Base Rent", and "Commercial Rent" as defined below are collectively referenced as "Rent".
- 4.2 <u>Initial Rent</u>. On the Commencement Date, Lessee shall pay to County an initial rent payment of Three Million Two Hundred and Fifty Thousand Dollars (\$3,250,000) ("Initial Rent") [to be divided to accommodate project phasing as described in the DDA]. No other Rent shall be due from Lessee to County during the Construction Period.
- 4.3 <u>Base Rent.</u> Commencing upon the Conversion Date (which is the date on which the Lessee repays its bank construction loan or the date on which the construction loan converts into permanent financing, but in no event later than three years from the Commencement Date of this Lease), Lessee shall annually pay to County twenty five percent

(25%) of total Surplus Cash ("Base Rent"). "Surplus Cash" means Project Income less Project Expenses (both defined below) for the preceding Lease Year. The 25% of Surplus Cash to be paid to County is independent of, and shall in no way be impacted by, any obligation of Lessee to pay any other entity any portion of Surplus Cash, and County will not share any portion of its 25% of Surplus Cash with any lender or other participant under any circumstances. Subject to County approval, a seller carryback note may be used in connection with the Base Rent, and the payment terms of such note shall be the same as the terms for payment of the Base Rent, provided that the County shall continue to receive Base Rent as set forth in this Lease after the maturity and payoff of any such note. The Base Rent for a particular Lease Year shall be paid by Lessee to County no later than June 1 of each year. The last payment of Rent shall be due within twenty (20) days following the expiration or termination of this Lease.

4.3.1.1 "Project Income" is, with respect to a particular year, all revenue, income, receipts, and other consideration actually received from operation of leasing the Improvements and Project. Project Income shall include, but not be limited to: all rents, fees and charges paid by tenants, Section 8 payments or other rental subsidy payments received for the dwelling units, deposits forfeited by tenants, all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements and proceeds from vending and laundry room machines. Project Income shall not include tenants' security deposits (except to the extent any such deposits are retained by Lessee or forfeited by tenants to cover rent, damages, or any other charges), loan proceeds, capital contributions or similar advances.

4.3.1.2 "Project Expenses" shall mean, with respect to a particular year, actual, reasonable and customary costs, fees and expenses directly attributable to the operation, maintenance and management of the Improvements and the Property, expressly including, without limitation: Rent and Additional Rent, debt service on any Project loan reasonably required in connection with the development, acquisition or operation of the Project (including but not limited to tax credit adjustors or shortfall payments, general partner or sponsor loans and limited partner loans); property taxes and assessments; onsite administrative costs (including salaries and benefits) or administrative costs relating to employees or agents of Lessee (including salaries and benefits); coordination and provision of tenant services; bond issuer and servicing and other lender and lessor monitoring or lending fees and costs; maintenance costs (including materials and labor); reasonable and customary payments necessary to maintain an operating reserve account to cover () months of Operating Expenses and debt service for the Project; reasonable and customary payments necessary to maintain a replacement reserve account for the Project, not to exceed \$____ per unit per year, subject to annual adjustments consistent with industry standard and not to exceed three percent (3%) (and which may be reasonably adjusted at refinance or resyndication as mutually agreed to by County and Lessee to reflect current market conditions); painting, cleaning, repairs and alterations; landscaping; utilities; rubbish removal; certificates, permits and licenses; sewer charges; insurance; security; advertising, promotion and publicity; office, janitorial, cleaning and building supplies; cable television, satellite and similar facilities; recreational amenities, supplies and services; a reasonable property management fee for the Project, not to exceed \$__ per unit per month, which shall be subject to annual adjustments equal to the increase, if any, in the CPI

(and which may be further adjusted at refinance or resyndication to reflect current market conditions); reasonable Asset Management Fees not to exceed \$_________, subject to annual increases equal to ______% (and which may be further adjusted at refinance or resyndication to reflect current market conditions) until the expiration of the Term; purchase, repair, servicing and installation of appliances, equipment, fixtures and furnishings (other than from reserves); and fees and expenses of accountants, attorneys, consultants and other professionals not included with the amount designated for Asset Management Fees; deferred developer fee and other extraordinary expenses. The calculation of Project Expenses shall be subject to the reasonable approval of the County. "Asset Management Fee" shall mean those fees paid to the Lessee's general partners for the purpose of managing the affairs of the Lessee's partnership and any fee paid to the Investor Limited Partner (as defined in Section 15.2) for the purpose of managing the affairs of the Investor Limited Partner relating to the Project (including preparation of annual tax exemption filings, oversight of annual audits, and preparation of partnership financial statements).

- 4.4 <u>Commercial Rent</u>. Following the execution of any commercial sublease for any portion of the Premises ("Space Lease", as defined in Section 14.6) Lessee shall pay to County 50% of all net rental proceeds (meaning, rental proceeds after payment of all costs and expenses of the operation of the commercial space) from the Space Lease ("Commercial Rent"). If any such sublease is with an Affiliate of Lessee or is not otherwise an arm's length market-rate transaction, then the market rent for the sublease, as determined at Lessee's expense by an MAI appraiser reasonably approved by County, shall be used for purposes of calculation of Commercial Rent. Lessee shall pay the Commercial Rent by June 1 of each year. Lessee shall pay the final Commercial Rent payment to County within 20 days of expiration or earlier termination of the Lease.
- Annual Financial Statements. Annually, not later than June 1, 4.5 beginning with the year following the year in which the Conversion Date (as defined in 4.1.2) occurs, Lessee shall submit to County an audited Annual Financial Statement for the preceding calendar year, prepared by a certified public accountant reasonably acceptable to County, determining the amount of Surplus Cash, if any, generated in that year, together with payment of the Rent for that year. The first such Annual Financial Statement shall be for the partial year beginning on the Conversion Date and ending on December 31 of that year. County shall review and approve such Annual Financial Statement, or request revisions, within 30 days after receipt. If as a result of County's review of the statement, there is an increase in the amount of any payment due and payable to County (as the result, for example, of a determination that the actual amount of Surplus Cash to which the County is entitled exceeds the amount of County's Share of Surplus Cash shown in the Annual Financial Statement submitted by Borrower), Borrower shall pay to the County the difference, with interest, from the date on which such payment was due, at the rate of five percent (5%) per annum within fifteen (15) days after receipt of written notice from the County of the deficit. "Annual Financial Statement" means the annual audited financial statement of Project Income and Project Expenses and balance sheet for the Premises, prepared at the Borrower's expense, by an independent certified public accountant licensed in California

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and reasonably acceptable to the County, which shall form the basis for determining the Surplus Cash.

- 4.5.1 <u>Accurancy of Statements</u>. Acceptance by Landlord of any monies paid by Lessee as Rent is not an admission of the accuracy of the Annual Financial Statement or of the amount of Rent. Landlord may challenge the amount of Rent or accurancy of the Annual Financial Statement by providing written notice to Lessee.
- 4.5.2 Records and Audit. At all times during the Term, Lessee shall keep and maintain complete, accurate and customary records and books of account relating to the Leased Premises and shall retain such materials for the three (3) most recent completed Lease Years. At all reasonable times during normal business hours, and upon reasonable advance written notice of not less than 24 hours, either on the Premises or such other office of Lessee at which said records and books of account may be kept, Landlord and its duly authorized agents, attorneys and accountants shall have the right to inspect, audit and make copies of any and all of such records and books of account, including copies of any information returns required by or furnished to any governmental authority, together with any and all other records and documents relating to the Rent and all subleases. If Lessee does not maintain such books and records at an office within twenty ten (10) miles of the Property, then Lessee shall prepare and deliver to Landlord certified duplicates of such books and records upon Landlord's request.
- 4.5.3 <u>Results of Inspection</u>. Landlord shall not be bound by the results of any inspection or audit conducted pursuant to <u>Section 4.5.2</u>. If, based upon such inspection or audit, Landlord reasonably determines that Rent as previously reported for the period inspected was understated, then Lessee shall pay such amount to Landlord within fifteen (15) days after receipt of notice of the deficit. Landlord shall bear all of its costs associated with the inspection unless (i) Lessee has failed to maintain the books of account and records required by this Lease, or (ii) Landlord reasonably determines that Rent as previously reported for the period inspected was understated. Lessee shall promptly reimburse Landlord for the actual, documented reasonable cost of such inspection if either of these conditions apply. Lessee shall have the right to challenge the determination of Landlord or its auditors by delivering written notice thereof to Landlord within fifteen (15) days after receipt of a notice of deficit. Any underpayment of Rent shall be subject to late charges under <u>Section 4.8</u>.
- Additional Rent. Lessee shall pay, as additional rent ("Additional Rent"), all sums of money required to be paid pursuant to the terms of this Lease that are not payable as Rent. If time for payment of sums of money that qualify as Additional Rent are not expressly provided for in this Lease, the amounts or charges shall be payable as Additional Rent with the subsequent installment of Rent due. Nothing in this Section shall be deemed to suspend or delay the payment of any Additional Rent at the time it becomes due and payable under this Lease or to limit any other remedy of County.

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4.7 <u>Address for Rent Payments</u>. All Rent and Additional Rent due under this Lease shall be made payable to the County of San Diego, and shall be considered paid when delivered to:

County of San Diego
Department of General Services - Fiscal Section
5560 Overland Avenue, Suite 410
San Diego, California 92123-1294

County may, at any time, by written notice to Lessee, designate a different address for the Rent payments, effective thirty (30) days after delivery of notice. Lessee assumes all risk of loss and responsibility for payment of late charges if Rent or Additional Rent payments are made by mail.

4.8 Failure to Pay Rent; Late Charge.

The late payment by Lessee of any Rent or Additional Rent will cause County to incur costs and expenses not contemplated under this Lease, the exact amount of which is difficult or impracticable to determine. These costs and expenses include, without limitation, administrative and collection costs, and processing and accounting expenses. If any Rent is not received by County before the sixth day of each calendar month, on the sixth day of the calendar month Lessee shall immediately pay to County a late charge equal to five percent (5.0%) of the overdue amount. If any Additional Rent is not received when due under this Lease, on the sixth day after the due date, Lessee shall immediately pay to County a late charge equal to five percent (5.0%) of the overdue amount. These late charges represent a reasonable estimate of the costs and expenses and are fair compensation to County for its loss caused by Lessee's nonpayment. If Lessee pays the late charge but fails to pay all unpaid amounts of Rent or Additional Rent due under this Lease, County's acceptance of the late charge shall not constitute a waiver of Lessee's default with respect to the nonpayment by Lessee nor prevent County from exercising all other rights and remedies available to County under this Lease or under law. If Lessee fails to pay Rent or Additional Rent at the time it is due and payable, any unpaid amounts shall bear interest at the rate of ten percent (10.0%) per year from the date due to the date of payment, calculated on the basis of monthly compounding with actual days elapsed compared to a 360-day year. However, interest shall not be payable on late charges incurred by Lessee nor on any amounts on which late charges are paid to the extent this interest would cause the total interest to be in excess of that legally permitted.

If a dispute arises between County and Lessee as to the correct amount of Rent or Additional Rent owed by Lessee, County may accept any sum tendered by Lessee as payment, without prejudice to County's claim as to the proper amount of Rent or Additional Rent owed. If it is subsequently determined that Lessee has not paid the full amount of Rent or Additional Rent, the late charge specified in this Lease shall apply only to that portion of the rent still due and payable from Lessee. Notwithstanding any provision of this Lease to the contrary, County's

Lease Administrator may in its sole discretion waive any interest or late charge upon written application of Lessee.

4.9 Triple Net Lease; No Counterclaim or Abatement. All Rent shall be paid absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount of the installments of all Rent throughout the Term, and (unless otherwise expressly provided herein) shall be paid without assertion of any counterclaim, setoff, deduction or defense and, except as otherwise expressly provided herein, without abatement, suspension, deferment, diminution or reduction. Under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall Landlord be expected or required to make any payment of any kind whatsoever, including without limitation, any regular or special assessments levied against the Property, or be under any obligation or liability hereunder, except as herein expressly set forth. Landlord shall have no responsibility for any costs of repair, maintenance or replacement whatsoever. Except as otherwise expressly provided herein, this Lease shall continue in full force and effect, and the obligations of Lessee hereunder shall not be released, discharged or otherwise affected, by reason of: (a) any damage to or destruction of the Premises or Improvements or any part thereof or any Condemnation of the Premises or the Improvements or any part thereof; (b) any restriction or prevention of or interference with any use of the Premises or the Improvements or any part thereof which materially interferes with Lessee's possession or use of the Premises (other than a breach of Landlord's covenant of quiet enjoyment); (c) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other proceeding relating to Landlord, or any action taken with respect to this Lease by any trustee or receiver of Landlord with respect to this Lease by any trustee or receiver of Landlord, or by any court, in any proceeding; (d) any claim which Lessee has or might have against Landlord; or (e) any failure on the part of Landlord to perform or comply with any of the terms hereof or of any other agreement with Lessee. Except as expressly provided in this Lease, the obligations of Lessee shall be separate and independent covenants and agreements.

ARTICLE 5. RESERVED

ARTICLE 6. USE

6.1 Acceptance of Premises. Prior to the Commencement Date, Lessee unconditionally accepted the condition of the Premises based on its own due diligence in accordance with the DDA. Lessee acknowledges that County has made no oral or written representations or warranties to Lessee regarding the condition of the Premises, and that Lessee has relied solely on its inspection of the Premises with respect to the condition of the Premises. The Premises is being leased in an "as is" condition, with no warranty, express or implied by County as to the condition of the soil, water, geology, or the presence of known or unknown faults, other site conditions, or the suitability of the Premises for the Project or the Improvements to be constructed by Lessee. If the soil, water, geology, or the presence of known or unknown

faults, or other site conditions is not in all respects entirely suitable for the Improvements it is the sole responsibility and obligation of Lessee to take the necessary action to place the Premises in a condition entirely suitable for the development of the Project and construction of the Improvements.

- 6.2 <u>Permitted Uses</u>. Lessee covenants and agrees for itself, its successors, its assigns and every successor in interest to the Premises, that Lessee, such successors and such assignees shall use the Property only for development, operation, maintenance, and repair of affordable housing and ancillary uses consistent with the DDA, Final Plans, City planning approvals for the Project, the County Regulatory Agreement, and this Lease ("Permitted Uses"). No change in the use of the Premises is permitted without the prior written approval of County.
- 6.3 <u>Duties and Prohibited Conduct</u>. If Lessee is reasonably in doubt as to whether any particular use of the Premises is a Permitted Use, Lessee may request a written determination regarding the use from the County's Lease Administrator, and Lessee will not be in breach or default under this Lease with respect to that particular use if Lessee abides by the determination. Lessee shall not use nor permit the use of the Premises in any manner that will create waste or a nuisance. Lessee shall not use, nor permit any person or persons to use the Premises for the sale or display of any goods and/or services that are in violation of Laws (defined below). Lessee shall keep the Premises in a decent, safe and sanitary condition, free from any objectionable noises or odors, except as may be typically present for the Permitted Uses specified in this Lease.

6.4 Compliance with Laws.

Lessee, at Lessee's sole expense, shall procure, maintain and hold available for County's inspection any governmental license or permit required for the proper and lawful conduct of Lessee's business. Lessee shall, at Lessee's sole expense, shall at all times during the Term promptly comply with all applicable federal, State and local laws, rules, regulations, orders, covenants and restrictions of record, and requirements regulating the use by Lessee of the Premises and Improvements ("Laws"), whether or not the Laws were in effect at the time this Lease was executed. The final judgment of any court of competent jurisdiction, or the admission of Lessee or any sublessee or permittee, in any action or proceeding against Lessee or any sublessee or permittee, whether or not the County is a party to the action or proceeding, that Lessee, or any sublessee or permittee, has violated any law, statute, ordinance, rule, regulation, orders, covenant, restriction or requirement pertaining to the use of the Premises and Improvements, shall be conclusive as to that fact as between County and Lessee.

Notwithstanding any other provision of this Lease to the contrary, Lessee shall be responsible for payment of all costs of complying with the requirements of the Americans with Disabilities Act of 1990 ("ADA") (42 USCS Sections 12101-12213), Title 24 of the California Code of Regulations ("Title 24") and State of California Civil Code Section 54.1 as they may apply to the Premises and Improvements. Lessee's obligations under this Lease shall include, without limitation, all costs of bringing the Premises and Improvements into compliance, and thereafter maintaining compliance with the requirements of Title III of the ADA ("Title III") (42

USCS Sections12181 - 12189) applicable during the Term as to the public accommodations and commercial facilities (but not to any residential spaces or residential services or serving spaces that are not subject to Title III), regardless of whether or not the particular requirements of compliance (i) are specifically required by the Permitted Uses of the Premises and Improvements, or (ii) may also be required of County under Title II of the ADA ("Title II") (42 USCS Sections12131 - 12165).

Lessee's duty to comply with Laws shall include compliance with any and all zoning and land use regulations applicable to the Premises and Lessee's intended use of the Premises ("Land Use Regulations"). County's execution of this Lease shall in no way be deemed to constitute a determination by County that Lessee's intended use of the Premises complies with applicable Land Use Regulations, nor shall it imply any conclusion by County regarding Land Use Regulations, even if County is the agency that enacts or implements the Land Use Regulations applicable to the Premises.

- 6.5 <u>Substance Abuse</u>. Lessee and its employees and agents shall not use or knowingly allow the use of the Premises for the purpose of unlawfully driving a motor vehicle or aircraft under the influence of an alcoholic beverage or any drug, or for the purpose of unlawfully selling, serving, using, storing, transporting keeping, manufacturing or giving away alcoholic beverages or any "controlled substance", precursor or analog specified in Division 10 of the State of California Health and Safety Code.
- 6.6 Compliance With Stormwater Laws. Lessee's use of the Premises and Improvements is subject to all federal, state and local laws, regulations, orders, policies and guidelines ("Stormwater Laws") regarding the discharge of pollutants into the stormwater conveyance system. Lessee's compliance with Stormwater Laws may require Lessee to develop, install, implement and maintain pollution prevention measures, source control measures and Best Management Practices ("BMPs"). BMPs can include operational practices, water or pollutant management practices, physical site features, or devices to remove pollutants from stormwater to affect the flow of stormwater or to infiltrate stormwater to the ground. BMPs applicable to Lessee's use of the Premises or Improvements may include a requirement that all materials, wastes or equipment with the potential to pollute urban runoff be stored in a manner that either prevents contact with rainfall and stormwater, or contains contaminated runoff for treatment and disposal. Lessee is required to, and shall use, operate, maintain, develop, redevelop and retrofit the Premises and Improvements, as necessary, in accordance with Stormwater Laws restricting the discharge of non-stormwater at or from the Premises or Improvements and Stormwater Laws requiring pollution prevention measures, source control measures, or the installation or use of BMPs. Lessee shall develop, install, implement and/or maintain at Lessee's sole cost and expense, any BMPs or similar pollution control devices required by Stormwater Laws and any implementing regulations or guidance. Lessee understands and acknowledges that the Stormwater Laws applicable to Lessee's use of the Premises or Improvements may be changed from time to time by federal, state and/or local authorities, and that additional requirements may become applicable based on changes in Lessee's activities or development or redevelopment by Lessee or County. Lessee shall conduct annual stormwater training and perform regular stormwater self-inspections, maintain records of all stormwater training and self-inspections, and

provide all necessary documentation to County upon request. Lessee shall promptly supply County with copies of notices of violations, notices of non-compliance, or other similar type notices received from regulatory agencies regarding any issues or conditions at the Premises or Improvements related to stormwater and non-stormwater management practices, any discharge in stormwater or non-stormwater from the Premises or Improvements, or any prohibited discharge of non-stormwater from the Premises or Improvements. Lessee shall also provide the County with copies of the final reports Lessee submits to any regulatory agency regarding investigation and/or remediation of stormwater or non-stormwater pollution related issues at the Premises or Improvements and/or prohibited discharges of non-stormwater from the Premises or Improvements. Lessee shall develop, install, implement, and maintain any requested BMPs, corrective actions, and/or other pollution control practices at the Premises or Improvements at Lessee's sole cost and expense. To the extent there is a conflict between any federal, State or local law, Lessee shall comply with the more restrictive provision. If County receives any fine or fines from any regulatory agency as a result of Lessee's failure to comply with Stormwater Laws, Lessee shall reimburse County for the entire amount of the fine(s).

<u>Prevailing Wage</u>. Work performed by Lessee or its contractor(s) may 6.7 be a "public work" for prevailing wage purposes. Lessee hereby expressly acknowledges and agrees that County has never previously represented to the Lessee or its contractor(s) for the Improvements in writing or otherwise, that any work under this Lease is not a "public work," as defined in Section 1720 of the Labor Code. It is not the intent of this Lease to impose an obligation to pay prevailing wages on work otherwise exempt from State of California prevailing wage laws. Lessee is solely responsible for ensuring prevailing wages are paid when required. Projects subject to the payment of prevailing wages are subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations, among other requirements. Lessee is solely responsible for ensuring all required job site postings and all certified payroll and other reporting applicable to it as an awarding body are completed, and all other requirements are met in accordance with State of California prevailing wage regulations. Information regarding prevailing wage requirements can be obtained from the Director, Department of Industrial Relations at www.dir.ca.gov, State of California Labor Code Section 1720, et seq., and Title 8 of the State of California Code of Regulations, Section 16000, et seq.

In connection with the development and construction (as defined by applicable law) of the Improvements, including, without limitation, any public work (as defined by applicable law), if any, Lessee shall bear all risks of payment or non-payment of state prevailing wages and compliance with all requirements under State of California Labor Code Section 1720, et seq., and Title 8 of the State of California Code of Regulations, Section 16000, et seq., and all related statutes, regulations, and policies.

In addition to and without limiting any other indemnification and related provisions of this Lease, to the fullest extent permitted by law, Lessee shall indemnify, protect, defend and hold harmless the County its officers, employees, contractors, agents and attorneys, with counsel reasonably acceptable to County, from and against any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (including labor costs, penalties, reasonable attorney's fees, court and litigation costs, and fees of expert witnesses) which, in connection with

the development and/or construction (as defined by applicable law) of the Improvements, including, without limitation, any and all public works (if any) (as defined by applicable law), results or arises in any way from noncompliance with any requirements under State of California Labor Code Section 1720, et seq., and Title 8 of the State of California Code of Regulations, Section 16000, et seq., and all related statutes, regulations, and policies. The foregoing indemnity shall survive completion of the Project and any expiration or earlier termination of this Lease.

- 6.8 No Condominiums. Except for the creation of condominium units required to divide ownership of the Premises to effectuate the financing structure for the Improvements as set forth in the DDA, Lessee shall not: (i) convert any portion of the Premises into condominiums, (ii) obtain or record any condominium declaration or restriction with respect to all or any portion of the Premises, (c) market, offer, or sell any condominium unit on the Premises, or (d) make any efforts, directly or indirectly, to accomplish any of the foregoing.
- 6.9 <u>Utilities</u>. Lessee shall provide and pay for all initial utility deposits and fees, and for all utilities and services necessary for its use of the Premises during the Term, including but not limited to gas, water, electricity, trash, sewer/septic tank charges and telephone. County shall have no responsibility to either provide or pay for any utilities or services. If any services are not separately metered or billed to Lessee but rather are billed to and paid by County, Lessee will pay to County its prorated share of the cost of the services, as determined by County, together with its prorated share of the cost of making the determination. County shall not be liable for any reason for any loss or damage resulting from an interruption of any of utilities or services.
- 6.10 Recycling Program. The County, in cooperation with other local public agencies, strongly encourages the recycling of glass, paper, cans, food waste, and other recyclable or reusable products and materials to reduce the carbon footprint and preserve space in local landfills. From and after the Conversion Date, County and Lessee shall work together to develop programs, materials, and signage to educate employees, sublessees, and visitors on the proper separation of recyclable materials.

ARTICLE 7. MECHANICS' LIENS

7.1 Mechanics' Liens. Lessee shall pay, or cause to be paid, all costs for work done by it, or caused to be done by it, on the Premises, and for all materials furnished for or in connection with any work on the Premises. If any lien is filed against the Premises, Lessee shall cause the lien to be discharged of record within twenty (20) business days after it is filed. In addition to and without limiting any other indemnification obligations under this Lease, Lessee shall indemnify, defend and hold County harmless from any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for Lessee or persons claiming under Lessee. This obligation to indemnify, defend, and hold harmless will survive the expiration or earlier termination of this Lease.

- 7.2 <u>Contest of Lien</u>. If Lessee contests any lien filed against the Premises, it shall furnish a bond, surety, undertaking or other security in connection therewith as required by law, or as requested by and satisfactory to County, to stay such proceeding, which bond, surety, undertaking or other security shall be sufficient to cause the lien to be insured against by the Title Company or removed as a lien against the Premises . If a final judgment establishing the validity or existence of a lien for any amount is entered, Lessee shall immediately pay and satisfy the judgment.
- 7.3 Right to Cure. If Lessee is in default in paying any charge for which a mechanics' lien claim and suit to foreclose the lien have been filed, and has not provided security in accordance with Section 7.2 above, County may but shall not be required to, pay the claim. Any related costs, and the claim amount paid, together with reasonable attorneys' fees incurred in connection with paying the claim ("Lien Costs") shall be immediately due and payable from Lessee to County as Additional Rent, and Lessee shall pay the Lien Costs to County with interest at the rate specified in Section 17.5, calculated from the date(s) of County's payment of the Lien Costs to Lessee's payment of the Lien Costs to County.
- 7.4 <u>Notice of Lien</u>. If any claim of lien is filed against the Premises or any action against the Premises or any action affecting the title to the property of which the Premises is a part is commenced, the party receiving notice of the lien or action shall immediately give the other party written notice of the lien or action.
- 7.5 Notice of Nonresponsibility. County or its representatives shall have the right to enter and inspect the Premises, subject to the rights of subtenants, at all reasonable times and shall have the right to post and keep posted on the Premises notices of nonresponsibility or other notices which County may deem to be proper for the protection of County's interest in the Premises. Lessee shall, on behalf of the County, before the commencement of any work which might result in any lien, post and maintain on the Premises, as record against the Premises, all notices of nonresponsibility providing for by the mechanics' lien laws of the State of California.

ARTICLE 8. SECURITY

From and after the Commencement Date, County will have no responsibility for security of the Premises and Lessee, at its sole expense, shall be solely responsible for security of the Premises, and shall provide for such security through appropriate measures as reasonably determined by Lessee.

ARTICLE 9. <u>DEVELOPMENT OBLIGATIONS; IMPROVEMENTS;</u> PERSONAL PROPERTY; FIXTURES

9.1 <u>Development of the Project</u>. As partial consideration and security for the granting of this Lease by County, Lessee shall complete the development, design, and

construction of the Improvements in accordance with the Final Plans, as defined in 9.4, prior to the expiration of the Construction Period, subject to Section 3.1. The County's review, direction, or approval throughout the design and construction of the Improvements shall not diminish, modify, or alter the duties, responsibilities, and obligations of the Lessee as specified in this Lease, nor shall it impose any financial obligation or other liability upon the County. The Project shall consist of capital improvements constructed in accordance with the requirements of this Lease.

- 9.2 <u>Construction Requirements</u>. All Improvements made to the Premises shall be made under the supervision of a competent architect or licensed structural engineer and made in conformity with applicable governmental approvals. All work with respect to the Improvements must be performed in a good and workmanlike manner, and be diligently completed. Upon completion of the Improvements, the Lessee shall record a Notice of Completion in the office of the San Diego County Recorder, as required or permitted by law, and the Lessee shall deliver to County, within ten (10) days after completion of the work, a copy of the Certificate of Occupancy, and the building permit for the work. Lessee shall construct all Improvements in accordance with all applicable laws and regulations.
- 9.3 <u>Construction Plans</u>. Within one hundred twenty (120) days following completion of any Improvements on the Premises, Lessee shall furnish County with one (1) complete set of construction set plans including all RFI notes. CAD files are also to be converted to Acrobat Reader (*.pdf format), which shall be included on disk, CD ROM or external storage device.

9.4 Performance of Work.

- 9.4.1 <u>Diligent Construction</u>. Lessee shall cause its contractor to diligently commence and complete the actual construction of the applicable Improvements (a) in a good and workmanlike manner by qualified and adequately supervised workers; (b) in substantial compliance with the Final Plans; (c) in compliance with all governmental and quasi-governmental rules, regulations, laws and building codes (including safety requirements), and all requirements of the insurers of Lessee, County, Investor Limited Partner, and lenders; and (d) in a manner free from all design, material and workmanship defects.
- 9.4.2 <u>County's Rules, Requirements</u>. Lessee must take all reasonably necessary measures to protect the adjacent property of County from Lessee's construction activities.
- 9.4.3 <u>County's Right to Enter</u>. County shall have the right during construction of the Improvements to enter the Premises for the purpose of inspecting construction progress. County will use its best efforts to minimize interference with Lessee's construction of the Improvements and will give prior no less than 48 hours written notice to Lessee and contractor of County's desire to enter the Premises. Entry shall be subject to compliance with jobsite health and safety rules (e.g., hard hats, safety vests, etc.).

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- 9.4.4 <u>Mechanic's Liens</u>. Lessee shall cause the Improvements to be constructed free of any vendor's, mechanics' or workers' or other liens, as further provided in <u>Article 7</u>.
- 9.4.5 <u>Reports</u>. Upon the reasonable written request of the County, Lessee shall deliver to, within ten (10) business days after County's request, copies of specific studies, reports and similar information, including all supplements, addenda and updates of the information, regarding the physical condition of the Premises (e.g., soils, geotechnical, hydrological, and environmental reports, studies, assessments and tests) obtained by Lessee except those prepared by Lessee's legal counsel and subject to attorney client privilege.
- 9.4.6 <u>Completion of Improvements</u>. For purposes of satisfaction of the development obligation under <u>Section 9.1</u>, completion of development of the Improvements ("Completion") shall be deemed to have occurred upon Lessee's submission to County's Lease Administrator of all of the following documents:
- 9.4.6.1 The final Certificate of Occupancy for the Improvements, as issued by the City of San Diego;
- 9.4.6.2 Copies of legally sufficient releases for all mechanics' liens or other liens affecting the Premises or Improvements;
- 9.4.6.3 A certified copy of a notice of completion, recorded by Lessee in accordance with State law;
- 9.4.6.4 Copies of all building permits, indicating inspection and approval by the issuer of the permits; and
- 9.4.6.5 An architect's or engineer's certification that the Improvements have been constructed in accordance with the Final Plans and are one hundred percent (100.0%) complete in accordance with this Lease.
- 9.5 <u>Plans and Specifications</u>. Pursuant to the DDA, the Lessee has delivered to County's Lease Administrator the plans and specifications prepared by the Lessee's architect, including the following (collectively the "<u>Plans</u>"):
 - Conceptual plans and site layout
 - Building design and architectural treatment
 - Exterior elevations
 - Landscaping specifications

County's Lease Administrator shall have the right to approve the Plans and all substantial changes to the Plans as set forth in the DDA. The Plans submitted to the City of San Diego in connection with the Approvals shall be deemed the "<u>Final Plans</u>".

9.6 <u>Signs</u>. Lessee, Contractor, and subcontractors shall not post signs on any part of the Premises except as permitted by applicable laws and regulations.

ARTICLE 10. IMPROVEMENTS; OPTIONAL IMPROVEMENTS

- 10.1 <u>County Not Responsible for Taxes and Assessments Accruing Against Lessee</u>. Anything to the contrary in this Lease notwithstanding, County shall not pay any taxes or assessments accruing against Lessee on the Premises or any interest of Lessee in the Premises before, during, or after the Term, and all tax payments and assessments arising from the Leasehold Estate shall be the sole responsibility of Lessee.
- 10.2 Lessee's Responsibility for Taxes and Assessments. From and after the Commencement Date, Lessee shall be solely responsible for payment of any taxes or assessments levied upon any Improvements, Fixtures, or Personal Property located on the Premises, to the extent that the taxes or assessments result from the business or other activities of Lessee upon, or in connection with, the Premises. As used in this Lease, the term "taxes" means all taxes, governmental bonds, special assessments, Mello-Roos assessments, charges, rent income, or transfer taxes, license and transaction fees, including, but not limited to, (i) any state, local, federal, personal or corporate income tax, or any real property or personal property tax, (ii) any estate inheritance taxes, (iii) any franchise, succession or transfer taxes, (iv) interest on taxes or penalties resulting from Lessee's failure to pay taxes, (v) any increases in taxes attributable to the sale of the Leasehold Estate, or (vi) any taxes which are essentially payments to a governmental agency for the right to make improvements to the Premises. Lessee shall pay all taxes when due, and shall not allow any taxes, assessments or fees to become a lien against the Premises or any Improvements on the Premises. Nothing in this Section prevents or prohibits Lessee from contesting the validity of any tax, assessment, or fee or from applying for a welfare tax exemption for all or any portion of the Improvements in a manner authorized by law.
- 10.3 <u>Section 107.6 Statement.</u> Pursuant to California Revenue and Taxation Code Section 107.6, Lessee is notified that the terms of this Lease may result in the creation of a possessory interest, and if a possessory interest is vested in Lessee, Lessee may be subjected to the payment of real property taxes levied on the possessory interest.

ARTICLE 11. REPAIRS; MAINTENANCE

11.1 <u>Lessee's Repair and Maintenance Obligations.</u> Lessee, at its sole expense, shall at all times during the Term of this Lease repair, maintain in good and tenantable condition and replace, as necessary, the Premises, the Improvements, all Fixtures and other equipment installed in the Premises, including all items of repair, maintenance, alteration,

improvement or reconstruction that may be required at any time or from time to time by a governmental agency having jurisdiction over the Premises. These obligations shall apply regardless of whether the repairs, restorations and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or noncapital, or the fault or not the fault of Lessee, its agents, employees, invitees, visitors, sublessees or contractors. All replacements made by Lessee shall be made in accordance with this Lease and shall be of like size, kind and quality to the items replaced. Lessee shall provide for trash removal, at its sole expense, and shall maintain all trash receptacles and trash areas in a clean, orderly and first-class condition.

- 11.2 <u>Lessee's Failure to Maintain</u>. If Lessee refuses or neglects to repair, replace, or maintain the Premises and Improvements in a manner reasonably satisfactory to County, County may, upon giving to Lessee written notice and opportunity to cure in accordance with <u>Article 16</u>, make the repairs or perform the maintenance on behalf of and for the account of Lessee. If County makes or causes any repairs to be made or performed, as provided for in this Lease, Lessee shall pay the cost of the repairs or maintenance to County, including administrative costs, as Additional Rent, promptly upon receipt of an invoice for the work.
- 11.3 <u>County Not Obligated to Repair or Maintain; Lessee's Waiver of State of California Civil Code Section 1942</u>. To the extent that any remedies specified in this Lease conflict or are inconsistent with any provisions of State of California Civil Code Section 1942 ("CC Section1942"), or any successor statute to CC Section 1942, the provisions of this Lease shall control. Lessee specifically waives any right it may have pursuant to CC Section 1942 to effect maintenance or repairs to the Premises and to abate and resulting costs from Rent or Additional Rent due to the County under this Lease.

ARTICLE 12. EXCULPATION, INDEMNIFICATION AND INSURANCE

- 12.1 <u>Definition of "Lessee Parties" and "County Parties"</u>. For purposes of this Lease, the term "Lessee Parties" refers singularly and collectively to Lessee and Lessee's officers, members, partners, agents, affiliates, lenders, employees, and independent contractors as well as to all persons and entities claiming through any of these persons or entities. The term "County Parties" refers singularly and collectively to County and its elected officials, officers, directors, affiliated entities, agents, servants, and employees.
- 12.2 <u>Definition of Claims</u>. For purposes of this Lease, "Claims" means any and all claims, losses, costs, damage, expenses, liabilities, liens, actions, causes of action (whether in tort or contract, law or equity, or otherwise), charges, assessments, fines, and penalties of any kind (including consultant and expert expenses, court costs, and attorneys' fees actually incurred).
- 12.3 <u>Exculpation</u>. The following exculpation provisions ("Exculpation Provisions") shall apply:

12.3.1 <u>Exculpation</u>. To the fullest extent permitted by law, Lessee, on its behalf and on behalf of all Lessee Parties, waives all Claims against County Parties arising out of, knowingly and voluntarily assumes the risk of, and agrees that County Parties shall not be liable to Lessee Parties for any of the following:

12.3.1.1 Injury to or death of any person; or

12.3.1.2 Loss of, injury or damage to, or destruction of any tangible or intangible property, including the resulting loss of use, economic losses, and consequential or resulting damage of any kind from any cause.

Provided, however that the County Parties shall not be exculpated from liabilities arising out of the gross negligence or willful misconduct of any of the County Parties.

No County Party, other than the County shall have any personal liability or responsibility for any of the responsibilities or liabilities of County under this Lease. No Lessee party, other than Lessee, shall have any personal liability or responsibility for any of the responsibilities or liabilities of Lessee under this Lease, unless and until the Lessee Party becomes lessee under this Lease or any New Lease provided under <u>Article 15</u>.

- 12.3.2 <u>Survival of Exculpation Provisions</u>. The provisions of this <u>Section 12.3</u> shall survive the expiration or earlier termination of this Lease until all Claims within the scope of the Exculpation Provisions are fully, finally, and absolutely barred by the applicable statutes of limitations.
- 12.3.3 <u>Lessee's Acknowledgment of Fairness</u>. Lessee acknowledges that the Exculpation Provisions of this Lease were negotiated with County, that the consideration for the Exculpation Provisions is fair and adequate, and that Lessee had a fair opportunity to negotiate, accept, reject, modify, or alter the Exculpation Provisions of this Lease.
- 12.3.4 <u>No Exculpation for Non-delegable Duties</u>. The Exculpation Provisions of this Lease may not be interpreted or construed as an attempt by County to be relieved of liability arising out of a non-delegable duty on the part of County.
- 12.3.5 <u>Waiver of Civil Code Section 1542</u>. With respect to the Exculpation Provisions of this Lease, Lessee waives the benefits of State of California Civil Code Section 1542, which provides:

"A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that, if known by him or her, must have materially affected his or her settlement with the debtor." Notwithstanding anything to the contrary in this <u>Section 12.3.5</u>, this release does not apply to any claim arising from (1) County's access or use of the Premises pursuant to any easement or other access rights provided by Lessee, (2) the gross negligence or willful misconduct of County Parties, and (3) any Claims arising from the Demolition (as such term is defined in the DDA).

- 12.3.6 <u>Indemnification</u>. The following indemnification provisions ("Indemnification Provisions") shall apply:
- 12.3.6.1 <u>Lessee's Indemnification of County Parties</u>. To the fullest extent permitted by law, Lessee shall, at Lessee's sole expense and with counsel reasonably acceptable to County, indemnify, protect, defend, and hold harmless ("Lessee's Indemnification") County Parties from and against all Claims, from any cause, arising out of or relating (directly or indirectly) to this Lease, the tenancy created under this Lease, or the Premises and Improvements, including, without limitation:
- 12.3.6.2 The use or occupancy, or manner of use or occupancy, of the Premises and Improvements, by Lessee Parties, or of any invitee, guests, sublessee, or licenses, or any other person occupying or using the Premises and Improvements;
- 12.3.6.3 Any act, error, omission, or negligence of Lessee Parties or of any invitee, guest, sublessee or licensee of Lessee Parties in, on, or about the Premises and Improvements;
 - 12.3.6.4 Lessee's conducting of its business;
- 12.3.6.5 Any alterations, activities, work, or things done, omitted, permitted, allowed, or suffered by Lessee Parties in, at, or about the Premises and Improvements, including construction of Improvements,
- 12.3.6.6 The violation of or failure by Lessee Parties to comply with any applicable laws, standards, rules, regulations, orders, decrees, or judgments; and
- 12.3.6.7 Any breach or default in performance of any obligation on Lessee's part to be performed under this Lease, whether before or during the Term or after the expiration or earlier termination of the Term.
 - 12.3.7 <u>Type of Injury or Loss</u>. Lessee's Indemnification extends to and includes Claims for:
- 12.3.7.1 Injury to any persons (including death at any time resulting from that injury);
- 12.3.7.2 Loss of, injury or damage to, or destruction of property (including all loss of use resulting from that loss, injury, damage, or destruction); and

12.3.7.3 All economic losses and consequential or resulting

damage of any kind.

- 12.3.8 Active or Passive Negligence; Strict Liability. Except as provided in this Section, Lessee's Indemnification shall apply, without limitation, to Claims caused by the concurrent negligent act or omission, whether active or passive, of County Parties, and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on County Parties. Lessee's Indemnification shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a Claim was caused solely by the negligence or willful misconduct of a County Party.
- 12.3.9 <u>Indemnification Independent of Insurance Obligations</u>. The Indemnification Provisions provided in this Lease may not be construed or interpreted as in any way restricting, limiting, or modifying Lessee's insurance or other obligations of this Lease and is independent of Lessee's insurance and other obligations. Lessee's compliance with the insurance requirements and other obligations of this Lease shall not in any way restrict, limit, or modify Lessee's Indemnification obligations under this Lease
- 12.3.10 <u>Survival of Indemnification</u>. The Indemnification Provisions of this <u>Section 12.3</u> shall survive the expiration or earlier termination of this Lease until all Claims against County Parties involving any of the indemnified matters are fully, finally, and absolutely barred by the applicable statutes of limitations.
- 12.3.11 <u>Duty to Defend</u>. Lessee's duty to defend County Parties is separate and independent of Lessee's duty to indemnify County Parties. The duty to defend includes Claims for which County Parties may be liable without fault or strictly liable. The duty to defend applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of Lessee Parties have been determined. The duty to defend applies immediately, regardless of whether County Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of County and Lessee that County Parties be entitled to obtain summary adjudication or summary judgment regarding Lessee's duty to defend County Parties at any stage of any claim or suit within the scope of the Indemnification Provisions. Notwithstanding the forgoing, if a final judgment of a court of competent jurisdiction establishes that a Claim was caused by the gross negligence or willful misconduct of a County Party, County shall be responsible for the costs of defending that Claim.
- 12.3.12 <u>Insurance</u>. In addition to and without limiting Lessee's Indemnification obligations under this Lease, Lessee shall at its sole expense provide and maintain during the Term and for any other period required in this Lease, insurance in the amounts and form specified in this Section and in EXHIBIT "B" <u>INSURANCE REQUIREMENTS CONSTRUCTION PERIOD</u> and EXHIBIT "C" <u>INSURANCE REQUIREMENTS OPERATIONS PERIOD</u> of this Lease.

12.3.13 <u>Compliance with Insurer Requirements.</u> Lessee shall, at Lessee's sole expense, comply with all requirements, guidelines, rules, orders, and similar mandates and directives pertaining to the use of the Premises, imposed by Lessee's insurers.

12.3.14 <u>Survival of Insurance Requirements</u>. Lessee shall, at Lessee's sole expense, maintain in full force and effect the insurance required under this Lease and shall name County Parties and any lender specified by County as additional insureds, for a period of no less than two (2) years after expiration or earlier termination of this Lease.

12.3.15 <u>Insurance Independent of Exculpation and Indemnification</u>. The insurance requirements set forth in this Lease are independent of Lessee's exculpation, indemnification, and other obligations under this Lease and shall not be construed or interpreted in any way to restrict, limit, or modify Lessee's exculpation, indemnification, and other obligations or to limit Lessee's liability under this Lease.

ARTICLE 13. HAZARDOUS MATERIALS

- Laws" means any and all federal, state or local laws, rules, decrees, orders, regulations or court decisions (including "common law"), including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., §9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C., §1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., §6901 et seq.), the California Hazardous Waste Control Act and the Carpenter-Presley-Tanner Hazardous Substance Act, State of California Health and Safety Code Section 25100, et seq., and Section 25300, et seq., the California Environmental Quality Act of 1970, and the Porter-Cologne Water Quality Control Act, Cal. Water Code Section 13000, et seq. relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises, soil and ground water conditions or other similar substances or conditions.
- 13.2 <u>Hazardous Materials Definition</u>. The term "Hazardous Materials" means any chemical, compound, material, substance or other matter that:

Is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;

Is controlled, referred to, designated in or governed by any Hazardous Materials Laws;

Gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws; or

Is any other material or substance giving rise to any liability, responsibility or duty upon the County or Lessee with respect to any third person under any Hazardous Materials Law.

Hazardous Materials do not include any substances customarily used in construction, development, operation, or maintenance of residential real estate, provided such substances are used in accordance with all applicable laws.

- 13.3 <u>Lessee Obligations</u>. During the Term of this Lease, or for any longer period specified in this Lease, Lessee shall comply with the following provisions unless otherwise specifically approved in writing by County's Lease Administrator:
- 13.3.1 From and after the Commencement Date, Lessee shall not cause or permit any Hazardous Materials to be brought, kept, or used in or about the Premises or the Improvements by Lessee, its agents, employees, sublessees, assigns, contractors or invitees, except as is customary in by Lessee's Permitted Uses of the Premises, as described in <u>Section 6.2</u>, such as, for example, customary amounts of residential and retail cleaning supplies.
- 13.3.2 Any handling, transportation, storage, treatment or usage by Lessee of Hazardous Materials that is to occur on the Premises or the Improvements following the Commencement Date shall be in compliance with all applicable Hazardous Materials Laws.
- 13.3.3 Any leaks, spills, release, discharge, emission or disposal of Hazardous Materials that may occur on the Premises or the Improvements following the Commencement Date shall be promptly and thoroughly cleaned and removed from the Premises or the Improvements by Lessee at its sole expense, and any discharge shall be promptly reported in writing to County, and to any other appropriate governmental regulatory authorities.
- 13.3.4 No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by Lessee in the Premises or the Improvements.
- 13.3.5 No underground improvements related to the storage or extraction of Hazardous Materials or resources, including but not limited to treatment or storage tanks, or water, gas or oil wells shall be located by Lessee on the Premises or the Improvements without County's prior written consent; except that Lessee may construct and operate water collection and treatment facilities as required by Laws.

13.3.6 Lessee shall, at Lessee's sole cost and expense, conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials in accordance with applicable Hazardous Materials Laws and as required by applicable law on, from, or affecting the Premises or the Improvements, regardless of the source or original location of such Hazardous Materials, in accordance with all applicable Hazardous Materials Laws and as may additionally be required by any Leasehold Mortgagee and Investor Limited Partner.

13.3.7 Activities proposed by the Lessee that involve disturbing asbestos materials on site shall only be conducted in accordance with all federal, state and local asbestos rules and regulations including, but not limited to, the California Occupational Safety and Health Administration (Cal/OSHA), Environmental Protection Agency (EPA) and Air Pollution Control District (APCD), with prior written consent of the County, as follows:

Prior to conducting asbestos related activities, the Lessee shall notify the County of the proposed work at least one month in advance. The notification shall include the location of work, type of asbestos containing material (ACM) to be removed and a work plan indicating the work practices and methods of control to be used during the abatement activity to control asbestos fiber release. The County Occupational Health Program shall review the work plan and may modify the plans as necessary.

Any asbestos related activities shall be performed by a contractor that is registered with Cal/OSHA and certified by the California Contractors State Licensing Board to perform asbestos work. Any asbestos related activities shall be overseen by a California Certified Asbestos Consultant (CAC), or a Certified Site Surveillance Technician under the direction of a CAC.

Replacement products used in tenant improvements or other construction activities shall not contain asbestos. Any replacement products used by Lessee shall be verified as non-asbestos products by using Material Safety Data Sheets (MSDS) and/or having the architect or project engineer verify that ACMs were not used.

Lessee shall promptly supply County with copies of all notices, reports, correspondence, and submissions made by Lessee to the United States Environmental Protection Agency, the United Occupational Safety and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials Laws.

13.3.8 Lessee shall promptly notify County of any liens threatened or attached against the Premises or the Improvements pursuant to any Hazardous Materials Law. From and after the Commencement Date, if such a lien is filed against the Premises, then within twenty (20) days following the filing or before any governmental authority commences proceedings to sell the Premises or the Improvements pursuant to the lien, whichever occurs first, Lessee shall either: (a) pay the claim and remove the lien from the Premises or the Improvements, or (b) furnish either (1) a bond or cash deposit reasonably satisfactory to County in an amount not less than the claim from which the lien arises, or (2) other security satisfactory

to County in an amount not less than that which is sufficient to discharge the claim from which the lien arises. Upon the expiration or earlier termination of this Lease, subject to Section 3.3, Lessee shall surrender the Premises and Improvements to County without any outstanding violations of and in full compliance with all Hazardous Materials Laws affecting the Premises and Improvements, and in accordance with the requirements of this Article 13.

13.4 <u>Lessee Due Diligence and Acceptance of Condition of Premises</u>. Lessee has conducted its own inspections, including a Phase II Environmental Assessment (if necessary), to familiarize itself with the condition of the Premises, including the presence of any Hazardous Materials and has unconditionally accepted the condition of the Premises based on its own due diligence in accordance. Lessee has unconditionally and irrevocably acceptance of the Premises in its "as is" physical condition, with no warranty, express or implied by County as to the presence of Hazardous Materials, or the condition of the soil, its geology, or the presence of known or unknown faults. If the condition of the Premises is not in all respects entirely suitable for the use or uses to which such Premises will be put, then it is the sole responsibility and obligation of Lessee to place the Premises in all respects in a condition suitable for the Project, solely at Lessee's expense.

13.5 Indemnification. In addition to and without limiting any other indemnification obligations under this Lease, from and after the Commencement Date, Lessee, its successors, and assigns, shall protect, indemnify, defend (with counsel selected by County), reimburse and hold County and its elected officials, officers, employees and agents harmless (collectively, the "Hazardous Materials Indemnity Obligation") from any Claims (defined in Section 12.2), judgments, damages, penalties, fines, costs or expenses (known or unknown, contingent or otherwise), liabilities (including sums paid in settlement of Claims), personal injury (including wrongful death), property damage (real or personal) or loss, including any attorneys' fees, consultant fees, and expert fees (consultants and experts to be selected by County) which arise from or in connection with the presence or suspected presence of Hazardous Materials, including the soil, ground water, or soil vapor on or under the Premises or the Improvements. Without limitation of the preceding sentence, the Hazardous Materials Indemnity Obligations apply to costs incurred in connection with investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any Hazardous Materials Laws because of: (a) the presence of Hazardous Materials in the soil, ground water, or soil vapor on the Premises, regardless of the source or original location of such Hazardous Materials except for any such Hazardous Materials that are present on the Property as a result of activities of County, its employees, contractors, or agents that occurred during the period from the acceptance of the condition of the Property by Developer under Section 201 of the DDA to the Closing under the DDA, and (b) any release, discharge, exposure, or displacement, or migration of Hazardous Materials caused by any act or omission of Lessee. The Hazardous Materials Indemnity Obligations shall survive the expiration or earlier termination of this Lease until all Claims involving any of the indemnified matters are fully, finally, and absolutely barred by the applicable statutes of limitations.

13.6 <u>Remedies Cumulative; Survival</u>. The provisions of this <u>Article 13</u> shall be in addition to any and all common law obligations and liabilities Lessee may have to County, and any remedies and the environmental indemnities provided for in this Article 13 shall survive

the expiration or earlier termination of this Lease and/or any transfer of all or any portion of the Premises, or of any interest in this Lease, and shall be governed by the laws of the State of California.

13.7 <u>Inspection</u>. If County has reasonable cause to believe that Lessee is not in compliance with this Article 13, County and County's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by County, may (but without the obligation or duty to do so), after reasonable prior written notice and from time to time, (except in the event of an emergency, or prior to the Commencement Date, in which case no notice shall be required), inspect the Premises or the Improvements to determine whether Lessee is complying with Lessee's obligations set forth in this Article 13 and to perform reasonable environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during any other hours agreed to by County and Lessee. If Lessee is not in compliance with Lessee's obligations set forth in this Article 13, after notice (except in the event of an emergency, or prior to the Commencement Date, in which case no notice shall be required) and the expiration of the applicable cure period. County shall have the right, in addition to County's other remedies available at law and in equity, to enter the Premises or the Improvements and take any action that County in its sole judgment deems appropriate to remediate any actual contamination or an imminent threat of contamination caused by Lessee's failure to comply. County will use reasonable efforts to minimize interference with Lessee's use of Premises or the Improvements but shall not be liable for any interference caused by County's entry and remediation efforts pursuant to and in compliance with this Section. Upon completion of any sampling or testing County will (which will be conducted at Lessee's expense if County's actions are a result of Lessee's default under this Lease) restore the affected area of the Premises or Improvements from any damage caused by County's sampling and testing.

ARTICLE 14. TRANSFER AND ASSIGNMENT

14.1 General Restriction of Transfers Lessee shall have no right to make any Transfer except as specifically provided in this Article 14. The term "Transfer" includes any of the following, whether voluntary or involuntary, direct or indirect: (i) assignment of all or any part of this Lease, or any interest in this Lease, (ii) any total partial sale, transfer, conveyance, sublease, or assignment of the whole or any part of the Premises, Improvements, or Leasehold Estate, (iii) any change in Control (defined below) of Lessee. Lessee recognizes that the qualifications and identity of Lessee are of particular concern to the County prior to Completion of construction because of the importance of the development of the Premises to the general welfare of the community and the fact that a change in control of Lessee is for practical purposes a transfer or disposition of the Leasehold Estate by Lessee. Lessee further recognizes that it is because of such qualifications and identity that the County is entering into the Lease with Lessee. Therefore, no voluntary or involuntary transferee of Lessee shall acquire any rights or powers under this Lease except as expressly permitted in this Lease, and Lessee represents and agrees that there shall be no Transfer without the prior written approval of the County in accordance with following conditions and requirements. Any Transfer in violation of this Article 14 shall constitute a material default under this Lease. In the absence of full compliance with this Article

<u>14</u> and a specific written agreement signed by County (if applicable), Lessee, and the proposed transferee, no Transfer shall be effective or deemed to relieve Lessee from any obligations or liability under this Lease.

14.2 <u>Definitions</u>. For purposes of this <u>Article 14</u>, the following definitions apply:

"Person" means an individual, partnership, Limited Partnership, trust, estate, association, corporation, limited liability company, or other entity, domestic or foreign.

"Control" means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of equity interests, by contract, through election of the members of the Board or Directors, or otherwise. It shall be a presumption that Control with respect to a corporation or limited liability company is the right to exercise or Control, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the Controlled corporation or limited liability company, and that the administrative general partner of a limited partnership Controls the limited partnership.

"Affiliate" means: (1) any Person directly or indirectly Controlling, Controlled by or under common Control with another Person; (2) any Person owning or Controlling ten percent (10%) or more of the outstanding voting securities of such other Person; or (3) if that other Person is an officer, director, member or partner, any company for which such Person acts in any such capacity.

14.3 Assignment and Sublease after Completion. Except as otherwise provided in this Article 14, after Completion of the Improvements, Lessee shall have the right to assign its interest in the Lease or to sublet all (but not part) of the Improvements to any other party subject to the prior written approval of County, said approval not to be unreasonably withheld, conditioned, or delayed. County's approval shall be given if the Lessee is not in default under this Lease, has disclosed and provided documentation of all terms of the proposed assignment or sublease (which documentation shows the Transfer is consistent with and does not attempt to modify any terms of this Lease), and has provided documentation to County sufficient to establish that the proposed assignee or sublessee meets all of the following requirements:has prior experience owning and/or managing a real property development comparable to the Improvements, and manages not less than 500 affordable multifamily residential units (provided that such condition may be satisfied by a property manager engaged by such assignee or subtenant that manages, directly or indirectly not less than 500 affordable residential multi-family apartment units). No such assignment or sublease shall be effective or deemed to relieve Lessee until the assignee or sublessee has entered a written agreement with County to be bound by and assume the terms of this Lease. Subject to the requirement for a written agreement with County under Section 14.8, following transfer or assignment of the Lease by Lessee, Lessee will be released from its obligations under the Lease.

14.4 <u>Request for Assignment or Sublease</u>. Except as otherwise specified in <u>Sections 14.6</u> and <u>14.7</u> for specific Transfers, Lessee shall provide County with written notice of any proposed Transfer of this Lease and all required documentation for County review, at least

- thirty (30) days prior to the proposed Transfer. Lessee shall provide County with all documentation of all terms of the proposed Transfer and information regarding the proposed transferee. The County will approve or disapprove a request for Transfer within thirty (30) days of receipt of a request for transfer and sufficient documentation and information for the County to evaluate the proposed Transfer. If the County disapproves a request for a Transfer it will specify the reasons for disapproval. Failure to approve or disapprove the Transfer within the thirty (30) day period will be deemed disapproval.
- 14.5 <u>Additional Permitted Transfers</u>. The following Transfers shall be permitted at any time, subject to the requirements of this Section. Transfers contemplated by <u>Sections 14.5.1</u> through <u>14.5.3</u> are subject to County's reasonable approval, which approval shall be granted if at least thirty (30) days prior to the proposed Transfer, the Lessee discloses and provides documentation of all terms of the proposed Transfer, and has provided documentation to County sufficient to establish that the proposed Transfer meets one or more of the definitions in those Sections, and is otherwise consistent with the requirements of this Lease. Transfers contemplated under <u>Section 14.5.4</u> are subject to the requirements of <u>Section 14.5.4</u>.
- 14.5.1 Any transfer of an indirect interest in Lessee that does not result in a change in Control of Lessee;
- 14.5.2 The granting of reasonable easements to facilitate construction or operation of the Improvements;
- 14.5.3 The grant and exercise of an option and/or right of first refusal given by Lessee to a general partner of Lessee in accordance with the Lessee's Partnership Agreement on or around the expiration of the tax credit compliance period;
- 14.5.4 Any Transfer of an investor limited partner's interest in the Lessee or any removal and replacement of the general partner of the Lessee by its investor limited partner in accordance with Lessee's partnership agreement that was provided to County under the DDA; provided Lessee or its limited partner has provided County with notice of any such proposed Transfer and documentation sufficient to establish that the proposed Transfer meets the provisions of this Section 14.5.4 at least ten (10) days prior to the Transfer.
- 14.6 <u>Commercial Subleases</u>. The Lessee shall have the right to enter into subleases ("<u>Space Leases</u>") for commercials space in the Project ("<u>Space Lessees</u>") subject to the following conditions:
- 14.6.1 Each Space Lease shall contain a provision requiring the Space Lessee to attorn to County and to be subordinate to any Leasehold Mortgage, to the Leasehold Mortgagee, or any person designated in a notice from the Leasehold Mortgagee. If Lessee defaults under this Lease and if the Space Lessee is notified of Lessee's default and instructed to, the Space Lessee shall make sublessee's rental payments to County or Leasehold Mortgagee as required under this Lease and the Leasehold Mortgage.

- 14.6.2 The term of each Space Lease shall not exceed the remainder of the Lease Term.
- 14.6.3 Each Space Lessee shall execute an attornment agreement with County in substantially the form attached to this Lease as Exhibit "D".
- 14.6.4 For any Space Lease that will be coterminous with the Term of this Lease, Lessee must obtain from the Space Lessee at the time of execution of the Space Lease, an agreement and estoppel certificate from the Space Lessee verifying the termination date of the Space Lease and documenting the Space Lessee's agreement to vacate the Premises prior to expiration of the Term.
- 14.7 <u>Residential Subleases</u>. The Lessee shall have the right to enter into residential subleases to residents in the residential portion of the Improvements so long as such residential subleases do not exceed the Term of the Lease, comply with all requirement of the County Regulatory Agreement, and include a provision requiring attornment to County.
- 14.8 Written Agreement with County Required. Except for the residential subleases under Section 14.7, no Transfer shall have any effect or relieve Lessee from any obligations or liability until the proposed transferee has executed a written agreement with County assuming all obligations under the Lease. Any rights acquired by a transferee pursuant to any Transfer shall be subject to each and every covenant, condition and restriction set forth in this Lease and to all of the rights and interest of County under this Lease except as may be otherwise specifically provided in this Lease. If a conflict between the provisions of this Lease and the provisions of any Transfer document occurs, the provisions of this Lease will control.

14.9 <u>Transfer Fee; Estoppel Fee; Subordination, Attornment and Non-</u>Disturbance Agreement Fee.

- 14.9.1 <u>Transfer Fee</u>. If County is requested to consent to a Transfer under this Lease, Lessee shall reimburse County for all legal fees incurred resulting from the request, and pay County a nonrefundable fee ("<u>Transfer Fee</u>") to reimburse County or County's agent for costs and expenses incurred in connection with the request. The Transfer Fee shall be delivered to County concurrently with Lessee's request for consent. The Transfer Fee in effect as of the Commencement Date of this Lease is one thousand dollars (\$1,000.00).
- 14.9.2 <u>Estoppel Fee</u>. If County is requested to issue an estoppel certificate, Lessee shall pay County a nonrefundable fee ("<u>Estoppel Fee</u>") for County's costs incurred in connection with the request. The Estoppel Fee shall be delivered to County concurrently with Lessee's request for the estoppel. The Estoppel Fee in effect as of the Commencement Date of this Lease is five hundred dollars (\$500.00).
- 14.9.3 <u>Non-Disturbance and Attornment Fee</u>. If County is requested to execute a NDA, Lessee shall pay County a nonrefundable fee ("<u>NDA Fee</u>") for County's costs

incurred in connection with the request. The NDA Fee shall be delivered to County concurrently with Lessee's request to execute the NDA. The NDA Fee in effect as of the Commencement Date of this Lease is seven hundred fifty dollars (\$750.00).

14.9.4 <u>Fee Adjustments</u>. County reserves the right to adjust the Transfer Fee, Estoppel Fee and NDA Fee from time to time during the Term of this Lease ("<u>Fee Adjustment</u>"). The base for computing a Fee Adjustment shall be the Consumer Price Index for All Urban Consumers (1982-84=100) for the Los Angeles-Riverside-Orange County Area CPI-U, as published by the U.S. Department of Labor, Bureau of Labor Statistics. The Fee Adjustment shall be determined by use of the following formulas:

Transfer Fee: $A = \$1,000.00 \times (B/C)$

Estoppel Fee: $A = $500.00 \times (B/C)$

NDA Fee: A = \$750.00 x (B/C)

Where:

"A" equals the adjusted Transfer Fee, Estoppel Fee or NDA Fee;

"B" equals the monthly "Consumer Price Index", as described in <u>Section 14.10</u> of this Lease, published for the month most closely preceding the date of request for consent to transfer; and

"C" equals the monthly "Consumer Price Index", as described in <u>Section 14.10</u>, published for the month of the Operations Period Commencement Date of this Lease.

The fees listed above shall only apply following expiration of the Construction Period.

14.10 Consumer Price Index for Fee Adjustment. The consumer price index which shall be used as the source for the Consumer Price Index numbers in Section 14 shall be that published by the United States Department of Labor, entitled United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for the Los Angeles-Riverside-Orange County Area, all items of the index entitled "Consumer Price Index for All Urban Consumers" for the Los Angeles-Riverside-Orange County Area (1982-84 = 100). If the index used for the Fee Adjustment is discontinued or revised during the Term, then County and Lessee shall agree upon a substitute index or computation for purposes of computing the Fee Adjustment. If County and Lessee cannot agree on a substitute index, the substitute index or computation shall be determined by arbitration pursuant to the provisions of the State of California Code of Civil Procedure.

- 14.11 <u>Security Assignment of Space Leases</u>. Subject to the rights of any Leasehold Mortgagee, as security for the performance of Lessee's obligations hereunder, Lessee hereby grants to County a security interest in and to all of Lessee's right to receive any rentals or other payments under all Space Leases and this Lease shall constitute a security agreement for such purposes under laws of the State of California. County is authorized to file such financing statements reasonably necessary to perfect such security interest.
- 14.12 <u>Assignment by County</u>. If County sells or otherwise transfers fee simple title to the Premises, the purchaser or transferee thereof shall be deemed to have assumed County's obligations hereunder which arise on or after the date of sale or transfer, and County shall thereupon be relieved of all liabilities hereunder accruing from and after the date of such transfer, but this Lease shall otherwise remain in full force and effect. If County assigns County's interest under this Lease without transferring fee simple title to the Premises to the same person, County as holder of fee simple title to the Premises shall remain liable for the performance of fee holder's obligations under this Lease.
- 14.13 Merger of Estates. County and Lessee hereby agree and acknowledge that the interests of County and of Lessee in the Premises and the Improvements shall at all times be separate and apart, and shall in no event be merged, notwithstanding the fact that the Lease or the Leasehold Estate created thereby, or any interest in either thereof, may be held directly or indirectly by or for the account of any person who shall own the fee estate in the Premises and the Improvements or any portion thereof; and no such merger of estates shall occur by operation of law, or otherwise, unless and until all persons at the time having any equity or secured financing interest of record in the fee estate and all persons having any equity or secured financing interest of record in the Lease or the Leasehold Estate, shall join in the execution of a written instrument effecting such merger of estates and record such instrument among the land records of San Diego County, California.
- 14.14 <u>Non-Disturbance and Attornment</u>. Upon request, the County will enter into a Non-Disturbance and Attornment Agreement in substantially the form attached as Exhibit "D" with any subtenant (excluding Residential tenants) authorized under this Article 14.

ARTICLE 15. LEASEHOLD FINANCING AND INVESTOR LIMITED PARTNER PROVISIONS

- 15.1 <u>Right to Encumber</u>. Lessee shall have no right to encumber the Leasehold Estate except as explicitly authorized under this Lease. Lessee shall have no right to encumber County's fee interest in the Premises.
- 15.1.1 Subject to the requirements of this <u>Article 15</u> from and after the Commencement Date, Lessee shall have the right at any time and from time to time to encumber its Leasehold Estate by one or more Leasehold Mortgages, subject to the prior written approval of County, said approval not to be unreasonably withheld, conditioned, or delayed. Lessee shall deliver to County a substantially final copy of the Leasehold Mortgage and related documents,

and all information necessary to allow County to confirm satisfaction of the requirements of this <u>Article 15</u> at least thirty (30) days prior to the proposed recordation of the Leasehold Mortgage. County's approval of the Leasehold Mortgage may not be withheld, conditioned, or delayed, so long as all of the following conditions are satisfied as evidenced by sufficient documentation provided to County:

15.1.1.1 the Leasehold Mortgagee is an Institutional Lender (defined below),

15.1.1.2 the Leasehold Mortgage does not encumber the County's fee interest in the Premises.

15.1.1.3 the Leasehold Mortgage does not cover any interest in any real property other than the Leasehold Estate and does not cover more than one indebtedness; and

15.1.1.4 the Leasehold Mortgage meets all requirements of this Article 15 and is not otherwise inconsistent with the terms of this Lease.

Institution Lender" shall mean: (1) a bank, trust company, insurance company, investment company, money management fund, credit union, savings bank, pension, welfare or retirement fund or system or real estate investment trust; (2) a trustee or issuer of collateralized mortgage obligations, commercial mortgage backed securities or similar investment entity; (3) an entity that is a "qualified institutional buyer" within the meaning of Rule 144A under the United States Securities Act of 1933, as amended, or an entity that is an institutional "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, as amended; or (4) any Person that is a subsidiary of any one of the foregoing entities, and has total assets of not less than \$600,000,000 and a net worth of not less than \$250,000,000, or such person has engaged a nationally or regionally recognized commercial servicer to administer and service the Leasehold Mortgage; or (5) a public agency, including but not limited to the San Diego Housing Commission, Civic San Diego, or the California Department of Housing and Community Development; (6) Any general partner of the Lessee or any Affiliate thereof.

- 15.1.2 <u>Required Provisions in Leasehold Mortgage</u>. Each Leasehold Mortgage shall contain, and shall be deemed to contain, the following provisions or their substantial equivalent. Each Leasehold Mortgage, by accepting its Leasehold Mortgage, shall be deemed to have agreed to the following provisions. Such provisions reflect the definitions contained in this Lease. All such terms shall be deemed to be modified in the Leasehold Mortgage as appropriate to reflect the definitions in such Leasehold Mortgage.
 - a) The Leasehold Mortgage attaches solely to the Leasehold Estate and does not encumber the County's Fee Estate. This Leasehold Mortgage is subject to all the terms and conditions of the Lease.

- b) Notwithstanding anything to the contrary in the Leasehold Mortgage, Leasehold Mortgagee shall have no right to receive any Condemnation award proceeds or Casualty insurance proceeds (collectively, "Loss Proceeds") except to the extent (and under the conditions) payable to Lessee or Leasehold Mortgagee under this Lease.
- c) No successor Leasehold Mortgagee's interest in the Leasehold Estate ("Successor Lessee") shall have any rights under the Lease unless and until such Successor Lessee has executed, acknowledged, and delivered to the County an instrument, in recordable form, by which Successor Lessee assumes all obligations under the Lease (except as otherwise provided in the Lease), subject to all terms of the Lease, including terms that limit the liability of any Lessee.
- d) a Leasehold Mortgage shall not be deemed to constitute an assignment or Transfer of the Leasehold Estate, nor shall any Leasehold Mortgagee, as such, or in the exercise of its rights under this Lease, be deemed to be an assignee, transferee, or mortgagee in possession of the Leasehold Estate so as to require such Leasehold Mortgagee, as such, to assume or otherwise be obligated to perform any of Lessee's obligations under this Lease except when, and then only for so long as, such Leasehold Mortgagee has acquired ownership and possession of the Leasehold Estate pursuant to a Foreclosure Event (defined in Section 15.2.1.3) under its Leasehold Mortgage (as distinct from its exercise of Leasehold Mortgagee's Cure Rights).
- 15.1.3 No extension, modification, change or amendment to a Leasehold Mortgage shall be effective, or binding upon County, unless and until approved in writing by County, which approval shall be granted so long as such extension, modification, change, or amendment satisfies the applicable requirements of this <u>Article 15</u> and does not otherwise conflict with this Lease. Along with any request for County approval under this Section, Lessee shall provide all information and documentation necessary to allow County to determine whether the proposed extension, modification, change, or amendment to the Leasehold Mortgage satisfies the applicable requirements of this <u>Article 15</u> and does not otherwise conflict with this Lease, and County shall respond to such request within twenty business (20) days of County's receipt of all such information and documentation.
- 15.1.4 Lessee shall deliver to County promptly after execution by Lessee a true and verified copy of any Leasehold Mortgage or extension, modification, change, amendment, or assignment thereof, together with the name and address of the Leasehold Mortgagee or assignee.
- 15.1.5 Immediately following the recordation of any Leasehold Mortgage, Lessee, at Lessee's expense, shall cause to be recorded in the office of the San Diego County Recorder, a written request for delivery to County of a copy of any notice of default and of any

notice of sale under the Leasehold Mortgage, as provided by the statutes of the State of California. The Leasehold Mortgage documents shall include a provision requiring that a copy of any notice of default or any notice of sale to be delivered to the County. County shall have thirty (30) days in which to cure any default after the time for Lessee to cure the default has expired. Neither County's right to cure any default nor any exercise of the right to cure a default shall constitute an assumption of Lessee's liability under the Leasehold Mortgage.

- 15.1.6 Subject to the requirements of this <u>Article 15</u>, any Leasehold Mortgagee shall have the unrestricted right to participate in and securitize its interest in the Leasehold Mortgage without the necessity of obtaining any consent from County. Any Leasehold Mortgagee shall have the right to assign its Leasehold Mortgage without the necessity of obtaining any consent from County if the following conditions are met: (a) the assignee is an Institutional Lender; (b) the assignment does not result in or involve any extension, modification, change, or amendment to the Leasehold Mortgage (other than identifying a new Leasehold Mortgagee), (c) Lessee or the Leasehold Mortgagee provides prompt notice of the assignment and contact information of the assignee to County. No assignment in violation of this Section will be effective or binding against the County.
- 15.1.7 The County will not in any way subordinate any of its rights under this Lease to any Leasehold Mortgagee and any Leasehold Mortgagee who forecloses on its Leasehold Mortgage shall agree to abide by and be bound by all the terms of this Lease during the term of its ownership of the Leasehold Estate.
- 15.1.8 If a conflict between the provisions of this Lease and the provisions of any Leasehold Mortgage occurs, the provisions of this Lease will control.
- 15.1.9 Any delivery of a deed or assignment of the Leasehold Estate or assignment of the Lease pursuant to foreclosure proceedings, or deed or assignment in lieu of foreclosure, to the Leasehold Mortgagee or other purchaser shall not be subject to the prior written consent of County, but any subsequent purchaser or transferee of all or any portion of the Lease, Improvements, or Leasehold Estate following such a foreclosure of the Leasehold Mortgage (or delivery of a deed or assignment of the Lease in lieu of foreclosure) shall be subject to the prior written consent of County as provided in <u>Article 14</u>.
- 15.1.10 County acknowledges that Lessee may encumber the Leasehold Estate as provided in this <u>Article 15</u> and grant to the Leasehold Mortgagee a collateral assignment in and to all rights of the Lessee under this Lease, including all of Lessee's rents and profits from the Leasehold Estate, as security for the Leasehold Mortgage.
- 15.1.11 County acknowledges that any mortgage now or hereafter encumbering County's fee interest in the Premises shall either (i) be subject and subordinate in all respects to the Lease and to the Leasehold Estate or (ii) shall provide recognition and non-disturbance protection to Lessee and its successors and assigns by means of a separate agreement reasonably acceptable to Lessee, the Investor Limited Partner, and the Leasehold Mortgagee in all respects. Lessee shall not encumber County's fee interest in the Premises.

15.1.12 Unless otherwise agreed to by the County, all insurance proceeds for Casualty under Article 19 shall be deposited with an Eligible Independent Trustee (defined below) reasonably acceptable to the Leasehold Mortgagee, to act as the insurance trustee and disburse such proceeds in accordance with the requirements of Article 19. Unless otherwise agreed to by the County, all condemnation proceeds which Tenant is required to use for repair, reconstruction, or restoration of the Improvements or Premises following Condemnation under Article 20 shall be deposited with an Eligible Independent Trustee reasonably acceptable to the Leasehold Mortgagee, to act as the trustee and disburse such proceeds in accordance with the requirements of Article 20. County further agrees that (i) the Leasehold Mortgagee may participate in any suits or proceedings relating to such insurance or condemnation proceeds, causes of action, claims, awards or recoveries and is authorized to adjust any loss covered by insurance and participate with County and Lessee in the adjustment of or any condemnation claim and to settle or compromise any claim or action in connection with respect to an insured loss and participate in settlements or compromises of condemnation claims, (ii) the Leasehold Mortgagee is entitled to payment of any Condemnation award proceeds or insurance proceeds for Casualty that are payable to Tenant and not required to be used for repair, restoration, or reconstruction of the Premises or Improvements under Article 19 and Article 20, and (iii) County shall not terminate the Lease solely on the basis of a Casualty or Condemnation affecting the Premises or Improvements (except in the case of total condemnation, which shall be governed by Section 20.1) without the prior written consent of the Leasehold Mortgagee, unless the Leasehold Mortgage is paid in full, provided that this does not in any way limit, restrict, or impose any requirement of Leasehold Mortgagee's consent on County's right to terminate this Lease for an Event of Default. "Eligible Independent Trustee" means a depository institution or trust company not affiliated with the Leasehold Mortgagee and insured by the Federal Deposit Insurance Corporation, the short-term unsecured debt obligations or commercial paper of which are rated at lease "A-1+" by S&P and "P-1" by Moody's, and "F-1+" by Fitch and the long-term unsecured debt obligations or which are rated at least "A+" by S&P, "A2" by Moody's, and "AA-" by Fitch acceptable to Leasehold Mortgagee in Leasehold Mortgagee's reasonable discretion.

Leasehold Mortgagee that is assigned Leasehold Mortgagee's foreclosure rights for purposes of exercising Leasehold Mortgagee's foreclosure rights under the Leasehold Mortgage ("Foreclosure Affiliate"), acquires title to the Leasehold Estate through foreclosure of the Leasehold Mortgage (or delivery of a deed or assignment of the Lease in lieu of foreclosure), any liability of the Leasehold Mortgagee or such Foreclosure Affiliate to County under the Lease shall be limited to the value of the Leasehold Mortgagee's or Foreclosure Affiliate's interest in the Leasehold Estate and the Ground Lease, including the value of all insurance required under the Lease or otherwise held in connection with the Lease. The provisions of this Section 15.1.13 shall apply only to the Leasehold Mortgagee or the Foreclosure Affiliate, and shall not apply to any subsequent assignee of the Leasehold Estate or Lease, or to any purchaser at a foreclosure sale or subsequent purchaser.

15.1.14 By acquiring title to the Leasehold Estate, the Leasehold Mortgagee, the Foreclosure Affiliate, or other purchaser shall become responsible and liable for the obligations of Lessee under the Lease, but shall only be liable to County under the Lease for its acts or omissions taking place and claims and obligations accruing during the period in which it holds title to the Leasehold Estate or an interest in the Ground Lease; provided, however, that the Leasehold Mortgagee or Foreclosure Affiliate shall be obligated to cure any monetary default of the previous Lessee that remained outstanding at the time of foreclosure (or assignment or deed in lieu of foreclosure), and nothing in this <u>Article 15</u> relieves the Leasehold Mortgagee or Foreclosure Affiliate of that obligation.

Leasehold Mortgage that complies with the definition of such term, then the Leasehold Mortgagee under such Leasehold Mortgage shall be entitled to all Mortgagee Protections (as against both the County and any successor holder of the Fee Estate) from and after such date as Lessee or the Leasehold Mortgagee has given the County written notice of such Leasehold Mortgage and Leasehold Mortgagee, accompanied by a copy of the Leasehold Mortgage, recorded or unrecorded. No change of address of such Leasehold Mortgagee, or assignment of such Leasehold Mortgage, shall be effective against the County unless and until such Leasehold Mortgagee shall have given the County written notice of such change or assignment. The Investor Limited Partner will also be entitled to Mortgagee Protections until such time as the Investor Limited Partner is not a member a Lessee.

15.1.16 Termination of Leasehold Mortgagee's Rights If a Leasehold Mortgagee is entitled to Mortgagee Protections, then such entitlement shall not terminate unless and until such time, if any, as either (1) the Leasehold Mortgage shall have been satisfied and discharged of record, except through a Foreclosure Event; (2) such Leasehold Mortgagee has consented in writing to the termination of its Mortgagee Protections; or (3) after the County has complied with all Mortgagee Protections, the County has validly terminated this Lease, no Leasehold Mortgagee has validly requested (and is entitled to) a New Lease, and the New Lease Option Period has expired.

15.2 <u>Additional Protections</u>. During the continuance of any Leasehold Mortgage until such time as the lien of any Leasehold Mortgage has been extinguished, and if a true and verified copy of such Leasehold Mortgage was delivered to County together with a written notice of the name and address of the owner and holder thereof as required under this <u>Article 15</u>, the following provisions benefitting the Leasehold Mortgagee shall apply with respect to the Leasehold Mortgagee. Additionally, during the Tax Credit Compliance Period applicable to Lessee, which means the fifteen (15) year tax credit compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of prior or succeeding law, the following provisions benefitting the tax credit equity investor limited partner ("Investor Limited Partner") shall apply with respect to the Investor Limited Partner.

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15.2.1 <u>Definitions</u>. The following definitions shall apply for purposes of this Section 15.2.

15.2.1.1 <u>Bankruptcy Proceeding</u>. Any bankruptcy, insolvency, reorganization, composition, or similar proceeding, whether voluntary or involuntary, under Title 11, United States Code, or any similar state or federal statute for the relief of debtors, including any assignment for the benefit of creditors or similar proceeding.

15.2.1.2 Event of Default. "Event of Default" shall have the definition set forth in Section 16.1.

15.2.1.3 Foreclosure Event. A "Foreclosure Event" means any transfer of title to the Fee Estate or the Leasehold Estate as the result of any: (1) judicial or nonjudicial foreclosure; (2) trustee's sale; (3) deed, transfer, assignment, or other conveyance in lieu of foreclosure; (4) other similar exercise of rights or remedies in the nature of "1" through "3" under any Leasehold Mortgage; or (5) transfer by operation of or pursuant to any Bankruptcy Proceeding, in each case ("1" through "5") whether the transferee is a Mortgagee, a party claiming through a Mortgagee, or a third party.

15.2.1.4 <u>Leasehold Mortgagee's Cure</u>. "Leasehold Mortgagee's Cure" means any Leasehold Mortgagee's or Investor Limited Partner Cure of an Event of Default (defined in 16.1) and any actions taken by a Leasehold Mortgagee to cure an Event of Default.

15.2.1.5 <u>Leasehold Mortgagee's Cure Rights.</u> "Leasehold Mortgagee's Cure Rights" means all rights of Leasehold Mortgagee(s) or Investor Limited Partner to cure any Event of Default by Lessee.

15.2.1.6 <u>Leasehold Mortgagee's Representative</u>. A "Leasehold Mortgagee's Representative" means from time to time any agent, assignee, designee, nominee, or representative of a Leasehold Mortgagee or Investor Limited Partner, provided that such agent, assignee, designee, nominee, or representative is a wholly owned subsidiary, full time employee, legal counsel, or bona fide loan servicer, custodian, or collateral agent of the Leasehold Mortgagee or Investor Limited Partner, as applicable.

15.2.1.7 <u>Mortgagee Protections</u>. The "Mortgagee Protections" means, as to any Mortgagee or Investor Limited Partner, all rights, protections, and privileges of such Mortgagee as expressly provided for under this Lease, including the following: (1) any right to receive notices and/or to cure defaults (including, in the case of a Leasehold Mortgagee or Investor Limited Partner, all Leasehold Mortgagee's Cure Rights); (2) any requirement for Leasehold Mortgagee's or Investor Limited Partner Consent to any matter; (3) in the case of a Leasehold Mortgagee, all provisions of this Lease relating to a New Lease and all rights of any New Lessee or Successor Lessee; and (4) all other rights, protections, and privileges of such Mortgagee under this Lease.

15.2.1.8 <u>New Lease</u>. A "New Lease" means a new lease of the Premises, effective as of (or retroactively to) the date of termination of this Lease, for the remainder of the Term of this Lease, considered as if this Lease had not been terminated, with New Lessee, on all the same terms and provisions of this Lease and in the same form as this

Lease. Any New Lease shall include all rights, and privileges of Lessee under this Lease, but shall not include any obligations of Lessee that have already been performed and no longer apply. Any New Lease or a memorandum thereof shall be in recordable form, and shall include all the same Mortgagee Protections for the benefit of any Leasehold Mortgagee of New Lessee as provided in this Lease.

15.2.1.9 <u>New Lease Delivery Date</u>. A "New Lease Delivery Date" means the date when the County and New Lessee enter into a New Lease.

15.2.1.10 New Lease Option Period. A "New Lease Option Period" means, upon the occurrence of a termination of this Lease (other than as the result of the scheduled expiration date of the Term or termination for casualty or condemnation under Article 19 or Article 20), a period that begins on the date of such termination and ends on the date 90 days after the County has given every Leasehold Mortgagee Notice of such date of termination. The New Lease Option Period shall be tolled and extended during any period during which any Leasehold Mortgagee's right to require the County to enter into a New Lease is restricted or impaired by a Bankruptcy Proceeding, but not if such restriction or impairment is a result of the acts or omissions of such Leasehold Mortgagee).

15.2.1.11 <u>New Lessee</u>. A "New Lessee" means the Leasehold Mortgagee that requests a New Lease, or its Leasehold Mortgagee's Representative, or such other Lessee under a New Lease as such Leasehold Mortgagee shall select (but excluding the Lessee originally named in this Lease), all as designated by such Leasehold Mortgagee.

15.2.1.12 <u>Uncurable Default</u>. An "Uncurable Default" is any nonmonetary Event of Default that by its nature is impossible for the Leasehold Mortgagee to cure, despite the Leasehold Mortgagee gaining possession of the Premises

15.2.2 County shall not agree with Lessee to any mutual termination nor accept any surrender by Lessee of this Lease (except upon the expiration of the Lease Term as provided herein), nor shall Lessee consent to any substantive amendment or modification of this Lease which has a material impact on the interests of a Leasehold Mortgagee or Investor Limited Partner, without the prior written consent of the Leasehold Mortgagee and Investor Limited Partner, which consent shall not be unreasonably withheld, conditioned, or delayed. The following procedure shall be used to obtain the prior written consent of Leasehold Mortgagee or Investor Limited Partner under this Section: i) County shall make a request to the Leasehold Mortgagee and Investor Limited Partner for any such consent in writing by certified mail, return receipt requested ("First Request"); (ii) if Leasehold Mortgagee or the Investor Limited Partner does not respond within thirty (30) days after receipt (or refusal to accept delivery) of the First Request, County shall make a second request to Leasehold Mortgagee or Investor Limited Partner, as applicable, for such consent in writing by certified mail, return receipt requested ("Second Request"); (iii) if the Leasehold Mortgagee or Investor Limited Partner, as applicable, does not respond to Landlord in writing by certified mail, return receipt requested, received (or refused to be received) by Landlord within thirty (30) days after receipt (or refusal to accept delivery) of the Second Request, then the Leasehold Mortgagee or the Investor Limited Partner,

as applicable, shall be deemed to have granted its consent. Failure of the Leasehold Mortgage or Investor Limited Partner to approve the proposed substantive amendment within thirty (30) days of receipt of notice from County shall constitute unreasonable delay, and in the event of such unreasonable delay by the Leasehold Mortgagee or Investor Limited Partner, the proposed substantive amendment or modification shall be deemed approved by the Leasehold Mortgagee or Investor Limited Partner. Nothing in this Section limits County's right to terminate this Lease for an Event of Default after any applicable notice and cure period as otherwise provided in this Lease.

Mortgagee and Investor Limited Partner shall have the right, but not the obligation, at any time prior to termination of this Lease, to pay all of the Rents due hereunder, to provide any insurance, to pay any taxes and make any other payments, to make any repairs and improvements and do any other act or thing required of Lessee hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the covenants, conditions, and agreements hereof to prevent the termination of this Lease. All payments so made and all things so done and performed by the Leasehold Mortgagee or Investor Limited Partner shall be as effective to prevent a termination of this Lease as the same would have been if made, done and performed by Lessee instead of by the Leasehold Mortgagee. If an Event of Default is cured by the Leasehold Mortgagee or Investor Limited Partner, this Lease shall continue in full force and effect as if such Event of Default had not occurred. This subparagraph establishes the right but not the obligation of Leasehold Mortgagee and Investor Limited Partner to cure or attempt to cure any Event of Default, and the Leasehold Mortgagee and Investor Limited Partner may abandon or discontinue its efforts to cure at any time.

15.2.5 <u>Cure Rights</u>. All rights of County to terminate this Lease as the result of the occurrence of any such Event of Default shall be subject to and conditioned upon County having first given the Leasehold Mortgagee and Investor Limited Partner written notice of such Event of Default and the Leasehold Mortgagee having failed to remedy such default or to complete the actions authorized under this Section within the prescribed time frames. If an Event of Default occurs, then County shall so notify all known Leasehold Mortgagees and Investor Limited Partners who Lessee has provided County notice in accordance with this <u>Article 15</u>. To the extent permitted by applicable State of California law, the time periods provided in this Section for cure of Lessee's defaults under this shall be in lieu of, and not in addition to, any similar time periods described by State of California law as a condition precedent to the commencement of legal action against Lessee for possession of the Premises.

15.2.5.1 <u>Monetary Default</u>. Leasehold Mortgagee and Investor Limited Partner shall have thirty (30) days after receipt of such written notice to fully cure any default in the payment of any monetary obligations of Lessee under this Lease and must thereafter continue to faithfully perform all such monetary obligations.

15.2.5.2 <u>Non-Monetary Default</u>. For a non-monetary Event of Default, the Leasehold Mortgagee and Investor Limited Partner shall have ninety (90) days beyond those cure periods provided to Lessee under this Lease, and if Investor Limited Partner

has commenced to cure during such ninety (90) day period, such cure period shall be extended as long as reasonably necessary to effectuate such cure provided that the Leasehold Mortgagee or Investor Limited Partner is diligently and continuously prosecuting such cure to completion; provided, however, that in no event shall the County be precluded from exercising remedies for an Event of Default if its rights become or are about to become materially jeopardized by any failure to cure the default or the default is not cured within one hundred and eighty (180) days after the notice of default is provided to the Leasehold Mortgagee or Investor Limited Partner. In addition, Investor Limited Partner may cure a default caused by its general partner, by (a) removing such general partner (or commencing and diligently prosecuting such removal of the general partner to completion) from the tax credit limited partnership or, if Lessee is a limited liability company, by removing (or commencing and diligently prosecuting such removal of the general partner to completion) any Affiliate of general partner from the Lessee and (b) fully curing the default, and (excepting any Uncurable Defaults) (c) thereafter complying with the terms and conditions of this Lease. Any such Transfer of the general partner interest is a Permitted Transfer under Section 14.5.4 of this Lease.

15.2.5.3 Non-Monetary Default Requiring Possession to Cure. A non-monetary Event of Default under this Lease which in the nature thereof cannot be remedied by the Leasehold Mortgagee shall be deemed to be remedied if (i) within ninety (90) days after receiving written notice from County setting forth the nature of such Event of Default, the Leasehold Mortgagee acquires the Lease or commences foreclosure or other appropriate proceedings in the nature thereof, (ii) the Leasehold Mortgagee diligently and continuously prosecutes any such proceedings to completion, (iii) the Leasehold Mortgagee fully cures any default in the payment of any monetary obligations of Lessee under this Lease within thirty (30) days after receipt of the required written notice and thereafter continues to faithfully perform all such monetary obligations, and (iv) after acquiring the Lease, the Leasehold Mortgagee performs all of the obligations of Lessee under this Lease as and when the same are due, accruing after Leasehold Mortgagee has obtained possession of the Property. Following the date on which the Leasehold Mortgagee (or its Affiliate) obtains title to and possession of the Premises, any Uncurable Default shall be deemed cured for purposes of County's right to terminate the Lease for such Event of Default as between County and Leasehold Mortgagee (or its Affiliate) such that County shall not terminate this Lease on the basis of such Uncurable Default.

15.2.6 <u>Bankruptcy Proceeding</u>. If the Leasehold Mortgagee is prohibited by any Bankruptcy Proceeding involving Lessee from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified in Section 0 above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that the Leasehold Mortgagee has fully cured any default in the payment of any monetary obligations of Lessee under this Lease and continues to pay currently such monetary obligations as and when the same fall due, and provided that the Leasehold Mortgagee diligently works to remove any such prohibition.

To the extent that cure by the Investor Limited Partner of a non-monetary default is prohibited by any Bankruptcy Proceeding involving Lessee, the time period for such cure shall be extended for the period of such prohibition, provided that the Investor Limited Partner has

fully cured any default in the payment of any monetary obligations of Lessee under this Lease and continues to pay currently such monetary obligations as and when the same fall due, and provided that the Investor Limited Partner diligently works to remove any such prohibition.

15.2.7 Rejection of Lease in Bankruptcy Proceeding. If Lessee (as debtor in possession) or a trustee in bankruptcy for Lessee rejects this Lease in any Bankruptcy Proceeding affecting Lessee, then such rejection shall be deemed Lessee's assignment of the Lease and the Leasehold Estate to a Successor Lessee (to be designated by Lessee's Leasehold Mortgagee(s)), in the nature of an assignment in lieu of foreclosure, subject to all Leasehold Mortgages. Upon such deemed assignment, this Lease shall not terminate. Each Leasehold Mortgagee shall continue to have all the rights of a Leasehold Mortgagee as if the Bankruptcy Proceeding had not occurred, unless such Leasehold Mortgagee shall disapprove such deemed assignment by Notice to the County within thirty days after such Leasehold Mortgagee received Notice of the rejection of this Lease in Bankruptcy Proceedings. If any court of competent jurisdiction shall determine that this Lease shall have been terminated notwithstanding the deemed assignment provided for in place of rejection of this Lease, then Leasehold Mortgagee(s) shall continue to be entitled to a New Lease as provided in this Lease.

15.2.8 <u>Leasehold Mortgagee's Right to Enter Premises</u>. The County and Lessee authorize each Leasehold Mortgagee to enter the Premises as necessary to effect Leasehold Mortgagee's Cure and take any action(s) reasonably necessary to effect Leasehold Mortgagee's Cure. A Leasehold Mortgagee's rights under this paragraph or exercise of such rights shall not constitute control of the Premises or mean that such Leasehold Mortgagee has possession of the Premises or liability to the County or Lessee.

15.2.9 Foreclosure of a Leasehold Mortgage, whether by judicial proceedings or by virtue of any power of sale contained in the Leasehold Mortgage, or any conveyance of the Lease from Lessee to the Leasehold Mortgagee by virtue or in lieu of foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of County or constitute a breach of any provision of or a default under this Lease. Upon such foreclosure, County shall recognize the Leasehold Mortgagee or any other foreclosure sale purchaser, as Lessee hereunder so long as the Leasehold Mortgagee or the foreclosure purchaser agrees in writing to abide by all of the provisions of the Lease, and to assume liability for and perform all obligations under the Lease accruing from and after the date the Leasehold Mortgage acquires Lessee's title to the Premises, and so long as there is no outstanding monetary default under this Lease, regardless of when such default occurred or obligation accrued, or foreclosure sale purchaser cures the outstanding monetary default. If the Leasehold Mortgagee becomes the Lessee under this Lease or under any New Lease obtained pursuant to Section 15.2.10 below, the Leasehold Mortgagee shall be liable for the obligations of Lessee under this Lease or such New Lease arising during the period of time that the Leasehold Mortgagee is the Lessee hereunder or thereunder, and for any outstanding monetary default, regardless of when such monetary default occurred or monetary obligation accrued. If, in conformance with Article 14 and Article 15 of this Lease, the Leasehold Mortgagee subsequently assigns or transfers its interest under this Lease after acquiring the same by foreclosure or by an acceptance of a deed in lieu of foreclosure or subsequently assigns or transfers its interest under any such New Lease, and in connection

with any such assignment or transfer the Leasehold Mortgagee takes back a mortgage or deed of trust encumbering such Leasehold Estate to secure a portion of the purchase price given to the Leasehold Mortgagee for such assignment or transfer, then such mortgage or deed of trust shall be considered a Leasehold Mortgage as contemplated under this Section if it meets all of the requirements of this Article 15, and any such qualifying Leasehold Mortgagee shall be entitled to receive the benefit of and shall be bound by the provisions of this Article 15 and any other provisions of this Lease intended for the benefit or burden of the holder of a Leasehold Mortgage.

12.2.10 <u>Leasehold Mortgagee's Right To A New Lease</u>. If this Lease terminates before its stated expiration date for any reason (including an Event of Default or rejection in a Bankruptcy Proceeding affecting Lessee), but excluding a termination for casualty or condemnation under <u>Article 19</u> or <u>Article 20</u>, then (in addition to any other or previous notice required to be given by the County to a Leasehold Mortgagee) the County shall, within ten (10) business days, give notice of such termination to each Leasehold Mortgagee. Upon a Leasehold Mortgagee's request given within the New Lease Option Period, the County shall enter into a New Lease with New Lessee, provided that such Leasehold Mortgagee shall, on the New Lease Delivery Date: (1) pay to the County any and all sums then due under this Lease as if this Lease had not been terminated; and (2) agree to cure all then-uncured nonmonetary defaults (other than Uncurable Defaults), within a reasonable period after the New Lease Delivery Date with reasonable diligence. The following additional provisions shall apply to any New Lease:

15.2.10.1 <u>Priority</u>. Any New Lease made pursuant to this <u>Section</u> 15.2 shall have the same priority with respect to any lien, charge or encumbrance on County's fee estate as did this Lease and the New Lessee under such New Lease shall have the same right, title and interest in and to the Leasehold Interest as Lessee had under this Lease.

15.2.10.2 Adjustment for Net Income. On the New Lease Delivery Date, the County shall pay New Lessee an amount equal to the net operating income derived from the Premises (gross income from subleases and other operations conducted at the Premises less Rent and reasonable operating expenses, and any other amounts owed to County in connection with the Lease) during the period from the date of termination of the Lease to the New Lease Delivery Date, provided that New Lessee concurrently pays the County all sums required to be paid the County pursuant to this Lease, as if the Lease had not been terminated, and not already paid to the County from gross income of the Premises.

15.2.10.3 Pendency of Dispute. If the County and New Lessee disagree regarding any payment due the County as a condition to execution of a New Lease, then New Lessee (if an Institutional Lender or a Leasehold Mortgagee's Representative acting for an Institutional Lender) shall not be required to pay the disputed portion of such payment (as a condition to obtaining a New Lease) provided that such New Lessee: (1) on the New Lease Delivery Date pays the County the full amount not in controversy and (2) agrees in writing to pay any additional sum ultimately determined to be due promptly upon such determination with interest at the Prime Ratefrom the New Lease Delivery Date. The parties shall cooperate to determine any disputed amount promptly in accordance with the New Lease.

15.2.10.4 <u>Assignment of Certain Items</u>. On the New Lease Delivery Date, the County shall assign without recourse to New Lessee all of the County's right, title and interest in and to all: (1) moneys, if any, then held by, or payable to, the County that Lessee (or Leasehold Mortgagee) would have been entitled to receive but for termination of this Lease; (2) leases affecting any portion of the Premises (which leases, upon such assignment by the County to New Lessee, shall become subleases arising from the Leasehold Estate under the New Lease); and (3) security deposits of subtenants under the Lease.

15.2.10.5 Preservation of Former Subleases. Between the date of termination of the Lease and the New Lease Delivery Date (or the expiration of the New Lease Option Period, if no Leasehold Mortgagee requests a New Lease): (1) the parties acknowledge that any subleases shall be direct leases between the County and the former subtenant; (2) the County shall not, except with Leasehold Mortgagee's written consent (which shall not be unreasonably withheld), cancel any such direct lease or accept any cancellation, termination, or surrender of such a direct lease (unless such termination shall be effected as a matter of law upon the termination of this Lease, in which case such direct lease shall, at New Lessee's option, be reinstated as a Sublease arising from the New Lease on the New Lease Delivery Date) without consent by New Lessee; or (3) enter into any new leases of the Premises or any portion thereof, except with Leasehold Mortgagee's written consent (which shall not be unreasonably withheld). At the request of New Lessee, on the New Lease Delivery Date the County shall enter into and NDA in substantially the form attached as Exhibit "D" with any commercial subtenants as to which the County would otherwise be required to deliver NDA's under this Lease.

15.2.10.6 <u>The County's Costs and Expenses</u>. If a Leasehold Mortgagee requires the County to enter into a New Lease, then such Leasehold Mortgagee shall pay all reasonable expenses, including transfer taxes and reasonable legal costs incurred by the County in connection with any Event of Default and termination of this Lease, recovery of possession of the Premises, and preparation, execution, and delivery of the New Lease and any memorandum of the New Lease requested by New Lessee.

15.2.10.7 <u>Survival</u>. All rights of any Leasehold Mortgagee, and obligations of the County, regarding a New Lease shall survive the termination of this Lease for the duration of the New Lease Option Period.

15.2.11 <u>Interaction of Mortgages with other Estates and Parties</u>

15.2.11.1 <u>Interaction with Leasehold Mortgages</u>. Any Leasehold Mortgage shall attach solely to the Leasehold Estate, and shall not encumber or attach to the County's fee estate or affect, limit, or restrict the County's rights and remedies under this Lease except as expressly provided in this Lease. If this Lease terminates and the New Lease Option Period has expired without any Leasehold Mortgage requesting a New Lease, then the obligations formerly secured by the Leasehold Mortgage shall be unsecured. Upon a Foreclosure Event under a Leasehold Mortgage, the Leasehold Mortgage or Successor Lessee shall succeed only to the Leasehold Estate. Any Foreclosure Event under a Leasehold Mortgage shall not extinguish, terminate, or otherwise adversely affect the County's fee estate (subject to this Lease)

or the rights of any fee mortgagees as against the County or its fee estate (which shall in all events, except termination of this Lease, remain subject to this Lease).

15.2.11.2 <u>Leasehold Mortgagee's Representative</u>. Any Leasehold Mortgagee may exercise its rights (including all Mortgagee Protections and the benefit thereof) under this Lease, or perform any action permitted to be taken by a Leasehold Mortgagee, through a Leasehold Mortgagee's Representative.

Leasehold Mortgagee may, by notice to the County, temporarily or permanently waive any Mortgagee Protections as specified in such notice. Any such waiver shall be effective in accordance with its terms as against such Leasehold Mortgagee and its successors and assigns. Any such waiver shall not bind any subsequent Leasehold Mortgagee under a subsequent Leasehold Mortgage granted by Lessee. Lessee's default as mortgagor under a Leasehold Mortgage shall not constitute an Event of Default under this Lease except to the extent that Lessee's acts or omissions, in and of themselves, constitute an Event of Default under this Lease.

15.2.11.4 Fee Mortgages. Any Fee Mortgage shall be subject and subordinate to, and shall not attach to: (1) this Lease and the Leasehold Estate (whether held by Lessee, a Successor Lessee, or a New Lessee); (2) any New Lease and the Leasehold Estate thereunder; (3) any judgment arising from the County's breach of this Lease; (4) any estate (including a subleasehold and a leasehold mortgagee estate) directly or indirectly arising from this Lease or any New Lease or the Leasehold Estate under either (so long as this Lease or such New Lease has not been terminated in accordance with its terms and in compliance with all rights of Leasehold Mortgages); (5) Lessee's or New Lessee's and any Leasehold Mortgagee's rights and remedies under this Lease; and (6) any rights of a Leasehold Mortgagee with respect to the Leasehold Estate. Any Fee Mortgagee, and in the event of a foreclosure of a Fee Mortgage or delivery of a deed in lieu of such foreclosure, the Fee Mortgagee or grantee or successful bidder at the foreclosure sale, shall succeed only to the Fee Estate, subject to items "1" through "6".

Mortgagee desires to exercise any Mortgagee Protection, then the party against whom such Mortgagee Protection is to be exercised shall be required to recognize either: (1) only the Fee Mortgagee or Leasehold Mortgagee, as applicable, that desires to exercise such Mortgagee Protection and whose Fee Mortgage or Leasehold Mortgage, as applicable, is most senior in lien (as against other Mortgages of like type) or (2) such other Fee Mortgagee or Leasehold Mortgagee, as applicable, as has been designated in writing by all Fee Mortgagees or all Leasehold Mortgagees, as applicable, to exercise such Mortgagee Protection. Priority of Mortgages shall be conclusively evidenced by (in order of precedence of application): (x) written agreement among the affected Mortgagees; (y) a report or certificate of a title insurance company licensed to do business in the State; or (z) joint written instructions of all Mortgagees (Fee or Leasehold, as applicable). Neither Lessee nor the County shall be obligated to determine the relative priorities of any Mortgages. With respect to any Mortgagee Protections that by their nature can only be exercised by the most senior of the Leasehold Mortgagees (such

as the right to a New Lease), pending the determination of priority, any time period that applies to Leasehold Mortgagees' exercise of such Mortgagee Protections shall be tolled, provided that such tolling shall not (a) extend for more than 60 days or (b) apply to any other Mortgagee Protections.

15.2.11.6 <u>No Merger</u>. Without the written consent of the County, Lessee, Leasehold Mortgagees, and Investor Limited Partner, the Fee Estate and the Leasehold Estate shall remain distinct and separate estates and shall not merge, notwithstanding the acquisition of both the Fee Estate and the Leasehold Estate by the County, Lessee, a New Lessee, any Leasehold Mortgagee, or a third party, whether by purchase or otherwise.

15.2.11.7 <u>Collection of Subrent.</u> If, pursuant to the Lease, the County collects any subrent from any subtenant, then after the County has applied such subrent only to pay any Rent then due under this Lease, the County shall remit to Leasehold Mortgagee, and not to Lessee, any remaining subrent. Lessee hereby directs the County accordingly. Leasehold Mortgagee shall apply any such subrent in compliance with its Leasehold Mortgage or the documents secured by such Leasehold Mortgage.

15.2.12 County and Lessee shall, in accordance with applicable Law and County's standard procedures, cooperate in including in this Lease by suitable amendment from time to time, any provision which may be reasonably requested by any Leasehold Mortgagee or Investor Limited Partner which is reasonably necessary for financing the construction or operation of the Improvements on commercially reasonable terms or for implementing the provisions of this <u>Article 15</u>; provided, however, that any such amendment shall not in any way affect the Term, Rent, or any compensation to be paid to County under this Lease, nor have any substantial adverse impact on any rights of County under this Lease, as determined by the Director, and the Lessee shall pay or reimburse County for all costs and expenses incurred by it in connection with any such amendment, including reasonable attorneys' fees.

15.2.13 County and Lessee agree to execute, acknowledge, and deliver to any approved Leasehold Mortgagee and Investor Limited Partner, an agreement in form reasonably acceptable to County prepared at the sole expense of Lessee, reaffirming the applicability of the provisions of this <u>Article 15</u> to a particular Leasehold Mortgage, and the Lessee shall pay or reimburse County for all costs and expenses incurred by it in connection with any such amendment, including reasonable attorneys' fees. Any such amendment may be approved and authorized by the County's Lease Administrator.

15.2.14 County also agrees to execute the lease rider required by the California Tax Credit Allocation Committee in connection with any low-income housing tax credit financing used in connection with the Improvements, subject County's reasonable review and modification as needed to accurately reflect the terms of this Lease and the Project. County further agrees to execute State of California Department of Housing and Community Development ("HCD") documents as typically required of lessors by HCD under HCD's statutes, regulations, and published policies and guidelines in connection with HCD's affordable

housing finance programs, subject County's reasonable review and modification as needed to accurately reflect the terms of this Lease and the Project.

15.3 Obligations of Lessee. Nothing contained in this Lease or in any Leasehold Mortgage shall be deemed or construed to relieve Lessee from the obligation of full and faithful observance and performance of its covenants, conditions, and agreements contained in this Lease, or from any liability for the non-observance or non-performance thereof, or to require or provide for the subordination to the lien of such Leasehold Mortgage of any estate, right, title or interest of County in or to the Premises or this Lease.

15.4 County's Lien Waivers.

15.4.1 <u>As to Lessee</u>. From and after the Commencement Date, Lessee shall have the absolute right from time to time during the Lease Term and without County's further approval, written or otherwise, to grant and assign a mortgage or other security interest in all of Lessee's furniture, trade fixtures (excluding Fixtures), equipment, inventory and other personal property ("Lessee's Personal Property") to a Leasehold Mortgagee in connection with a Leasehold Mortgage. County agrees, upon reimbursement for all of its costs and expenses including reasonable attorney's fees, to execute such confirmation, certificates, and other documents as a Leasehold Mortgagee may reasonably request (with such conditions as County may reasonably impose) in connection with a Leasehold Mortgage, including subordination of any claims arising by way of any County lien against Lessee's Personal Property (whether created by statute, contract or otherwise), subject to County's reasonable review and approval.

15.4.2 As to Space Lessees. On request, County shall execute and deliver to subtenants of any non-residential space ("Space Lessees"), upon reimbursement for all of County's costs and expenses including reasonable attorney's fees, a County waiver and consent for the benefit of lenders to the Space Lessees, pursuant to which County consents to the installation of furniture, trade fixtures, equipment, inventory and other Personal Property ("Space Lessee's Personal Property") in the Space Lessee's premises, subordinates any lien or security interest in any of the Space Lessee's Personal Property, agrees to allow the Space Lessee's lender access to its subleased premises in order to remove the Space Lessee's Personal Property therefrom or otherwise realize on its security interest in such property from the subleased premises, and to provide County, the Space Lessee, and its lender with such other protections as are reasonably appropriate under the circumstances. County shall have the right to approve the form of County waiver and consent, which approval shall not be unreasonably withheld, conditioned or delayed, provided that no provision of the waiver and consent shall have any material adverse impact on the County's interests. The Space Lessee's Personal Property shall not include equipment or machinery constituting real estate fixtures or such equipment or machinery which is necessary to the operation of the premises of any lessee under a Space Lease. Any right to remove the Space Lessee's Personal Property shall be subject to the requirement that the lender repair and restore, at lender's expense, any damage to the Improvements resulting from such removal to County's reasonable satisfaction.

ARTICLE 16. DEFAULTS BY LESSEE; COUNTY'S REMEDIES

16.1 Events of Default. The occurrence of any of the following shall be an "Event of Default" under this Lease:

- (1) Lessee fails to pay any Rent, Additional Rent, or any other payment required under this Lease within five (5) business days after notice that the payment was not received when due:
- (2) Lessee fails to perform any other obligation to County under this Lease and this failure continues for sixty (60) days after written notice from County, except that if Lessee begins to cure its failure within the sixty (60) day period but by its nature the failure cannot be cured within such period, then, so long as Lessee continues to diligently, continuously, and in good faith works to cure its failure, the sixty (60) day period shall be extended for a period as is reasonably necessary to complete the cure, but not to exceed a maximum of one hundred and twenty (120) days;
- (3) Lessee commences any proceeding under any law relating to bankruptcy, insolvency, reorganization or relief of debts, or seeks appointment of a receiver, trustee, custodian or other similar official for Lessee or for any substantial part of its property, or any such proceeding is commenced against Lessee, and either continues for a period exceeding sixty (60) days or results in the entry of an order for relief against Lessee which is not fully stayed within sixty (60) days after entry;
- (4) Lessee becomes insolvent or bankrupt, does not generally pay its debts as they become due, or admits in writing its inability to pay its debts, or makes a general assignment for the benefit of creditors;
- (5) Any third party initiates any process to obtain a levy or attachment or otherwise seize all or any portion of the Leasehold Estate, the Improvements, Fixtures, or Lessee's Personal Property, which is not reversed, released, or stayed within thirty (30) days.
- 16.2 Remedies. Upon the occurrence and continuance of an Event of Default past applicable notice and cure periods, in addition to all remedies available at law or in equity, without limitation, County shall have the right, without further notice or demand of any kind to Lessee or any other person, to terminate this Lease, and terminate Lessee's right of possession, in which case this Lease shall terminate, and Lessee shall immediately surrender possession of the Premises to County and have no further claim on the Premises and Improvements under this Lease. Immediately following such termination, County shall have the right to reenter and take possession of the Premises and Improvements. Upon an Event of Default, County shall be entitled to recover from Lessee all damages incurred by County by reason of Lessee's default, including without limitation thereto, the following: (i) the worth at the time of award of any unpaid Rent, and Additional Rent which had been earned at the time of such termination; plus (ii) the worth at the time of award of the amount by which the unpaid Rent, and Additional Rent

which would have been earned after termination until the time of award exceeds the amount of such rental loss that is proved could have been reasonably avoided; plus (iii) the worth at the time of award of the amount by which the unpaid Rent and Additional Rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that is proved could have been reasonably avoided; plus (iv) any other amount necessary to compensate County for all the damages proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom, including, without limitation, costs of reletting, completing and maintaining the Improvements, leasing commissions, cost of repairs, renovation or demolition of the Improvements and all other costs of returning the Premises to a marketable condition; plus (v) all attorneys' fees and costs incurred by County in retaking the Premises and collecting amounts due from Lessee; plus (vi) at County's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law. As used in (i) above, the "worth at the time of award" is computed using an interest rate at the maximum rate allowed by State of California law. In addition to all other remedies, the County has the remedy described in State of California Civil Code Section 1951.4: "County may continue lease in effect after Lessee's breach and abandonment and recover Rent or Additional Rent as it becomes due, if Lessee has right to sublet or assign, subject only to reasonable limitations."

- 16.3 County's Remedies Cumulative. All of County's remedies under this Lease shall be in addition to all other remedies County may have at law or in equity. Waiver by County of any breach of any obligation by Lessee shall be effective only if it is in writing, and shall not be deemed a waiver of any other breach, or any subsequent breach of the same obligation. County's acceptance of payment by Lessee shall not constitute a waiver of any breach by Lessee except for any breach with respect to the payment so accepted. County may advance such monies and take such other actions for Lessee's account as reasonably may be required to cure or mitigate any default by Lessee. Lessee shall immediately reimburse County for any such advance, and such sums shall bear interest at the default interest rate until paid.
- 16.4 <u>No Punitive or Consequential Damages</u>. Neither County nor Lessee shall be entitled to any punitive, special, indirect, collateral, or consequential damage award against the other party in any action or proceeding arising out of or related to this Lease or for any lost profits suffered or claimed to be suffered.
- 16.5 <u>Interest</u>. Any amounts, other than Rent or Additional Rent, due from Lessee under the provisions of this Lease which are not paid when due shall bear interest at the rate of four percent (4.0%) over the discount rate charged from time to time by the Federal Reserve Bank of San Francisco, but not to exceed the maximum rate which County is permitted by law to charge.
- 16.6 <u>Request for Information</u>. Within ten business (10) days after County's request, Lessee shall provide County, any financial, legal and business information concerning any of the matters addressed in this Article 16.

ARTICLE 17. DEFAULTS BY COUNTY; REMEDIES

If County neglects or fails to perform or observe any of the terms, covenants, or conditions of this Lease on its part to be performed or observed within sixty (60) days after written notice of default or, when more than sixty (60) days is required because of the nature of the default, and County fails to proceed diligently to cure the default after written notice of the default, then Lessee may sue for specific performance and County shall be liable to Lessee for any and all damages sustained by Lessee as a result of County's breach; provided, however, that: (i) any money judgment resulting from any default or other claim arising under this Lease shall be satisfied only out of the current rents, issues, profits and other income County receives from its operation of Premises, net of all current operating expenses, liabilities, reserves and debt service associated with the operation of the Premises (for purposes of this Article 17 only, "Net Income"), (ii) no other real, personal or mixed property of County, wherever located, shall be subject to levy on any judgment obtained against County, (iii) if the Net Income is insufficient to satisfy the judgment, Lessee will not institute any further action, suit, claim or demand, in law or in equity, against County for or on the account of the deficiency, and (iv) the neglect or failure shall not constitute consent by County for Lessee to perform or observe the terms, covenants or conditions of this Lease at County's expense. Lessee waives, to the extent permitted under law, any right to satisfy any money judgment against County except from Net Income.

ARTICLE 18. ABANDONMENT

Subject to Force Majeure, the Casualty provisions of <u>Article 19</u>, and the Condemnation provisions of <u>Article 20</u>, Lessee shall not vacate or abandon the Premises and Improvements at any time during the term of this Lease nor permit the Premises to remain unoccupied for a period of longer than five (5) consecutive days during the term of this Lease. If Lessee abandons, vacates or surrenders the Premises, or is dispossessed by process of law, or otherwise, any Personal Property or Fixtures belonging to Lessee and left on the Premises shall, at the option of County, be deemed abandoned. County may dispose of any Personal Property and Fixtures deemed abandoned in any manner provided by State of California law and is relieved of all liability for disposing any Personal Property or Fixtures. These provisions shall not apply if the Premises are closed and business temporarily discontinued due to a Force Majeure event as defined in Section 29.10 of this Lease.

ARTICLE 19. DAMAGE OR DESTRUCTION

19.1 <u>Damage and Restoration</u>. Subject to the provisions of Section 19.5, if, at any time after the Commencement Date and during the Term, all or any part of the Premises or Improvements are damaged or destroyed by any cause ("Casualty"), Lessee shall, at Lessee's sole expense, repair, restore and reconstruct the Premises and Improvements to substantially the same condition that existed immediately prior to the Casualty in substantial conformance with the Final Plans (as may be modified pursuant to this Lease), subject to any changes necessary to

comply with then applicable Laws and with any upgrades or improvements proposed by Lessee and reasonably approved by County. All such work shall be promptly constructed in a good and workmanlike manner according to and in conformance with all Laws and the requirements of this Lease.

- 19.2 <u>Rent Abatement</u>. There shall be no rent abatement, allowance, reduction, or suspension of any Rent or Additional Rent because of any Casualty.
- 19.3 Application of Insurance Proceeds. In the event of a Casualty, all insurance proceeds shall be applied first to fully repair, restore, and reconstruct the Premises and Improvements, and any insurance proceeds remaining after completion of all such repair, restoration, and reconstruction in accordance with this Lease, including resolution of any mechanics liens in accordance with Article 8, shall be paid to Lessee, or the Leasehold Mortgagee as required under the Leasehold Mortgage. If the insurance proceeds are insufficient to pay all costs to fully repair, restore, and reconstruct the Premises and Improvements as required under this Lease, Lessee shall pay the deficiency and shall proceed to complete the repair, restoration and reconstruction of the Premises and Improvements and pay the cost of completing the repair, restoration and reconstruction, or shall be in default under this Lease.
- 19.4 Exclusive Remedies. Notwithstanding any Casualty, Lessee shall not be released from any of its obligations under this Lease, except to the extent and upon the conditions expressly stated in this Article 19. County and Lessee expressly waive the provisions of State of California Civil Code Sections 1932(2) and 1933(4) with respect to any damage or destruction of the Premises and Improvements and agree that their rights shall be exclusively governed by the provisions of this Article 19.

19.5 Exceptions to Repair and Reconstruction Requirement.

19.5.1 <u>Last Five Years of Term</u>. If a Casualty occurs during the final five (5) years of the Term, and if such damage or destruction cannot be substantially repaired within one (1) year from the date of such damage or destruction, subject to the rights of the Leasehold Mortgagee, County or Lessee may elect to terminate this Lease by written notice delivered to the other within sixty (60) days. If Lessee or County elects to terminate this Lease under this Section 19.5.1, Lessee shall promptly perform or complete all of the following, and the Lease shall terminate upon Lessee's performance or completion of all of the following: (i) complete Restoration (defined in Section 3.3) of the Premises, (ii) pay to the County the one-time amount equal to the Rent for lesser of three (3) Lease Years or what would have been the remainder of the Term without the termination, (iii) following completion of Restoration, deliver possession of the Premises to County and quitclaim all right, title, and interest in and to the Premises, and (v) cause to be discharged all liens and encumbrances on the Premises resulting from any act or omission of Lessee. If Lessee or County elects to terminate the Lease under this Section 19.5.1, Lessee shall not be entitled to recover any sums from County, including but not limited to any lost profit, business opportunity or administrative or legal expenses as a result of termination of the Lease pursuant to this Section. If neither Lessee or County

elects to terminate the Lease under this Section, Tenant shall repair, restore and reconstruct the Premises and Improvements in accordance with Section 19.1, then Lessee shall at Lessee's sole expense, repair, restore and reconstruct the Premises and Improvements. Insurance Proceeds Deficiency. If the cost of repair or reconstruction following a Casualty exceeds the available insurance proceeds by more than ten percent (10%), Lessee may elect to terminate the Lease, subject to and following performance of all of the following by Lessee: (i) completion of Restoration (defined in Section 3.3), (ii) payment to the County of a one-time amount equal to the Rent for three (3) Lease Years, (iii) following completion of Restoration, delivery of possession of the Premises to County and quitclaim all right, title, and interest in and to the Premises, and (v) discharge of all liens and encumbrances on the Premises resulting from any act or omission of Lessee.

19.5.2 <u>Application of Insurance Proceeds</u>. If County or Lessee elect to terminate the Lease under <u>Section 19.5.1</u>, or if Lessee elects to terminate the Lease under <u>Section 19.5.2</u>, Tenant shall use as much of the available insurance proceeds as is necessary to complete Restoration (defined in Section 3.3). Tenant's duties of Restoration under <u>Sections 19.5.1</u> and <u>19.5.2</u> is not contingent upon the availability of insurance proceeds; however, all insurance proceeds sufficient to complete Restoration shall be made available to Lessee by the Eligible Independent Trustee. The remainder of the insurance proceeds following completion of Restoration shall be used first to pay off any amounts still owing under the Leasehold Mortgage, and next to pay to the County the applicable required payment under <u>Sections 19.5.1</u> and <u>19.5.2</u>, and finally to Lessee.

19.5.3 <u>Leasehold Mortgagee Application of Insurance Proceeds.</u> Leasehold Mortgagee Application of Insurance Proceeds. Any provision of this Lease to

the contrary notwithstanding, Leasehold Mortgagee may apply insurance proceeds to retire the Leasehold Mortgage obligations, subject to an amount of the such proceeds sufficient to either (a) complete Restoration or (b) repair, restore, and reconstruct the Premises and Improvements in accordance with Section 19.1 ("Repair") first being deposited in a separate account with an Eligible Independent Trustee approved by County and Lessee, to be held in trust and disbursed only for Repair or Restoration in accordance with this Section. If Leasehold Mortgagee elects to apply insurance proceeds to retire the Leasehold Mortgage obligations under this Section, then Lessee shall elect within one hundred twenty (120) days after the Casualty to either complete Restoration or Repair, and before any Casualty insurance proceeds are applied to any Leasehold Mortgage obligations, a sufficient amount of the Casualty insurance proceeds shall be deposited with the Eligible Independent Trustee to complete the Restoration or Repair (the "Escrowed Proceeds"). The amount of the Escrowed Proceeds shall be determined by a qualified independent engineering consultant, which consultant shall be subject to County's reasonable approval. If Lessee elects to perform the Restoration under this Section, then this Lease shall terminate upon the satisfaction of the conditions set forth in Section 19.5.1 for Lease termination. Any provision of this Lease or any Leasehold Mortgage to the contrary notwithstanding, no Casualty insurance proceeds shall be applied to any Leasehold Mortgage obligation except in strict compliance with this Section.

19.5.4 No Rent Abatement. There shall be no abatement or reduction in Construction, Rent, or Additional Rent during the time from the occurrence of the Casualty until the date of termination of the Lease following completion of all conditions for termination of the Lease under <u>Section 19.5.1</u> or <u>19.5.2</u>.

ARTICLE 20. CONDEMNATION

- 20.1 <u>Termination for Total Condemnation</u>. If all of the Premises is taken under eminent domain or inverse condemnation (collectively, "Condemnation") by a party other than County, or, if less than all of the Premises is taken under Condemnation, and Lessee reasonably determines the remainder of the Premises not taken is unsuitable for the purposes permitted by the Lease ("Constructive Total Condemnation"), then Lessee may, with the consent of the Leasehold Mortgagee, terminate this Lease as of the date of the taking by delivery of written notice of the election within twenty (20) days after the party has been notified of the taking or, in the absence of written notice, within twenty (20) days after the taking.
- 20.2 Continuation of Lease After Partial Taking. If a partial taking of the Premises occurs and this Lease is not terminated by County or Lessee under Section 20.1, this Lease shall remain in full force and effect as to any portion of the Premises remaining, and: (1) this Lease will no longer be in effect as of the date of the taking for the portion of the Premises taken by the public entity; (2) the Condemnation proceeds shall be allocated and disbursed in accordance with Section 20.3.5; (3) At its sole expense, and regardless of whether Condemnation award proceeds are sufficient to cover costs of restoration, Lessee shall restore the remaining portion of the Premises to create a reasonably sound and economically feasible architectural unit substantially suitable for the purposes for which they were used immediately before the taking, using good workmanship and new first-class materials, in accordance with the requirements of Article 9 and Article 10 of this Lease.
- 20.3 Awards. Subject to the condition that the amount of Condemnation proceeds paid to the Leasehold Mortgagee must not be less than the total award minus the value of the County's interest in the Premises or portion of the Premises under the Lease (as set forth in Section 20.3.1 below) that was taken pursuant to the Condemnation, any Condemnation proceeds shall be applied first to the actual out-of-pocket costs incurred by County and Lessee in the Condemnation proceedings, and then allocated as follows.
- 20.3.1 <u>Total Condemnation.</u> In the event of a total Condemnation, the Condemnation proceeds, after payment of the costs of the Condemnation proceedings for County, Lessee, and Leasehold Mortgagee, shall be allocated as follows: First, County shall receive the fair market value of the Premises, considered as unimproved. Second, the Leasehold Mortgage shall receive the amount of the portion of the proceeds attributable to Lessee's interest in the Lease and Leasehold Estate required to be paid to the Leasehold Mortgagee under the terms of the Leasehold Mortgage. Finally, the County and Lessee shall receive, on a pari passu basis, the County Remainder Share and Lessee's Remainder Share, as defined below:

20.3.1.1 "Lessee's Remainder Share" means the value of Tenant's interest in the Lease and the Leasehold Estate, minus the amount paid to the Leasehold Mortgagee under Section 20.3.1.2

20.3.1.2 "County's Remainder Share" means the net present value of the Rent payments for the remainder of the Term that would have been due to County had the Condemnation not occurred, plus the net present value of County's residual interest in the Improvements following expiration of the Term, plus, in the event of a Constructive Total Taking, the portion of the Condemnation proceeds attributable to severance damages from severance of the condemned portion of the Premises and Improvements from the remainder Premises and Improvements that County would hold following termination of the Lease under Section 20.1, minus the amount paid to County under Section 20.3.1.1.

20.3.5 <u>Partial Condemnation.</u> In the event of a partial Condemnation, the Condemnation proceeds, after payment of the costs of the Condemnation proceedings, shall be applied first to restoration of the Improvements and Premises in accordance with <u>Section 20.2</u>. After Lessee has completed and fully paid for the restoration, including satisfaction of any mechanic's liens in accordance with <u>Article 7</u>, any remaining Condemnation award proceeds shall be paid first to County in an amount equal to the value of the portion of the Rent, and Additional Rent attributable to the portion of the Premises taken by the Condemnation, and then to Lessee or Leasehold Mortgagee as required under the Leasehold Mortgage.

20.3.6 <u>Temporary Condemnation</u>. If the whole or any part of the Property is taken temporarily by Condemnation, then the Lease shall remain in full force and effect, there shall be no abatement or reduction in Rent or Additional Rent and Lessee shall be required to continue to make Rent and Additional Rent payments as required under the Lease, and the Lessee (or the Leasehold Mortgagee as required under the Leasehold Mortgage) shall receive the full amount of compensation awarded for the taking.

20.4 <u>Lessee's Right to Seperately Pursue Remedies</u>. Nothing this <u>Article 20</u> shall limit Lessee's right to separately pursue compensation or damages from the condemning public agency for lost revenues, business interruption, lost value of plans and permits, and moving and relocation expenses, Lessee shall be solely entitled to any such compensation for damages free and clear of any claim by County, provided, however, that no such claim or compensation shall in any way reduce the amount of any Condemnation award proceeds payable to County under this Article 20.

ARTICLE 21 SALE OR MOTGAGE BY COUNTY

21.1 <u>Sale or Mortgage</u>. County may at any time after the Commencement Date and receipt of building permits and commencement of vertical construction, without the consent of Lessee, sell, purchase, exchange, transfer, assign, lease, encumber or convey County's interest in whole or in part, in this Lease, the Premises, the realty underlying the Premises and/or any

portion of or interest in the realty or improvements on the Premises (collectively, "Sale"), provided that any seller or transferee expressly assumes this Lease and the documents evidencing and securing a mortgage or encumbrance include subordination and non-disturbance language ensuring the protection of the leasehold interest created by the Ground Lease, to the Lessee's reasonable satisfaction, as well as language providing that a foreclosure or an uncured default under the mortgage or encumbrance will not result in an automatic termination of the Ground Lease..

- 21.2 <u>Assignment by County</u>. If County sells or otherwise transfers fee simple title to the Premises, the purchaser or transferee thereof shall expressly assume County's obligations hereunder which arise on or after the date of sale or transfer, and County shall thereupon be relieved of all liabilities hereunder accruing from and after the date of such transfer, but this Lease shall otherwise remain in full force and effect.
- 21.3 <u>Release on Sale</u>. Upon the completion of a Sale in accordance with this <u>Article 21</u>, County shall be released from all liability toward Lessee and Lessee's successors and assigns arising from this Lease because of any act, occurrence, or omission of County occurring after the Sale.

ARTICLE 22 RESERVED

ARTICLE 23 SUBORDINATION; ATTORNMENT

- 23.1 <u>Subordination</u>. Without the necessity of any other document being executed and delivered by Lessee, this Lease is and shall be junior, subject and subordinate to any existing or future permits or approvals issued by the United States of America or any local, State of California or federal agency affecting the control or operation of the Premises. Lessee shall be bound by the terms and provisions of any permits or approvals. This Lease is and shall also be senior to all ground leases, mortgages, deeds of trust and other security instruments of any kind now covering the leasehold estate, or any portion of the leasehold estate.
- 23.2 <u>Attornment</u>. If any proceedings are brought for foreclosure, or if the exercise of the power of sale under any mortgage or deed of trust made by County covering the Premises that complies with the terms of this Lease occurs, Lessee shall attorn to the purchaser upon any foreclosure or sale of the Premises and recognize the purchaser as landlord under this Lease, and the purchaser shall be bound by all the terms and conditions of this Lease.

ARTICLE 24 COUNTY'S RIGHT OF ACCESS

County, its agents, employees, and contractors may enter the Premises and Improvements at any time in response to an emergency, and also at reasonable hours after reasonable prior written notice of not less than 48 hours to: (a) inspect the Premises and Improvements, (b) exhibit the Premises and Improvements to prospective purchasers or tenants, (c) determine, if it has reasonable cause to believe that Lessee is not in compliance, whether Lessee is complying with its obligations under this Lease (including its obligations with respect to compliance with Hazardous Materials Laws), (d) post notices of non-responsibility or similar notices, and (e) exercise rights under Section 2.3, if any. All work performed pursuant to this Article will be done as promptly as reasonably possible and all work and entry by the County pursuant to this Article shall be performed in a manner that does not unreasonably interfere with Lessee or any occupants or subtenants. Following completion of County's entry under this Article, County shall promptly restore the Premises and Improvements to the same or better condition as existed prior to the County's entry and promptly repair any damage to the Premises and Improvements caused by the County's work or under this Article. Lessee waives any claim of injury or inconvenience to Lessee's business, interference with Lessee's business, loss of occupancy or quiet enjoyment of the Premises and Improvements, or any other loss caused by County's entry onto the Premises pursuant to and in compliance with this Article.

ARTICLE 25 QUIET ENJOYMENT

Provided that Lessee is not in default under this Lease, Lessee shall peacefully and quietly have, hold and enjoy the Premises throughout the Term, without hindrance, ejection or molestation by County, or any person lawfully claiming through or under County.

ARTICLE 26 NOTICES

All notices, demands, requests or other communication required or permitted to be given or served under this Lease ("Notice" or "Notices") shall be in writing, and (i) delivered in person to an officer or authorized representative of the other party, and if to Lessee, then also to any Leasehold Mortgagee, (ii) sent by United States Postal Service, certified or registered mail, postage prepaid, (iii) sent by courier delivery service, or (iv) delivered by electronic mail, with the original document subsequently delivered by United States Postal Service First Class Mail to the other party at the addresses specified in Section 1.2 of this Lease. Mailed Notices shall be deemed to have been given, delivered and received three (3) business days after the date the Notice is posted by the United States Postal Service. All other Notices shall be deemed given, delivered and received upon actual receipt. Either party may, by written notice delivered pursuant to this Section, at any time designate a different address to which Notices shall be sent.

ARTICLE 27 AFFIRMATIVE ACTION PROGRAM FOR VENDORS

During the Term, Lessee shall comply with the Affirmative Action Program for Vendors (as defined in the San Diego County Administrative Code Section 84 et seq.) pertaining to employment of disabled persons, as set forth in Article IIIK (commencing at Section 84) of the San Diego County Administrative Code, which is incorporated into this Lease by this reference. Lessee is informed that the County's Affirmative Action Program for Vendors provides that its requirements shall not apply to any lessee, or subcontractor of a Lessee, who has a regular, paid workforce of less than fifteen (15) employees. In accordance with San Diego County Administrative Code Section 84.6, as an option for compliance with this Article 27, Lessee provide to the County Director of Purchasing and Contracting written certification that Lessee (i) has an Affirmative Action Program substantially consistent with the objectives of the County Affirmative Action Program for Vendors which is approved by an agency of the Federal Government, or (ii) is otherwise complying with all Federal or State disabled persons hiring requirements. A copy of this Affirmative Action Program will be furnished to Lessee by the County's Lease Administrator upon Lessee's request.

ARTICLE 28 WAIVER OF RELOCATION ASSISTANCE BENEFITS

Lessee is informed and acknowledges the following: By entering into this Lease and becoming a tenant of County, Lessee may become entitled to receipt of "relocation assistance benefits" ("Relocation Benefits") pursuant to the Federal Uniform Relocation Assistance Act (42 U.S.C. Section 4601 et seq.) and/or the California Relocation Assistance Law (Cal. Government Code Section 7270 et seq.) (collectively, the "Relocation Statutes"), should County at some time make use of the Premises in such a way as to "displace" Lessee from the Premises. Pursuant to the Relocation Statutes, County may then become obligated to make payments to Lessee even where the displacement of Lessee does not otherwise constitute a breach or default by County of its obligations pursuant to this Lease. In consideration of County's agreement to enter into this Lease, to the fullest extent permitted by law, Lessee waives any and all rights it may now have, or may subsequently obtain, to Relocation Benefits arising out of the County's assertion or exercise of its contractual rights to terminate this Lease pursuant to its terms, whether or not the rights are contested by Lessee or any other entity, and releases County from any liability for payment of Relocation Benefits. Lessee does not waive its rights to Relocation Benefits to the extent that Lessee's entitlement to Relocation Benefits may arise out of any condemnation or pre-condemnation actions taken by the County or any other public agency with respect to the Premises. Lessee shall in the future execute any further documentation of the release and waiver provided by this Article 28 as reasonably required by County.

ARTICLE 29 GENERAL PROVISIONS

29.1 <u>Authority</u>. Lessee represents and warrants that it has full power and authority to execute and fully perform its obligations under this Lease pursuant to its governing instruments, without the need for any further action, and that the person(s) executing this Lease

on behalf of Lessee are the duly designated agents of Lessee and are authorized to act on behalf of Lessee.

- 29.2 <u>Brokers</u>. Lessee warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation and/or execution of this Lease. If any broker other than the brokers acknowledged in writing by County make claim for monies owed, Lessee shall indemnify, defend and hold County harmless from the claim, which obligations shall survive the expiration or earlier termination of this Lease.
- 29.3 <u>Captions</u>. The captions, headings and table of contents appearing in this Lease are inserted for convenience only and in no way define, limit, construe, or describe the scope or intent of the provisions of this Lease.
- 29.4 Approvals. Except as otherwise expressly provided in this Lease, approvals required of County or Developer in this Agreement, including the attachments, shall not be unreasonably withheld, conditioned or delayed. All approvals shall be in writing. Except as otherwise expressly provided in this Lease, failure by either party to approve a matter within the time provided for approval of the matter shall not be deemed a disapproval, and failure by either party to disapprove a matter within the time provided for approval of the matter shall not be deemed an approval. Except as otherwise expressly provided in this Lease, approvals or consent required of County shall be deemed granted by the written approval of the County's Lease Administrator in his or her discretion. Notwithstanding the foregoing, the County's Lease Administrator may, in his or her sole discretion, refer to the governing body of County any item requiring County approval; otherwise, "County approval" or "County consent" means and refers to approval or consent by the County's Lease Administrator.
- 29.5 <u>Business Days</u>. The term "business days" as used in this Lease means any calendar day other than a Saturday, Sunday or official County holiday.
- 29.6 <u>Cumulative Remedies</u>. If a default under this Lease occurs, each party's remedies shall be limited to those remedies set forth in this Lease. The remedies under this Lease are cumulative and not exclusive of any other remedies under this Lease to which the non-defaulting party may be entitled.
- 29.7 <u>Exhibits</u>. All exhibits referred to in this Lease are attached to this Lease and incorporated into this Lease by reference.
- 29.8 Entire Agreement. This Lease, together with all addenda, exhibits and riders attached to this Lease, and the DDA, constitute the entire agreement between County and Lessee with respect to the subject matter of this Lease, and all prior or contemporaneous agreements, understandings and representations, oral or written, are superseded
- 29.9 <u>Estoppel Certificate</u>. Subject to payment of fees required under <u>Section</u> <u>15.10</u>, County and Lessee shall, from time to time, within ten business (10) business days after request from the other party or from any Leasehold Mortgagee, investor, Space Lessee, or a

holder or prospective holder of a Fee Mortgage or a purchaser or prospective purchaser of the fee interest in the Premises, execute and deliver to each other, to the applicable Leasehold Mortgagee or a holder or prospective holder of a Fee Mortgage or a purchaser or prospective purchaser of the fee interest in the Premises or to any person whom the requesting party may designate, an estoppel certificate consisting of statements, if true, that (a) this Lease is in full force and effect, with payment of rent and other charges hereunder being current through the date of the certificate (or stating the date through which rent and all other applicable charges hereunder have been paid); (b) this Lease has not been modified or amended (or setting forth all modifications and amendments); (c) to the best of such party's knowledge and belief (based solely upon such party's customary internal investigation undertaken with respect to similar requests, and without waiving any such default should it learn, subsequent to execution of such statement, that the other party was then in default), the other party is not then in default beyond any applicable notice, cure or grace period under this Lease; and (d) to the best of such party's knowledge and belief (based solely upon such party's customary internal investigation undertaken with respect to similar requests, and without waiving any such default should it learn, subsequent to execution of such statement, that the other party was then in default), such other factual statements as County, Lessee, Leasehold Mortgagee, prospective lender to either County or Lessee, Space Lessee, investor or purchaser from either County or Lessee, may reasonably request.

- 29.10 Force Majeure. If County or Lessee is prevented or delayed from performing any act or discharging any obligation under this Lease, except for the payment of Rent, Additional Rent, or other payment required under this Lease by Lessee, because of any and all causes beyond either party's reasonable control, including but not limited to unusual delays in deliveries, abnormal adverse weather conditions, unavoidable Casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, governmental restrictions, regulations or controls, any hostile government actions, civil commotion and fire or other Casualty, legal actions attacking the validity of this Lease or the Lessee's occupancy or use of the Premises, or any other Casualties beyond the reasonable control of either party except casualties resulting from Lessee's negligent operation or maintenance of the Premises ("Force Majeure"), performance of the act shall be excused for the period of the delay, and the period for performance of the act shall be extended for a period equivalent to the period of the delay. Force Majeure shall not include any bankruptcy, insolvency, or financial inability or financial considerations of Lessee.
- 29.11 <u>Governing Law</u>. This Lease shall be governed, construed and enforced in accordance with the laws of the State of California.
- 29.12 <u>Interpretation</u>. The language of this Lease shall be construed simply according to its plain meaning and shall not be construed for or against either party.
- 29.13 <u>Joint and Several Liability</u>. If more than one person or entity executes this Lease as Lessee, each of them is jointly and severally liable for all of the obligations of Lessee under this Lease.

- 29.14 <u>Liquidated Damages</u>. Any payments by Lessee to County under this Lease described as liquidated damages represent the parties' reasonable estimate of County's actual damages under the described circumstances, the actual damages being uncertain and difficult to ascertain in light of the impossibility of foreseeing the state of the leasing market at the time of the various deadlines set forth in this Lease.
- 29.15 <u>Modification</u>. The provisions of this Lease may not be modified, except by a written instrument signed by County and Lessee.
- 29.16 <u>Partial Invalidity</u>. If any provision of this Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected by the determination. Each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.
- 29.17 <u>Payments</u>. Except as may otherwise be expressly stated in this Lease, each payment required to be made by Lessee shall be in addition to, and not a substitute for, other payments to be made by Lessee under this Lease.
- 29.18 <u>Successors and Assigns</u>. This Lease shall be binding on an inure to the benefit of County and Lessee and their successors and assigns, except as may otherwise be provided in this Lease.
- 29.19 <u>Time of Essence</u>. Time is of the essence of each and every provision of this Lease.
- 29.20 Waiver. No provision of this Lease or the breach of any provision of this Lease shall be deemed waived, except by written consent of the party against whom the waiver is claimed. The waiver by County of any breach of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of the term, covenant or condition of any subsequent breach of the term, covenant or condition, or of any other term, covenant or condition contained in this Lease. County's subsequent acceptance of partial Rent or Additional Rent or performance by Lessee shall not be deemed to be an accord and satisfaction or a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease or of any right of County to a forfeiture of this Lease by reason of the breach, regardless of County's knowledge of the preceding breach at the time of County's acceptance. The failure on the part of County to require exact or full and complete compliance with any of the covenants, conditions of agreements of this Lease shall not be construed as in any manner changing or waiving the terms of this Lease or as estopping County from enforcing in full the provisions of this Lease. No custom or practice which may arise between County and Lessee in the course of administering this Lease shall be construed to waive, estop or in any way lessen County's right to insist upon the full performance of, or compliance with, any term, covenant or condition of this Lease by Lessee, or construed to inhibit or prevent County's exercise of its rights with respect to any default, dereliction or breach of this Lease by Lessee.

- 29.21 <u>Memorandum of Lease</u>. Concurrently with the execution of this Lease, the parties will execute a "Memorandum of Lease" in the form attached to this Lease as EXHIBIT "E" <u>MEMORANDUM OF LEASE</u> and cause it be recorded in the Official Records of the San Diego County Recorder.
- 29.22 <u>Counterparts</u>. This Lease may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.

[signatures on following page]

SIGNATURES

The Lease shall be effective as of the dat	te of its execution by the County's Lease Administrator.
LESSEE:	
[insert signature block]	
COUNTY:	
County of San Diego, a political subdivi	sion of the State of California
Dated:	By:
	Marko Medved, P. E., CEM, Director Department of General Services
Approved as to form and legality:	
Dated:	By:
	Nathan Slegers, Senior Deputy County Counsel
	Schol Deputy County Counsel

County and Lessee have duly executed this Lease as of the day and year written below.

EXHIBIT "A"

DESCRIPTION OF PREMISES

Location Map



EXHIBIT "A"

DESCRIPTION OF PREMISES

Site Map



EXHIBIT "A"

DESCRIPTION OF PREMISES

LEGAL DESCRIPTION

Real property in the City of San Diego, County of San Diego, State of California, described as follows:

PARCEL 1 OF PARCEL MAP 9284, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, ON OCTOBER 23, 1979 AS FILE NO. 79-443936 OF OFFICIAL RECORDS.

APN: 361-661-12-00

EXHIBIT "B"

INSURANCE REQUIREMENTS - CONSTRUCTION PERIOD

Insurance Requirements

Without limiting Lessee's indemnification obligations under this Lease, Lessee shall provide at its sole expense and maintain during the term of the Construction Period of Lease, or as may be further required in this Lease, the insurance specified in this Exhibit "C". Lessee's insurance shall protect Lessee against claims which may arise out of or result from Lessee's construction operations under the Lease and for activities which Lessee may be legally liable, whether the operations are performed by Lessee or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- A. Commercial General Liability, Occurrence form, Insurance Services Office form CG0001.
- B. Automobile Liability covering all owned, non-owned and hired auto, Insurance Services Office form CA0001. If any type of hazardous substances is transported that could cause environmental harm the policy shall contain a Pollution Coverage Endorsement (MCS-90B) or Pollution Liability-Broadened Coverage for Covered Autos-Business Auto, Motor Carrier and Truckers Coverage Forms, Form # CA9948 0902.
- C. Workers' Compensation, as required by State of California and Employer's Liability Insurance.
- D. Professional Errors and Omissions Liability required if Lessee provides or engages any type of professional services including but not limited to engineers, architects and project or construction management. Such policy may be provided by engineers, architects and project or construction management consultants in lieu of Lessee providing such coverage.
- E. Pollution Legal Liability and/or Asbestos Legal Liability required if project involves environmental hazards. Such policy may be provided by contractor whose scope involves environmental hazards in lieu of Lessee providing such coverage.
- F. Builder's Risk covering all new construction and materials which are the subject of this Lease.

2. Minimum Limits of Insurance

The insurance required shall be written for not less than limits of liability specified in this Lease or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. Lessee may use a combination of primary and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the insurance provisions. As a requirement of this Lease, any available insurance proceeds in excess of the specified minimum limits and coverage stated below, shall also be available to the County. The indemnity provisions shall apply to the full amount of damages and are not limited by the minimum limits stated below.

Lessee shall maintain limits no less than:

- A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability, Independent Contractors Liability, Broad Form Property Damage, and Explosion, Collapse and Underground Damage (XCU): \$5,000,000 per occurrence for bodily injury and property damage. Products and Completed Operations with limits of not less than \$5,000,000 per occurrence to be maintained for three years following Acceptance of work by the County. The General Aggregate limit shall be \$5,000,000 and shall be a Project Specific Aggregate.
- B. Comprehensive Automobile Liability covering all owned, non-owned and hired vehicles for bodily injury and property damage of not less than one million dollars (\$1,000,000) each accident.
- C. Statutory Workers' Compensation, as required by State of California and Employer's Liability at one million dollars (\$1,000,000) each accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of the County.
- D. Professional Errors and Omissions Liability: \$3,000,000 per claim with an aggregate limit of not less than \$3,000,000. Any self-retained limit shall not be greater than \$1,000,000 per occurrence/event without County Risk Management approval. This coverage shall be maintained for a minimum of three (3) years following termination or completion of Lessee's work pursuant to the Lease.
- E. Pollution Legal Liability Insurance: \$2,000,000 per claim with an aggregate limit of not less than \$4,000,000. Any self-retained limit shall not be greater than \$100,000 per occurrence/event without County Risk Management approval. Coverage shall include contractual liability

coverage. This coverage shall be maintained for a minimum of two years following termination of completion of Contractor's work pursuant to the Contract.

F. Builder's Risk: All risk or special form perils including theft of building materials (excluding earthquake and flood) covering completed value of project with no coinsurance penalty. Coverage shall be in an amount of no less than the full replacement value of the property at the time of loss. Coverage shall be provided on the work and materials which is the subject of this Lease, whether in process or manufacture or finished, including "in transit" coverage to the final agreed upon destination of delivery and including loading and unloading operations.

3. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by County Risk Management if excess of One Hundred Thousand Dollars (\$100,000) per claim/occurrence. At the option of the County, either: the insurer shall reduce or eliminate the deductibles or self-insured retentions as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

A. Additional Insured Endorsement. The County of San Diego, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively are to be covered as additional insureds on the General Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Lessee including materials, parts, or equipment furnished in connection with the work or operations and automobiles owned, leased, hired or borrowed by or on behalf of the Lessee. General Liability coverage can be provided in the form of an endorsement to the Lessee's insurance (at least as broad as ISO from CG 2010 11 85 or both CG 2010, CG 2026, CG 2033, or CG 2038; and CG 2037 forms if later revisions used).

- B. <u>Primary Insurance Endorsement</u>. For any claims related to this project, the Lessee's insurance coverage, including any excess liability policies, shall be primary insurance at least as broad as ISO CG 2001 04 13 as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively. Any insurance or self-insurance maintained by the County, its officers, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
- C. <u>Notice of Cancellation</u>. Notice of Cancellation shall be provided in accordance with policy provisions.
- D. <u>Severability of Interest Clause</u>. Coverage applies separately to each insured, except with respect to the limits of liability, and that an act or omission by one of the named insureds shall not reduce or avoid coverage to the other named insureds.
- E. <u>Loss Payee Clause</u>. Builder's Risk policy shall name County as loss payee as its interests may appear. Loss, if any, shall be adjustable with and payable to the County as trustee for all entities having an insurable interest, except in cases that may require payment of all or a proportion of the insurance to be made to a mortgagee as its interest may appear.

General Provisions

5. Qualifying Insurers

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A-, VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by County Risk Management.

6. Evidence of Insurance

Prior to the Commencement Date of this Lease, Lessee shall furnish County with certificate(s) of insurance and amendatory endorsements effecting coverage required by this clause. Renewal certificates and amendatory endorsements shall be furnished to County within thirty days after the expiration of the term of any required policy. Lessee shall permit County at all reasonable times to inspect any required policies of insurance. Insurance documents shall be issued and sent to the name and address listed this Lease.

7. Failure to Obtain or Maintain Insurance; County's Remedies

Lessee's failure to provide insurance specified or failure to deliver certificates of insurance and amendatory endorsements, or failure to make premium payments required by the insurance, shall constitute a material breach of the Lease, and County may, at its option, terminate the Lease for any default by Lessee.

8. No Limitation of Obligations

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Lessee, and any approval of said insurance by the County are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Lessee pursuant to the Lease, including, but not limited to, the provisions concerning indemnification.

9. No Recourse

The insurer shall have no recourse against County for payment of any premium or for assessments under any insurance policy maintained in connection with this Lease.

10. Review of Coverage

County retains the right at any time to review the coverage, form and amount of insurance required in this Lease and may require Lessee to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

11. Self-Insurance

Lessee may, with the prior <u>written</u> consent of County Risk Management, fulfill some or all of the insurance requirements contained in the Lease under a plan of self-insurance. Contractor shall only be permitted to utilize self-insurance if in the opinion of County Risk Management, Lessee's (i) net worth, and (ii) reserves for payment of claims of liability against Lessee, are sufficient to adequately compensate for the lack of other insurance coverage required by this Lease. Lessee's utilization of self-insurance shall not in any way limit liabilities assumed by Lessee under the Agreement.

12. Claims Made Coverage

If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, the policy shall provide that:

A. The policy retroactive date coincides with or precedes Lessee's commencement of work under the Lease (including subsequent policies purchased as renewals or replacements).

- B. Lessee shall make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Lease.
- C. If insurance is terminated for any reason, Lessee shall purchase an extended reporting provision of at least three years to report claims arising in connection with the Lease.
- D. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

13. Subcontractors' Insurance

Lessee shall require and verify that all subcontractors maintain insurance meeting all the requirements stated in this Lease, and Lessee shall ensure that County is an additional insured on insurance required from subcontractors. The Additional Insured endorsement shall be attached to the certificate of insurance in order to be valid and on a form at least as broad as ISO from CG 2010 11 85 or both CG 2010, CG 2026, CG 2033, or CG 2038; and CG 2037 forms if later revisions used. If any subcontractor's coverage does not comply with the foregoing provisions, Lessee shall defend and indemnify the County from any damage, loss, cost, or expense, including attorneys' fees, incurred by County as a result of subcontractor's failure to maintain required coverage. In addition to the foregoing, Lessee shall require that any and all subcontractors performing any excavation of the Project have Explosion, Collapse and Underground Damage Liability (XCU) Insurance and coverage in the amount of \$2,000,000 per occurrence.

14. Waiver of Subrogation

Lessee hereby agrees to waive rights of subrogation which any insurer (excluding pollution and professional policies) of Lessee may acquire from County by virtue of the payment of any loss. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the County for all work performed by the Contractor, its employees, agents and subcontractors.

EXHIBIT "C"

INSURANCE REQUIREMENTS - OPERATIONS PERIOD

Insurance Requirements

Without limiting Lessee's indemnification obligations to County under this Lease, Lessee shall provide and maintain during the Operations Period of this Lease insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the Premises and Improvements identified in the Lease. The cost of the insurance shall be borne entirely by the Lessee.

1. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

- A. Commercial General Liability, Occurrence form, Insurance Services Office Form CG0001. Workers Compensation, as required by State of California and Employer's Liability Insurance.
- B. Property Insurance against all risk or special form perils (excluding earthquake or flood), including Replacement Cost coverage, without deduction for depreciation, for Lessee's merchandise, fixtures owned by Lessee, any items identified in this Lease as Improvements to the Premises constructed and owned by Lessee, and the personal property of Lessee, its agents and employees.
- C. Rental Income Replacement

2. MINIMUM LIMITS OF INSURANCE

Lessee shall maintain limits no less than:

- A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability and Independent Contractors: One million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be two million dollars (\$2,000,000) and shall be a Per Location Aggregate. Fire Damage Limit (Any One Fire) three hundred thousand dollars (\$300,000) and Medical Expense Limit (Any One Person) five thousand dollars (\$5,000).
- B. Employers Liability: One million dollars (\$1,000,000) each accident for bodily injury or disease. Coverage shall include a waiver of subrogation endorsement in favor of County of San Diego.

- C. Property: Full replacement cost with no coinsurance penalty provision.
- D. Rental Income Replacement assuring County of receiving the minimum monthly rent from the time the Premises and Improvements are damaged or destroyed with a minimum period of coverage of one (1) year.

If the Lessee maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Lessee. As a requirement of this Lease, any available insurance proceeds in excess of the specified minimum limits and coverage stated above, shall also be available to the County of San Diego.

3. <u>DEDUCTIBLES AND SELF-INSURED RETENTION'S</u>

Any liability deductible or self-insured retention must be declared to and approved by the County Risk Management. The property insurance deductible shall not exceed one hundred thousand dollars (\$100,000) per occurrence and shall be borne by Lessee.

4. OTHER INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- A. <u>Additional Insured Endorsement</u>. The County of San Diego, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively are to be covered as additional insureds on the General Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Lessee including materials, parts, or equipment furnished in connection with the work or operations. (General Liability coverage can be provided in the form of an endorsement to the Lessee's insurance at least as broad as ISO from CG 2010 11 85 or both CG 2010, CG 2026, CG 2033, or CG 2038; <u>and</u> CG 2037 forms if later revisions used).
- B. <u>Primary Insurance Endorsement</u>. For any claims related to this Lease, the Lessee's insurance coverage shall be primary insurance at least as broad as ISO CG 2001 04 13 as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively. Any insurance or self-insurance maintained by the County, the members of the Board of Supervisors of the County, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.

C. <u>Notice of Cancellation</u>. Notice of cancellation shall be in accordance with policy provisions.

5. QUALIFYING INSURERS

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A-, VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by County Risk Management.

6. EVIDENCE OF INSURANCE

Prior to the commencement of the Operations Period of this Lease, Lessee shall furnish the County with certificates of insurance and amendatory endorsements effecting coverage required by this Lease. Renewal certificates and amendatory endorsements shall be furnished to County within thirty (30) days after the expiration of the term of any required policy. Lessee shall permit County at all reasonable times to inspect any required policies of insurance.

7. FAILURE TO OBTAIN OR MAINTAIN INSURANCE; COUNTY'S

REMEDIES

Lessee's failure to provide insurance specified or failure to furnish certificates of insurance and amendatory endorsements or failure to make premium payments required by the insurance, shall constitute a material breach of this Lease and County may, at its option, terminate this Lease for any default by Lessee.

8. NO LIMITATIONS OF OBLIGATIONS

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Lessee, and any approval of the insurance by the County are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Lessee pursuant to the Lease, including, but not limited to, the provisions concerning indemnification.

9. REVIEW OF COVERAGE

County retains the right at any time to review the coverage, form and amount of insurance required by this Lease and may require Lessee to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

10. SELF-INSURANCE

Lessee may, with the prior written consent of County Risk Management, fulfill some or all of the insurance requirements contained in this Lease under a plan of self-insurance. Lessee shall only be permitted to utilize self-insurance if in the opinion of County Risk Management, Lessee's (i) net worth, and (ii) reserves for payment of claims of liability against Lessee, are sufficient to adequately compensate for the lack of other insurance coverage required by this Lease. Lessee's utilization of self-insurance shall not in any way limit liabilities assumed by Lessee under this Lease.

11. SUBLESSEE'S INSURANCE REQUIREMENTS

If Commercial Sublessee or Sub-sublessee

Lessee shall require any commercial sublessee and any commercial sub-sublessee, of all or any portion of the Premises and Improvements to provide minimum insurance coverage described in this Lease prior to occupancy.

If Residential Sublessee or Sub-sublessee

Without limiting sublessee's and any sub-sublessee's indemnification, sublessee shall provide and maintain, during the term of their lease, at their sole expense, insurance at least in the amounts and form specified below; provided, however that this requirement shall not apply to households renting residential units at the Premises.

- A. <u>Liability Insurance</u>. Lessee shall procure Personal Liability insurance including incidental Workers' Compensation coverage applying to the use and occupancy of the Premises and Improvements, or any part of the Premises and Improvements, or any areas adjacent to the Premises and Improvements, and in an amount not less than one hundred thousand dollars (\$100,000).
- B. <u>All Risk Insurance</u>. A standard fire policy including all-risk or special form perils, providing Replacement Cost Coverage, without deduction for depreciation for (i) Lessee's personal property, (ii) fixtures owned by Lessee, and (iii) any items identified in this Lease as improvements to the Premises constructed and owned by Lessee. The deductible for the required fire insurance policy shall not exceed ten thousand dollars (\$10,000) per occurrence and shall be borne by Lessee.

12. WAIVER OF SUBROGATION

Lessee and County waive all rights to recover against each other or against any other tenant or occupant of the building, or against the officers, directors, shareholders, partners, employees, agents or invitees of each other or of any other occupant or tenant of the building, from any Claims (as described in ARTICLE 13 EXCULPATION, INDEMNIFICATION AND INSURANCE of this Lease) against either of them and from any damages to the fixtures,

personal property, Lessee's improvements, and alterations of either County or Lessee in or on the Premises and Improvements, to the extent that the proceeds received from any insurance carried by either County or Lessee, other than proceeds from any program of self-insurance, covers any Claim or damage. Included in any policy or policies of insurance provided by Lessee (excluding professional and pollution if applicable) shall be a standard waiver of rights of subrogation against County by the insurance company issuing the policy or policies.

EXHIBIT "D"

FORM OF NON-DISTURBANCE AND

ATTORNMENT AGREEMENT FOR SUBLEASES

	on-disturbance and attornment agreement ("Agreement") is made and entered
into as of	by and between
("Lessor"),	("Lessee"), and the County of San
Diego, a politica	("Lessee"), and the County of San I subdivision of the State of California ("County"), with reference to the
following facts:	• //
C	
	RECITALS
A.	Lessor leases from the County land located San Diego, California known as ("Master Leasehold") pursuant to a long term ground lease known as
County of San D	iego Contract Number ("Master Lease").
В.	The Master Lease requires Lessor to develop and construct upon the Master
	n improvements ("Improvements"). Portions of the Improvements may be
	n-residential tenants of Lessor. The Improvements are depicted on the site plan Agreement as EXHIBIT "A" <u>DESCRIPTION OF IMPROVEMENTS</u> .
C.	Lessee desires to lease from Lessor a portion of the Improvements
("Premises") pur	suant to the lease agreement attached to this Agreement as EXHIBIT "B"
LEASE AGREE	MENT.
D.	County, Lessor and Lessee desire to enter into this Agreement in order to
clarify their resp	ective rights and obligations in the event the Master Lease should ever be
terminated and tl	ne County regains direct control of the Master Leasehold.
	ideration of the above recitals and the mutual promises contained in this nty, Lessor and Lessee agree as follows:
1.	Non-Disturbance. County consents to the Lease and agrees that in the

event that the Master Lease is terminated or expires for any reason, as long as Lessee is not in default of its obligations under the Lease beyond all available cure periods after required notice given, Lessee shall peaceably and quietly have, hold and enjoy the Premises leased pursuant to the Lease and the rights under the Lease shall not be terminated or disturbed for the full term of the Lease (provided the term of the Lease does not extend beyond the term of the Master Lease if the Master Lease would not have been terminated) in accordance with the terms, covenants,

conditions, and provisions of the Lease subject to any limitations imposed by Section 2 below on the scope of the County's attornment.

- 2. <u>Attornment</u>. Lessee agrees that in the event the Master Lease is terminated, Lessee shall attorn to County as its lessor, and that the attornment shall be effective and self-operative without the execution of any other instruments on the part of either Lessee or County upon the receipt by Lessee of notice of County's termination of the Master Lease, and the Lease shall thereafter continue in accordance with its terms between Lessee as lessee and County as lessor, and County agrees to recognize Lessee's rights under the Lease and not disturb the possession and rights of Lessee, provided however that:
 - (a) County shall not be liable for any act or omission of Lessor.
- (b) County shall not be subject to any offsets or defenses that Lessee may have against Lessor.
- (c) County shall not be bound by any prepayment of rent, operating expenses, common area maintenance fees, deposits or rental security, or any other sums deposited with Lessor under the Lease, unless the sum is actually received by County. Notwithstanding the foregoing, Lessee shall have no obligation to pay to County any prepaid rent received by Lessor prior to the termination of the Master Lease.
- (d) County shall not be liable for any representations or warranties given or made by Lessor.
- (e) The Lease shall not be amended or modified without the prior written consent of County, and County shall not be bound by any modification or amendment of the Lease made without the written consent of County.
- (f) County shall not be obligated to cure any default of Lessor under the Lease or Master Lease or to complete the construction of the Improvements. Lessee shall not be obligated to cure any default of Lessor under either the Lease or Master Lease, nor shall Lessee be responsible for any liability attributable to Lessor arising prior to or after Lessee's attornment to the County as its lessor.
- (g) Lessee agrees to execute any additional agreements reasonably requested by the County to document the attornment.
 - (h) Lessee shall not be liable for any act or omission of Lessor.

or made by Lessor		Lessee shall not be liable for any representations or warranties given
may have against l	•	Lessee shall not be subject to any offsets or defenses that County
it has succeeded to notice, the paymen	oay rent to the interent by Lesson the Lesson	Notwithstanding anything to the contrary, Lessee shall not be under the County until Lessee receives written notice from the County that est of Lessor under the Lease. From and after receipt of the written ee to County of rentals and other payments then due or thereafter under the Lease shall constitute full performance of all obligations is.
notice of any term		County hereby covenants and agrees to provide Lessee written the Master Lease.
notice of any notic		County hereby covenants and agrees to provide Lessee written ults that County sends to Lessor under the Master Lease.
notice of any assig		County hereby covenants and agrees to provide Lessee written the Master Lease.
		County hereby covenants and agrees to provide Lessee at least forty-before County enters the Premises and the purpose for County's ept in the event of an emergency.

D-3

- 3. <u>Termination of Lease</u>. If the Lease is terminated or expires for any reason, all rights and obligations of the parties pursuant to this Agreement, except with regard to any obligations or liabilities owed to County or Lessee before the termination, shall terminate without further recourse.
- 4. Quiet Enjoyment. County warrants and covenants to Lessor and Lessee that it is vested with good and marketable fee title to the Premises and that, in the event the Master Lease is terminated, it has the right and lawful authority to enter into the Lease for the term set forth in the Lease (provided the term does not exceed that set forth in the Master Lease). In consideration of the foregoing agreements of Lessee, County agrees that as long as Lessee is not in default of the terms of the Lease beyond all available cure periods with required notice given, County (i) will not join or name Lessee as a party in any proceedings to terminate the Master Lease, (ii) will not disturb Lessee's possession of the Premises under the Lease upon the termination of the Master Lease, (iii) will accept the attornment of Lessee, subject to the limitations contained in this Agreement, and (iv) will assume and perform (but only while in possession or control of the Master Leasehold) all of Lessor's obligations under the Lease, except as otherwise provided in this Agreement.
- 5. <u>Notices</u>. All notices or other communication required or permitted to be given under this Agreement shall be in writing, and (i) delivered in person to an officer or an authorized representative of the other party, (ii) sent by United States Postal Service registered or certified mail, postage prepaid, or (iii) sent by courier delivery service to the following addresses:

	Attention: Director, Department of General Services
	5560 Overland Avenue, Suite 410
	San Diego, California 92123
If to Lessor:	
If to Lessee:	

If to County: County of San Diego

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All notices or other communications shall be deemed given, delivered and received upon actual receipt or refusal. The parties to this Agreement may, by written notice delivered pursuant to this section, at any time designate a different address to which notices shall be sent.

- 6. <u>Mineral Rights</u>. County's exercise of its right for the activities described in Section 2.2 of the Master Lease shall not result in any material impact on Lessee's development or use of, or operation on, the Master Leasehold and the Premises for the purposes permitted under the Master Lease (including, but not limited to, ingress and egress, access, signage and parking).
- 7. <u>Easements/Reservations</u>. No right reserved by County in Section 2.3 of the Master Lease shall be exercised as to interfere unreasonably with Lessee's development or use of the Master Leasehold and the Premises, or operations (including access and free flow of customer traffic) or result in the loss of improvements previously constructed by Lessee, or parking and other common areas serving the improvements.
- 8. <u>County Entry onto Premises</u>. In exercising any County's rights of entry on to the Premises under the Master Lease, County shall not unreasonably interfere with the operation of Lessee on the Master Leasehold and the Premises and any entry shall be conducted in a manner that minimizes disruption to Lessee. Lessee waives any claim of injury to Lessee's business or inconvenience to Lessee's business, interference with Lessee's business, loss of occupancy or quiet enjoyment of the Master Leasehold and the Premises, or any other loss occasioned by entry onto the Premises.
- 9 Miscellaneous. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of California as applied to contracts entered into between California residents to be performed wholly within California. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. All periods of time referred to in this Agreement shall include Saturdays, Sundays and County holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice or approval shall fall on a Saturday, Sunday or County holiday, the act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or County holiday. This Agreement shall be binding upon and shall inure to the benefit of all the parties to this Agreement, their respective beneficiaries, successors and assigns. Each party signing this Agreement on behalf of an entity represents and warrants that he or she has full authority to do so and the signature of no other party is necessary for this Agreement to be effective. Headings at the beginning of each numbered section of the Agreement are solely for the convenience of the parties and are not a part of this Agreement. This Agreement contains all

of the agreements of the parties to this Agreement with respect to the matters contained in this Agreement, and no prior agreement or understanding pertaining to any matter shall be effective for any purpose. No provision of this Agreement may be amended or added to this Agreement except by an agreement in writing signed by the parties to this Agreement or their respective successors in interest. If any of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the provision(s) shall be reformed by the court to the minimum extent possible to render it valid, legal and enforceable (if possible), and the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired. Time is of the essence under this Agreement and any amendment, modification or revision of this Agreement.

THE REMAINDER OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK.
THE SIGNATURES ARE ON THE FOLLOWING PAGE.

SIGNATURES

The parties have entered into this Agreemen	nt effective a	as of the date and year first written above.
	Lessor:	
	By:	
	Its:	
	Lessee:	
		,
	By:	
	Its:	
County:		
County of San Diego,		
a political subdivision of the State of California	rnia	
	By:	
		MARKO MEDVED, Director

	Approved as to form and legality:
By:	NATHAN SLEGERS,
	Senior Deputy County Counsel

Department of General Services

FORM OF NON-DISTURBANCE AND ATTORNMENT AGREEMENT FOR SUBLEASES

EXHIBIT "A" <u>DESCRIPTION OF IMPROVEMENTS</u>

FORM OF NON-DISTURBANCE AND ATTORNMENT AGREEMENT FOR SUBLEASES

EXHIBIT "B"

LEASE AGREEMENT

Begins on Next Page

EXHIBIT "E"

MEMORANDUM OF LEASE

Begins on next page

WHEN RECORDED, PLEASE RETURN	
THIS INSTRUMENT TO:	
Attention:	
	SPACE ABOVE FOR RECORDER'S USE
	ONLY
MEMORANDUM (DE LEACE
	Jr Lease
APN:	
The County of San Diego, a politic	cal subdivision of the State of California
"County") and, a, a, a, a, a, ease ("Lease"), dated, DESCRI	, (Dessee), effected into a, for the premises
"Premises") described in SCHEDULE "1" <u>DESCRI</u>	PTION OF PREMISES attached to this
Memorandum of Lease.	

1. accordance with the term	<u>Grant</u> . County grants to Lessee a leasehold estate in the Premises in s, covenants and conditions of the Lease.
2. Date and expiration date	<u>Term</u> . The term of the Lease is () years, with a Commencement as provided in the Lease.
3. forth above.	Filing. A copy of the Lease is on file with County at the address set
4. only as provided in the Lo	<u>Subordination</u> . County shall be obligated to subordinate the Lease ease.
shall not be used in interp deemed to modify or othe In the event of a conflict	Summary. This Memorandum of Lease does not include all the ditions of the Lease. The provisions of this Memorandum of Lease reting the terms, covenants and conditions of the Lease and shall not be trwise change any of the terms, covenants or conditions of the Lease. Detween the Lease and this Memorandum of Lease, the terms, of the Lease shall control.
Lessee shall execute and	<u>Termination of Lease</u> . Upon the expiration or earlier termination of lum of Lease shall terminate and be of no further force or effect. deliver for recordation, a quitclaim deed in favor of County confirming right, title and interest in and to the Premises under the Lease. Lessee sts.
7. multiple counterparts, eac constitute one and the sar	<u>Counterparts</u> . This Memorandum of Lease may be executed in the of which shall be deemed an original but all of which, together, shall ne instrument.
day of,	y and Lessee have executed this Memorandum of Lease as of the
	"COUNTY"
	County of San Diego, a political subdivision of the State of California

	Marko Medved P.E., CEM,
	Director, Department of General Services
	"LESSEE"
	By:
	Title:
[Add appropriate notary form]	

SCHEDULE "1"

DESCRIPTION OF PREMISES

LEGAL DESCRIPTION

Real property in the City of San Diego, County of San Diego, State of California, described as follows:

PARCEL 1 OF PARCEL MAP 9284, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, ON OCTOBER 23, 1979 AS FILE NO. 79-443936 OF OFFICIAL RECORDS.

APN: 361-661-12-00

EXHIBIT "F"

LESSEE'S RESPONSE TO REQUEST FOR PROPOSALS

Begins on next page

CLTA Preliminary Report Form

(Rev. 11/06)

Page Number: 1

Order Number: NHSC-6088447 (06)



First American Title Company

4380 La Jolla Village Dr, Suite 200 San Diego, CA 92122

Renata McGraw Chelsea Investment Corporation 6339 Paseo Del Lago Carlsbad, CA 92011

Customer Reference: Mt Etna

Order Number: NHSC-6088447 (06)

Title Officer: Dianne Livingston Phone: (858)410-1303 Fax No.: (714)913-6750

E-Mail: dslivingston@firstam.com

Buyer:

PRELIMINARY REPORT

In response to the above referenced application for a policy of title insurance, this company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Exhibit A attached. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit A. Copies of the policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

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Dated as of November 06, 2019 at 7:30 A.M.

The form of Policy of title insurance contemplated by this report is:

To Be Determined

A specific request should be made if another form or additional coverage is desired.

Title to said estate or interest at the date hereof is vested in:

COUNTY OF SAN DIEGO

The estate or interest in the land hereinafter described or referred to covered by this Report is:

A fee.

The Land referred to herein is described as follows:

(See attached Legal Description)

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in said policy form would be as follows:

- 1. General and special taxes and assessments for the fiscal year 2019-2020 are exempt.
- 2. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
- 3. Abutter's rights of ingress and egress to or from Genesee Avenue and the Northeasterly 20 feet of Mt. Etna Drive have been relinquished in the document recorded July 24, 1957 as Book 6676, Page 559 of Official Records.
- 4. An easement shown or dedicated on the map filed or recorded June 27, 1961 as Map No. 4802. For: public utility
- 5. Abutter's rights of ingress and egress to or from Genesee Avenue, have been dedicated or relinquished on the filed Map recorded June 27, 1961 as Map No. 4802, of Tract Maps.

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6. An easement for public utilities and incidental purposes, recorded September 06, 1961 as Instrument/File No. 154915 of Official Records.

In Favor of: San Diego Gas and Electric Company

7. An easement for public utilities and incidental purposes, recorded January 31, 1962 as Instrument/File 18128 of Official Records.

In Favor of: San Diego Gas and Electric Company

8. An easement for public utilities and incidental purposes, recorded February 28, 1962 as

Instrument/File No. 34431 of Official Records.

In Favor of: Pacific Telephone and Telegraph Co.

Affects: The Southerly 12 feet of Parcel 1 as shown on said Parcel Map

9. An easement for ingress and egress and incidental thereto and incidental purposes, recorded September 06, 1963 as Instrument/File No. <u>159149</u> of Official Records.

In Favor of: G. M. Shumaker and Leslie Eade

10. An easement for public utilities and incidental purposes, recorded February 16, 1970 as Instrument/File No. 27851 of Official Records.

In Favor of: San Diego Gas and Electric Company

Affects: As described therein

- 11. The terms and provisions contained in the document entitled Agreement, executed by and between American Medical Enterprises, Inc., a California corporation and the Planning Commission of the City of San Diego, recorded August 24, 1970, as Instrument No. 152269 of Official Records.
- 12. An easement for public utilities and incidental purposes, recorded June 03, 1971 as Instrument/File No. 116389 of Official Records.

In Favor of: San Diego Gas and Electric Company

13. An easement for public utilities and incidental purposes, recorded May 07, 1974 as Instrument/File No. 74-118246 of Official Records.

In Favor of: San Diego Gas and Electric Company

The location of the easement cannot be determined from record information.

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14. Covenants, conditions, restrictions and easements in the document recorded January 08, 1979 as Instrument/File No. 79-007553 of Official Records, but deleting any covenant, condition, or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, sexual orientation, familial status, disability, handicap, national origin, genetic information, gender, gender identity, gender expression, source of income (as defined in California Government Code § 12955(p)) or ancestry, to the extent such covenants, conditions or restrictions violation 42 U.S.C. § 3604(c) or California Government Code § 12955. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

15. An easement for public utilities and incidental purposes, recorded March 12, 1981 as Instrument/File No. 81-075379 of Official Records.

In Favor of: San Diego Gas and Electric Company

The location of the easement cannot be determined from record information.

16. A lease dated December 01, 1989, executed by The County of San Diego as lessor and San Diego County Capital Asset Leasing Corporation as lessee, recorded December 20, 1989 as Instrument/File No. 89-690544 of Official Records.

Defects, liens, encumbrances or other matters affecting the leasehold estate, whether or not shown by the public records.

17. A lease dated December 1, 1989, executed by San Diego Capital Asset Leasing Corporation as sublessor and County of San Diego as sub-lessee, recorded December 20, 1989 as File No. <u>89-690545</u> of Official Records.

Defects, liens, encumbrances or other matters affecting the leasehold estate, whether or not shown by the public records.

- 18. Water rights, claims or title to water, whether or not shown by the public records.
- 19. Rights of parties in possession.

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INFORMATIONAL NOTES

Note: The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the certain dollar amount set forth in any applicable arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. If you desire to review the terms of the policy, including any arbitration clause that may be included, contact the office that issued this Commitment or Report to obtain a sample of the policy jacket for the policy that is to be issued in connection with your transaction.

- According to the latest available equalized assessment roll in the office of the county tax assessor, there is located on the land a(n) COMMERCIAL STRUCTURE known as 5255 MOUNT ETNA DRIVE, SAN DIEGO, CALIFORNIA.
- 2. According to the public records, there has been no conveyance of the land within a period of twenty-four months prior to the date of this report, except as follows:

None

3. We find no outstanding voluntary liens of record affecting subject property. Disclosure should be made concerning the existence of any unrecorded lien or other indebtedness which could give rise to any possible security interest in the subject property.

The map attached, if any, may or may not be a survey of the land depicted hereon. First American expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

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First American Title Company 1250 Corona Pointe Court, Suite 200 Corona, CA 92879

(951)256-5880 Fax - (909)476-2401



WIRE INSTRUCTIONS

for

First American Title Company, Demand/Draft Sub-Escrow Deposits Riverside County, California

First American Trust, FSB

5 First American Way Santa Ana, CA 92707 Banking Services: (877) 600-9473

ABA 122241255
Credit to First American Title Company
Account No. 3097840000

Reference Title Order Number 6088447 and Title Officer Dianne Livingston

Please wire the day before recording.

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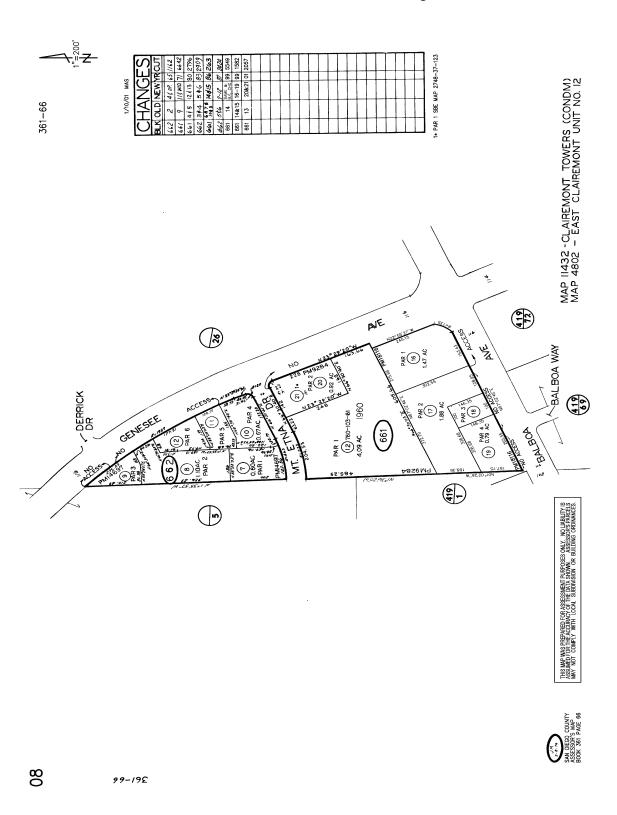
LEGAL DESCRIPTION

Real property in the City of San Diego, County of San Diego, State of California, described as follows:

PARCEL 1 OF PARCEL MAP <u>9284</u>, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, ON OCTOBER 23, 1979 AS FILE NO. 79-443936 OF OFFICIAL RECORDS.

APN: 361-661-12-00

Order Number: NHSC-6088447 (06) Page Number: 8



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NOTICE

Section 12413.1 of the California Insurance Code, effective January 1, 1990, requires that any title insurance company, underwritten title company, or controlled escrow company handling funds in an escrow or sub-escrow capacity, wait a specified number of days after depositing funds, before recording any documents in connection with the transaction or disbursing funds. This statute allows for funds deposited by wire transfer to be disbursed the same day as deposit. In the case of cashier's checks or certified checks, funds may be disbursed the next day after deposit. In order to avoid unnecessary delays of three to seven days, or more, please use wire transfer, cashier's checks, or certified checks whenever possible.

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EXHIBIT A LIST OF PRINTED EXCEPTIONS AND EXCLUSIONS (BY POLICY TYPE)

CLTA STANDARD COVERAGE POLICY - 1990

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

- 1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
 - (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- 2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
- 3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy:
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
- 4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
- 5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
- 6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

- 1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
 - Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public, records.
- 2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
- 3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
- 4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
- 5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
- 6. Any lien or right to a lien for services, labor or material unless such lien is shown by the public records at Date of Policy.

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CLTA/ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (12-02-13)

EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

- 1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
 - a. building;
 - b. zoning;
 - c. land use;
 - d. improvements on the Land;
 - e. land division; and
 - f. environmental protection.

This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.

- 2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
- 3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
- 4. Risks:
 - a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
 - b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
 - c. that result in no loss to You; or
 - d. that first occur after the Policy Date this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
- 5. Failure to pay value for Your Title.
- 6. Lack of a right:
 - a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
 - b. in streets, alleys, or waterways that touch the Land.
 - This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
- 7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.
- 8. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
- 9. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows: For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A. The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 16:	1% of Policy Amount Shown in Schedule A or \$2,500 (whichever is less)	\$10,000
Covered Risk 18:	1% of Policy Amount Shown in Schedule A or \$5,000 (whichever is less)	\$25,000
Covered Risk 19:	1% of Policy Amount Shown in Schedule A or \$5,000 (whichever is less)	\$25,000
Covered Risk 21:	1% of Policy Amount Shown in Schedule A or \$2,500 (whichever is less)	\$5,000

2006 ALTA LOAN POLICY (06-17-06)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

- (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;

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- (iii) the subdivision of land; or
- (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
- Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
- 3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
- 4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
- 5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
- 6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
- 7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

[Except as provided in Schedule B - Part II,[t[or T]his policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of:

[PART I

[The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

- (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real
 property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such
 proceedings, whether or not shown by the records of such agency or by the Public Records.
- 2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
- 3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
- 4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
- 5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
- 6. Any lien or right to a lien for services, labor or material unless such lien is shown by the Public Records at Date of Policy.

PART II

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:]

2006 ALTA OWNER'S POLICY (06-17-06)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

 (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

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- (i) the occupancy, use, or enjoyment of the Land;
- (ii) the character, dimensions, or location of any improvement erected on the Land;
- (iii) the subdivision of land; or
- (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
- 2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
- 3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 or 10): or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
- 4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
- 5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of: [The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

- 1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
- 2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
- 3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
- 4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
- 5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
- 6. Any lien or right to a lien for services, labor or material unless such lien is shown by the Public Records at Date of Policy.
- 7. [Variable exceptions such as taxes, easements, CC&R's, etc. shown here.]

ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (07-26-10)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

- (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.

(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d),

- 14 or 16.
- 2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
- 3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
- 4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
- 5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
- 6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
- 7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
- 8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.
- 9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.
- 10 Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
- 11 Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.



Privacy Information

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Information Obtained Through Our Web Site

First American Financial Corporation is sensitive to privacy issues on the Internet. We believe it is important you know how we treat the information about you we receive on the Internet. In general, you can visit First American or its affiliates' Web sites on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect the

domain names, not the e-mail addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site.

There are times, however, when we may need information from you, such as your name and email address. When information is needed, we will use our best efforts to let you know at the time of

collection how we will use the personal information. Usually, the personal information we collect is used only by us to respond to your inquiry, process an order or allow you to access specific account/profile information. If you choose to share any personal information with us, we will only use it in accordance with the policies outlined above.

Business Relationships

First American Financial Corporation's site and its affiliates' sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

Cookies

Some of First American's Web sites may make use of "cookie" technology to measure site activity and to customize information to your personal tastes. A cookie is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive.

FirstAm.com uses stored cookies. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

Fair Information Values

Fairness We consider consumer expectations about their privacy in all our businesses. We only offer products and services that assure a favorable balance between consumer benefits and consumer

Public Record We believe that an open public record creates significant value for society, enhances consumer choice and creates consumer opportunity. We actively support an open public record **Use** We believe we should behave responsibly when we use information about a consumer in our business. We will obey the laws governing the collection, use and dissemination of data. **Accuracy** We will take reasonable steps to help assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information.

When, as with the public record, we cannot correct inaccurate information, we will take all reasonable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.

Education We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy. We will instruct our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our industry to collect and use information in a responsible manner. **Security** We will maintain appropriate facilities and systems to protect against unauthorized access to and corruption of the data we maintain.

Form 50-PRIVACY (9/1/10)

Page 1 of 1

Privacy Information (2001-2010 First American Financial Corporation)

ATTACHMENT NO. 9

DUE DILIGENCE COMPLETION NOTICE

[On Developer's Letterhead]

County of San Diego
Attn: Director
Department of General Services
5560 Overland Avenue
Suite 410
San Diego, California 92123
Re: Mt. Etna Drive – Due Diligence Completion Notice
Dear,
Reference is made to that certain Disposition and Development Agreement dated , 2020 ("DDA"), by and between the County of San Diego ("County"), and Chelsea Investment Corporation ("Developer"). Capitalized terms used but not defined in this letter have the meanings given to such terms in the DDA.
This constitutes Developer's Due Diligence Completion Notice under <u>Section 201</u> of the DDA. Developer hereby notifies the City that [Developer unconditionally accepts the condition of the Property.] // [Developer rejects the condition of the Property for the following reason(s):]

[Developer's signature appears on following page]

DEVELOPER

Chels	Chelsea Investment Corporation		
By:			
Бу	Cheri Hoffman, President		

ATTACHMENT NO. 10

INSURANCE REQUIREMENTS - PRE-CONSTRUCTION PERIOD

Insurance Requirements

Within ten (10) business days prior to the Effective Date, Developer shall submit to County certificates of insurance and appropriate separate endorsements to the actual insurance policy, evidencing that the Developer has obtained for the Pre-Construction Period, at its sole expense, insurance in the following forms of coverage and minimum amounts specified from insurance carriers with a Best's Rating of not less than A-, VII or a company of equal financial stability approved in writing by County Risk Management.

- a. An occurrence policy of Commercial General Liability insurance insuring Developer against liability for bodily injury, personal injury or property damage arising out of or in connection with the Lessee's performance of work or service under this Agreement during the Pre-Construction Period of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) general aggregate. The County of San Diego, its officers, agents, employees, and volunteers shall be added as Additional Insured by separate endorsement to the policy (at least as broad as ISO form, CG 2026, CG 2033, or CG 2038 forms if later revisions used).
- b. Comprehensive Automobile Liability covering all owned, non-owned and hired vehicles for bodily injury and property damage of not less than one million dollars (\$1,000,000) each accident.
- c. Statutory Workers' Compensation, as required by State of California and Employer's Liability at one million dollars (\$1,000,000) each accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of the County of San Diego.
- d. Certificate of insurance provided by Developer shall state that the insurer providing the policy must give County written notice of cancellation in accordance with the policy provisions, at the address shown in the Agreement, of any cancellation, lapse, reduction or other adverse change to the insurance required of Developer under this Agreement.

If the Developer maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Lessee. As a requirement of this Agreement, any available insurance proceeds in excess of the specified minimum limits and coverage stated above, shall also be available to the County of San Diego.

County shall retain the right to review the coverage, form and amount of insurance required under this Agreement and may require Developer to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required. County requirements shall be reasonable. County retains the right to demand a certified copy of any insurance policy required under this Agreement with fifteen (15) business days' notice.

Developer may, with the prior written consent of County Risk Management, fulfill some or all of the insurance requirements contained in this Agreement under a plan of self-insurance. Developer shall only be permitted to utilize self-insurance if in the opinion of County Risk Management, the Lessee's (i) net worth, and (ii) reserves for payment of claims of liability against Developer are sufficient to adequately compensate for the lack of other insurance coverage required by this Lease. Lessee's utilization of self-insurance shall not in any way limit liabilities assumed by Developer under this Lease.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 10/3/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	()	CONTACT NAME: Certificate Department		
Cavignac & Associates 450 B Street, Suite 1800			FAX (A/C, No): 619-234-8601	
San Diego CA 92101		E-MAIL ADDRESS: certificates@cavignac.com		
		INSURER(S) AFFORDING COVERAGE	NAIC #	
		INSURER A: Navigators Specialty Ins Co	36056	
Chelsea Investment Corporation 6339 Paseo del Lago Carlsbad, CA 92011	CHELINV-01	ınsurer в : Ohio Security Insurance Company	24082	
		INSURER C: Aspen Specialty Ins Co	10717	
		INSURER D: Zenith Insurance Company	13269	
		INSURER E :		
		INSURER F:		
COVERAGES	CERTIFICATE NUMBER: 215805706	PEVISION NUM	ADED.	

COVERAGES CERTIFICATE NUMBER: 215895796 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	SR ADDLISUBR POLICY EXP							
LTR	TYPE OF INSURANCE	INSD	WVD	POLICY NUMBER	(MM/DD/YYYY)	(MM/DD/YYYY)	LIMIT	S
Α	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR	Y		LA19CGL172954IC	10/1/2019	10/1/2020	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000 \$ 50,000
							MED EXP (Any one person)	\$ 5,000
							PERSONAL & ADV INJURY	\$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$ 2,000,000
	POLICY X PRO-						PRODUCTS - COMP/OP AGG	\$ 2,000,000
	OTHER:							\$
В	AUTOMOBILE LIABILITY	Υ		BAS56255037	10/1/2019	10/1/2020	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	\$
	ALL OWNED SCHEDULED AUTOS						BODILY INJURY (Per accident)	\$
	X HIRED AUTOS X NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	\$
								\$
С	UMBRELLA LIAB X OCCUR			CX009EM19	10/1/2019	10/1/2020	EACH OCCURRENCE	\$ 15,000,000
	X EXCESS LIAB CLAIMS-MADE						AGGREGATE	\$ 15,000,000
	DED X RETENTION \$ 0							\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N		Υ	M1177905	10/1/2019	10/1/2020	X PER OTH- STATUTE ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?	N/A					E.L. EACH ACCIDENT	\$ 1,000,000
	(Mandatory in NH) If yes, describe under						E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
	DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	\$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: 5255 Mount Etna Drive, San Diego, CA 92117 (APN 361-661-12). Additional Insured coverage applies to General Liability and Automobile Liability for the County of San Diego, its officers, agents, employees and volunteers per policy form. Waiver of subrogation applies to Workers Compensation per policy form. Excess/Umbrella policy follows form over underlying policies: General Liability, Auto Liability & Employers Liability (additional insured and waiver of subrogation apply). If the insurance company elects to cancel or non-renew coverage for any reason other than nonpayment of premium Cavignac & Associates will provide 30 days notice of such cancellation or nonrenewal.

CERTIFICATE HOLDER	CANCELLATION
--------------------	--------------

County of San Diego Department of General Services Real Estate Services Division 5560 Overland Avenue, Suite 410 San Diego, CA 92123 Attn:Angela Jackson-Llama SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

1 M Dogo

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CALIFORNIA BUSINESS AUTO COVERAGE ENHANCEMENT ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

If the policy to which this endorsement is attached also contains a Business Auto Coverage Enhancement Endorsement with a specific state named in the title, this endorsement does not apply to vehicles garaged in that specified state.

COVERAGE INDEX

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SECTION II - LIABILITY COVERAGE is amended as follows:

1. NEWLY FORMED OR ACQUIRED SUBSIDIARIES

SECTION II - LIABILITY COVERAGE, Paragraph **A.1. Who Is An Insured** is amended to include the following as an "insured":

- **d.** Any legally incorporated subsidiary of which you own more than 50 percent interest during the policy period. Coverage is afforded only for 90 days from the date of acquisition or formation. However, "insured" does not include any organization that:
 - (1) Is a partnership or joint venture; or
 - (2) Is an "insured" under any other automobile policy except a policy written specifically to apply in excess of this policy; or
 - (3) Has exhausted its Limit of Insurance or had its policy terminated under any other automobile policy.

2. EMPLOYEES AS INSUREDS

SECTION II - LIABILITY COVERAGE, Paragraph **A.1. Who Is An Insured** is amended to include the following as an "insured":

- e. Any "employee" of yours while using a covered "auto" you do not own, hire or borrow but only for acts within the scope of their employment by you. Insurance provided by this endorsement is excess over any other insurance available to any "employee".
- **f.** Any "employee" of yours while operating an "auto" hired or borrowed under a written contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business and within the scope of their employment. Insurance provided by this endorsement is excess over any other insurance available to the "employee".

3. ADDITIONAL INSURED BY CONTRACT, AGREEMENT OR PERMIT

SECTION II - LIABILITY COVERAGE, Paragraph **A.1. Who Is An Insured** is amended to include the following as an "insured":

g. Any person or organization with respect to the operation, maintenance or use of a covered "auto", provided that you and such person or organization have agreed in a written contract, written agreement, or permit issued to you by governmental or public authority, to add such person, or organization, or governmental or public authority to this policy as an "insured".

However, such person or organization is an "insured":

- (1) Only with respect to the operation, maintenance or use of a covered "auto";
- (2) Only for "bodily injury" or "property damage" caused by an "accident" which takes place after you executed the written contract or written agreement, or the permit has been issued to you; and
- (3) Only for the duration of that contract, agreement or permit.

The "insured" is required to submit a claim to any other insurer to which coverage could apply for defense and indemnity. Unless the "insured" has agreed in writing to primary noncontributory wording per enhancement number 24, this policy is excess over any other collectible insurance.

4. SUPPLEMENTARY PAYMENTS

SECTION II - LIABILITY COVERAGE, Coverage Extensions, 2.a. Supplementary Payments, Paragraphs (2) and (4) are replaced by the following:

- (2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

5. AMENDED FELLOW EMPLOYEE EXCLUSION

In those jurisdictions where, by law, fellow "employees" are not entitled to the protection afforded to the employer by the workers compensation exclusivity rule, or similar protection, the following provision is added:

SECTION II - LIABILITY, Exclusion **B.5. Fellow Employee** does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire if you have workers compensation insurance in force for all of your "employees" at the time of "loss".

This coverage is excess over any other collectible insurance.

SECTION III - PHYSICAL DAMAGE COVERAGE is amended as follows:

6. HIRED AUTO PHYSICAL DAMAGE

Paragraph A.4. Coverage Extensions of SECTION III - PHYSICAL DAMAGE COVERAGE, is amended by adding the following:

If hired "autos" are covered "autos" for Liability Coverage, and if Comprehensive, Specified Causes of Loss or Collision coverage are provided under the Business Auto Coverage Form for any "auto" you own, then the Physical Damage coverages provided are extended to "autos":



- a. You hire, rent or borrow; or
- b. Your "employee" hires or rents under a written contract or agreement in that "employee's" name, but only if the damage occurs while the vehicle is being used in the conduct of your business, subject to the following limit and deductible:
- The most we will pay for "loss" in any one "accident" or "loss" is the smallest of:
 - (1) \$50,000; or
 - (2) The actual cash value of the damaged or stolen property as of the time of the "loss"; or
 - (3) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality, minus a deductible.
- b. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage.
- c. Subject to the limit, deductible and excess provisions described in this provision, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.
- d. Subject to a maximum of \$1,000 per "accident", we will also cover the actual loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss.
- e. This coverage extension does not apply to:
 - (1) Any "auto" that is hired, rented or borrowed with a driver; or
 - (2) Any "auto" that is hired, rented or borrowed from your "employee" or any member of your "employee's" household.

Coverage provided under this extension is excess over any other collectible insurance available at the time of "loss".

7. TOWING AND LABOR

SECTION III - PHYSICAL DAMAGE COVERAGE, Paragraph A.2. Towing, is amended by the addition of the following:

We will pay towing and labor costs incurred, up to the limits shown below, each time a covered "auto" classified and rated as a private passenger type, "light truck" or "medium truck" is disabled:

- a. For private passenger type vehicles, we will pay up to \$75 per disablement.
- b. For "light trucks", we will pay up to \$75 per disablement. "Light trucks" are trucks that have a gross vehicle weight (GVW) of 10,000 pounds or less.
- c. For "medium trucks", we will pay up to \$150 per disablement. "Medium trucks" are trucks that have a gross vehicle weight (GVW) of 10,001 - 20,000 pounds.

However, the labor must be performed at the place of disablement.

PHYSICAL DAMAGE - ADDITIONAL TRANSPORTATION EXPENSE COVERAGE

Paragraph A.4.a. Coverage Extensions, Transportation Expenses of SECTION III - PHYSICAL DAMAGE COVERAGE, is amended to provide a limit of \$50 per day and a maximum limit of \$1,500.

RENTAL REIMBURSEMENT

SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage, is amended by adding the following:

- We will pay up to \$75 per day for rental reimbursement expenses incurred by you for the rental of an "auto" because of "accident" or "loss", to an "auto" for which we also pay a "loss" under Comprehensive, Specified Causes of Loss or Collision Coverages. We will pay only for those expenses incurred after the first 24 hours following the "accident" or "loss" to the covered "auto."
- b. Rental Reimbursement requires the rental of a comparable or lesser vehicle, which in many cases may be substantially less than \$75 per day, and will only be allowed for the period of time it should take to repair or replace the vehicle with reasonable speed and similar quality, up to a maximum of
- c. We will also pay up to \$500 for reasonable and necessary expenses incurred by you to remove and replace your tools and equipment from the covered "auto". This limit is excess over any other collectible insurance.

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- **d.** This coverage does not apply unless you have a business necessity that other "autos" available for your use and operation cannot fill.
- e. If "loss" results from the total theft of a covered "auto" of the private passenger type, we will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided under Paragraph 4. Coverage Extension.
- f. No deductible applies to this coverage.
- g. The insurance provided under this extension is excess over any other collectible insurance.

If this policy also provides Rental Reimbursement Coverage you purchased, the coverage provided by this Enhancement Endorsement is in addition to the coverage you purchased.

For the purposes of this endorsement provision, materials and equipment do not include "personal effects" as defined in provision 11.B.

10. EXTRA EXPENSE - BROADENED COVERAGE

Under **SECTION III - PHYSICAL DAMAGE COVERAGE**, **A. Coverage**, we will pay for the expense of returning a stolen covered "auto" to you. The maximum amount we will pay is \$1,000.

11. PERSONAL EFFECTS COVERAGE

A. SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage, is amended by adding the following:

If you have purchased Comprehensive Coverage on this policy for an "auto" you own and that "auto" is stolen, we will pay, without application of a deductible, up to \$600 for "personal effects" stolen with the "auto."

The insurance provided under this provision is excess over any other collectible insurance.

B. SECTION V - DEFINITIONS is amended by adding the following:

For the purposes of this provision, "personal effects" mean tangible property that is worn or carried by an "insured." "Personal effects" does not include tools, equipment, jewelry, money or securities.

12. ACCIDENTAL AIRBAG DEPLOYMENT

SECTION III - PHYSICAL DAMAGE COVERAGE, B. Exclusions is amended by adding the following:

If you have purchased Comprehensive or Collision Coverage under this policy, the exclusion for "loss" relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

Any insurance we provide shall be excess over any other collectible insurance or reimbursement by manufacturer's warranty. However, we agree to pay any deductible applicable to the other coverage or warranty.

13. PHYSICAL DAMAGE DEDUCTIBLE - VEHICLE TRACKING SYSTEM

SECTION III - PHYSICAL DAMAGE COVERAGE, D. Deductible, is amended by adding the following:

Any Comprehensive Deductible shown in the Declarations will be reduced by 50% for any "loss" caused by theft if the vehicle is equipped with a vehicle tracking device such as a radio tracking device or a global position device and that device was the method of recovery of the vehicle.

14. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT COVERAGE

SECTION III - PHYSICAL DAMAGE COVERAGE, B. Exclusions, Paragraph **a.** of the exception to exclusions **4.c.** and **4.d.** is deleted and replaced with the following:

Exclusions 4.c. and 4.d. do not apply to:

- **a.** Electronic equipment that receives or transmits audio, visual or data signals, whether or not designed solely for the reproduction of sound, if the equipment is:
 - (1) Permanently installed in the covered "auto" at the time of the "loss" or removable from a housing unit that is permanently installed in the covered "auto"; and
 - (2) Designed to be solely operated by use from the power from the "auto's" electrical system; and
 - (3) Physical damage coverages are provided for the covered "auto".

If the "loss" occurs solely to audio, visual or data electronic equipment or accessories used with this equipment, then our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by a \$100 deductible.



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15. LOAN / LEASE GAP COVERAGE (Not Applicable In New York)

A. Paragraph C. Limit Of Insurance of SECTION III - PHYSICAL DAMAGE COVERAGE is amended by adding the following:

The most we will pay for a "total loss" to a covered "auto" owned by or leased to you in any one "accident" is the greater of the:

- 1. Balance due under the terms of the loan or lease to which the damaged covered "auto" is subject at the time of the "loss" less the amount of:
 - Overdue payments and financial penalties associated with those payments as of the date of the "loss":
 - b. Financial penalties imposed under a lease due to high mileage, excessive use or abnormal wear and tear:
 - Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease;
 - Transfer or rollover balances from previous loans or leases;
 - Final payment due under a "Balloon Loan";
 - The dollar amount of any unrepaired damage which occurred prior to the "total loss" of a covered "auto":
 - g. Security deposits not refunded by a lessor;
 - h. All refunds payable or paid to you as a result of the early termination of a lease agreement or as a result of the early termination of any warranty or extended service agreement on a covered "auto";
 - i. Any amount representing taxes;
 - Loan or lease termination fees; or
- 2. The actual cash value of the damage or stolen property as of the time of the "loss".

An adjustment for depreciation and physical condition will be made in determining the actual cash value at the time of the "loss". This adjustment is not applicable in Texas.

B. Additional Conditions

This coverage applies only to the original loan for which the covered "auto" that incurred the "loss" serves as collateral, or lease written on the covered "auto" that incurred the "loss".

C. SECTION V - DEFINITIONS is changed by adding the following:

As used in this endorsement provision, the following definitions apply:

"Total loss" means a "loss" in which the cost of repairs plus the salvage value exceeds the actual cash value.

A "balloon loan" is one with periodic payments that are insufficient to repay the balance over the term of the loan, thereby requiring a large final payment.

16. GLASS REPAIR - WAIVER OF DEDUCTIBLE

Paragraph D. Deductible of SECTION III - PHYSICAL DAMAGE COVERAGE is amended by the addition of the following:

No deductible applies to glass damage if the glass is repaired rather than replaced.

17. PARKED AUTO COLLISION COVERAGE (WAIVER OF DEDUCTIBLE)

Paragraph D. Deductible of SECTION III - PHYSICAL DAMAGE COVERAGE is amended by the addition of the following:

The deductible does not apply to "loss" caused by collision to such covered "auto" of the private passenger type or light weight truck with a gross vehicle weight of 10,000 lbs. or less as defined by the manufacturer as maximum loaded weight the "auto" is designed to carry while it is:

- In the charge of an "insured";
- b. Legally parked; and
- Unoccupied.

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The "loss" must be reported to the police authorities within 24 hours of known damage.

The total amount of the damage to the covered "auto" must exceed the deductible shown in the Declarations.

This provision does not apply to any "loss" if the covered "auto" is in the charge of any person or organization engaged in the automobile business.

18. TWO OR MORE DEDUCTIBLES

Under **SECTION III - PHYSICAL DAMAGE COVERAGE**, if two or more company policies or coverage forms apply to the same "accident", the following applies to Paragraph **D. Deductible**:

- a. If the applicable Business Auto deductible is the smaller (or smallest) deductible, it will be waived; or
- **b.** If the applicable Business Auto deductible is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible; or
- **c.** If the "loss" involves two or more Business Auto coverage forms or policies, the smaller (or smallest) deductible will be waived.

For the purpose of this endorsement, company means any company that is part of the Liberty Mutual Group.

SECTION IV - BUSINESS AUTO CONDITIONS is amended as follows:

19. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

SECTION IV- BUSINESS AUTO CONDITIONS, Paragraph B.2. is amended by adding the following:

If you unintentionally fail to disclose any hazards, exposures or material facts existing as of the inception date or renewal date of the Business Auto Coverage Form, the coverage afforded by this policy will not be prejudiced.

However, you must report the undisclosed hazard of exposure as soon as practicable after its discovery, and we have the right to collect additional premium for any such hazard or exposure.

20. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

SECTION IV - BUSINESS AUTO CONDITIONS, Paragraph **A.2.a.** is replaced in its entirety by the following:

- a. In the event of "accident", claim, "suit" or "loss", you must promptly notify us when it is known to:
 - (1) You, if you are an individual;
 - (2) A partner, if you are a partnership;
 - (3) Member, if you are a limited liability company;
 - (4) An executive officer or the "employee" designated by the Named Insured to give such notice, if you are a corporation.

To the extent possible, notice to us should include:

- (a) How, when and where the "accident" or "loss" took place;
- (b) The "insured's" name and address; and
- (c) The names and addresses of any injured persons and witnesses.

21. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

SECTION IV - BUSINESS AUTO CONDITIONS, Paragraph A.5. Transfer Of Rights Of Recovery Against Others To Us, is amended by the addition of the following:

If the person or organization has in a written agreement waived those rights before an "accident" or "loss", our rights are waived also.

22. HIRED AUTO COVERAGE TERRITORY

SECTION IV - BUSINESS AUTO CONDITIONS, Paragraph **B.7. Policy Period, Coverage Territory**, is amended by the addition of the following:

f. For "autos" hired 30 days or less, the coverage territory is anywhere in the world, provided that the "insured's" responsibility to pay for damages is determined in a "suit", on the merits, in the United States, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

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This extension of coverage does not apply to an "auto" hired, leased, rented or borrowed with a driver

23. PRIMARY AND NON-CONTRIBUTING IF REQUIRED BY WRITTEN CONTRACT OR WRITTEN AGREE-MENT

The following is added to SECTION IV - BUSINESS AUTO CONDITIONS, General Conditions, B.5. Other Insurance and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage is primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

- 1. Such "insured" is a Named Insured under such other insurance; and
- 2. You have agreed in a written contract or written agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

SECTION V - DEFINITIONS is amended as follows:

24. BODILY INJURY REDEFINED

Under SECTION V - DEFINITIONS, Definition C. is replaced by the following:

"Bodily injury" means physical injury, sickness or disease sustained by a person, including mental anguish, mental injury, shock, fright or death resulting from any of these at any time.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - STATE OR GOVERNMENTAL AGENCY OR SUBDIVISION OR POLITICAL SUBDIVISION - PERMITS OR AUTHORIZATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

State Or Governmental Agency Or Subdivision Or Political Subdivision:

Any State Or Governmental Agency Or Subdivision Or Political Subdivision for whom during the policy period you and such State Or Governmental Agency Or Subdivision Or Political Subdivision have agreed in writing in a contract or agreement that such State Or Governmental Agency Or Subdivision Or Political Subdivision be added as an additional insured on your policy.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A. Section II Who Is An Insured is amended to include as an additional insured any state or governmental agency or subdivision or political subdivision shown in the Schedule, subject to the following provisions:
 - This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

However:

- The insurance afforded to such additional insured only applies to the extent permitted by law; and
- b. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

- 2. This insurance does not apply to:
 - a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
 - b. "Bodily injury" or "property damage" included within the "products-completed operations hazard"
- With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- 1. Required by the contract or agreement; or
- Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.







June 25, 2018

County of San Diego Real Estate Services Division Attn: Angela Jackson-Llamas, Senior Real Property Agent 5560 Overland Avenue, Suite 410 San Diego, CA 92123

RE: Development of 3555 Mount Etna Drive, San Diego RFP

Dear Ms. Jackson-Llamas:

Chelsea Investment Corporation is the largest developer of affordable housing in San Diego. Serving Seniors is the leading service provider to seniors in the region, and Southern California Housing Collaborative is the principal housing provider for the San Diego Regional Center. The San Diego Regional Center is one of 21 Regional Centers for persons with developmental disabilities in the State of California. These centers were originally established to assist persons with intellectual disabilities and their families in locating and developing services and programs within their communities. During Chelsea's longstanding relationship with these partners, our work together has given us valuable experience in housing populations with special needs and collaborating with organizations like the County to produce the best possible project.

We desire to redevelop the Mount Etna Drive site, pursuant to the County's planning goals and guidelines, to deliver much needed quality affordable housing and supportive services with a financial structure that accommodates the immediate development of the project and assures long term feasibility. Our proposal is for *Messina and Modica*, a connected village of senior and family housing that will be developed and built concurrently. Our proposed community is an innovative multigenerational development where residents will enjoy safe and comfortable housing as well as an array of onsite services. We will work closely with you to understand and accomplish the County's objectives.

We look forward to the opportunity to work with the County of San Diego to refine our proposed concept and deliver this meaningful development to the downtown San Diego community.

Sincerely

James Schmid

CEO

Chelsea Investment Corporation

County of San Diego
5255 Mount Etna Drive Development Opportunity
Request For Proposals
June 25, 2018

Mount Etna Drive – Messina Seniors and Modica Family





COUNTY OF SAN DIEGO – REQUEST FOR PROPOSALS

DEPARTMENT OF GENERAL SERVICES GROUND LEASE AND DEVELOPMENT OF 5255 MOUNT ETNA DRIVE IN SAN DIEGO

PROPOSAL COVER PAGE

Submit this Completed Form as the Cover Page of Your Proposal

PROPOSAL DUE DATE: JUNE 25, 2018 5:00.00 PM Pacific Time to the Department of General Services; or JUNE 26, 2018 9:00.00 AM Pacific Time to the Clerk of the Board of Supervisors

Submit by delivering 10 hard copies, one unbound original, and one "high quality" digital PDF file (on a flash drive or CD) in a sealed envelope or package marked on the outside with "5255 Mount Etna Drive Ground Lease and Development RFP" to:

County of San Diego Real Estate Services Division Attention: Angela Jackson-Llamas, Senior Real Property Agent 5560 Overland Avenue, Suite 410 San Diego, California 92123

OR

County of San Diego Clerk of the Board of Supervisors Attention: Angela Jackson-Llamas, Senior Real Property Agent 1600 Pacific Highway, Room 402 San Diego, California 92101

For information, please contact:

Angela Jackson-Llamas <u>angela.jackson-llamas@sdcounty.ca.gov</u> 858-694-2336

TO BE COMPLETED BY OFFEROR

OFFEROR INFORMATION (Type or Print)	NAME, TITLE & CONTACT # OF PERSON	
	AUTHORIZED TO SIGN OFFER (type or Print) Cheri Hoffman, President	
	Cheri Holiman, President	
Chelsea Investment Corporation	(760)795-5606	

Offeror Company/Organization Name	Authorized Representative Name	
Chelsea Investment Corporation	Cheri Hoffman, President	
Offeror Address	Authorized Representative Title	
6339 Paseo del Lago		
Carlsbad, CA 92011	cheri@chelseainvestco.com	
Offeror City, State, Zip	Authorized Representative Email	
(760) 456-6000	(760) 795-5606	
Offeror Telephone Number	Authorized Representative Telephone Number	

SIGNATURE

I certify under penalty of perjury under the laws of the State of California that I am authorized to execute and submit this proposal on behalf of the Offeror listed above; that all of the RFP instructions and rules, exhibits, addenda, questions and answers, and any other information provided by the County, including but not limited to, the diligence material, has been reviewed, understood and complied with; and that all information in this submission is true, correct, and in compliance with the terms of the RFP.

Authorized Representative Signature

6/25/2018

Date



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1. Financial Offer

Proposed Ground Lease Terms:

Our pro forma proposes a 99-year ground lease term. The ground lease is separated into the three periods, the Pre-Construction Period, the Construction Period, and the Operations Period. Rent payments and durations of each period are outlined below.

Ground Lease Period	Rent Payments	Duration
Feasibility Period	Security Deposit equal to	120 days from Lease
	\$25,000.	execution. Feasibility Period
		ends upon delivery of
		Approval Notice to County (no
		later than 120 days following
		Lease Commencement).
Preconstruction Period	\$1 / year	Commencing upon Approval
		Notice Delivery and lasting
		through project entitlements
		and up to Construction Loan
		Closing. (no longer than 24
		months from Lease
		Commencement).
Construction Period	Lump Sum payment of	Commencing upon
	\$3,250,000 + \$1 per year	Construction Loan Closing and
	during this Period	ending upon Stabilized
		occupancy. (No longer than
		30 months from end of Pre-
		Construction Period).
Operations Period	25 % of cash flow from	Commencing upon Stabilized
	operations of Residential.	Occupancy and ending 99
		years from Lease
		Commencement.

Capitalized Ground Lease:

As an affordable housing development, the proposed project targets very low-income families, developmentally disabled individuals and seniors, therefore, the financing structure has to be feasible for the project income to be able to afford lease payments. As a result, we are structuring our proposal to include a "Capitalized Ground Lease" in addition to a percentage of



available cash flow. The Capitalized Ground Lease will be paid in full at Construction Loan Closing and is outlined in the table below.

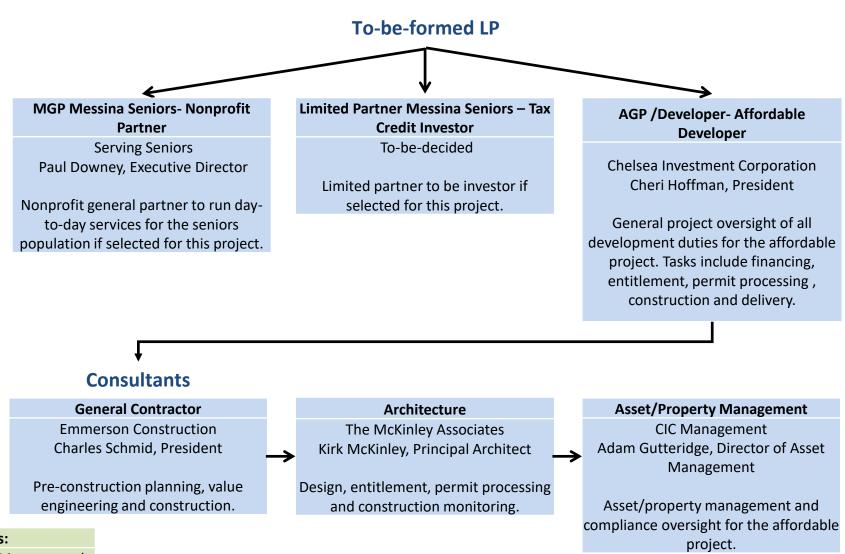
<u>Residential Cash Flow Participation</u>: Our proposal assumes that the county will participate in 25% of the cash flow from residential income. This cash flow amount is broken out on an annual basis in our proforma section and is summarized in the table below. Rent escalations are assumed at 2.5% annually and the County will participate as cash flow increases.

Capitalized Ground Lease Payment (Paid at Construction Loan Closing):	\$3,250,000
Total Estimated payments from Residential Cash Flow (Messina Seniors)(Assumes 95 years of stabilized cash flow):	\$38,002,200
Total Estimated payments from Residential Cash Flow (Modica Family)(Assumes 95 years of stabilized cash flow):	\$49,270,333
Total Estimated Payment to the County:	\$90,522,533

Rental payments will commence in accordance with the schedule above upon Lease Commencement. Rental payments will be made annually (with the exception of the Lump Sum Payment which will be made within 30 days of Construction Loan Closing). Upon Lease Commencement all Lessee contingencies will be assumed to have been waived. Residential cash flow is expected to increase with market conditions and the County will participate in these adjustments. These assumptions have already been assumed in the estimates for the residential and commercial cash flow amounts above.

<u>Due Diligence Period</u>: Developer shall have up to 120 days to complete any physical due diligence and complete negotiations on the form of the Ground Lease Document. Upon mutual execution of the Ground Lease Document, Developer shall deposit with the County a refundable deposit of \$25,000, and the 99-year time period will commence. The Deposit shall become non-refundable after the Feasibility Period. In the event Developer defaults on the Ground Lease after the Feasibility Period, the deposit shall be considered liquidated damages and shall be retained by the County.

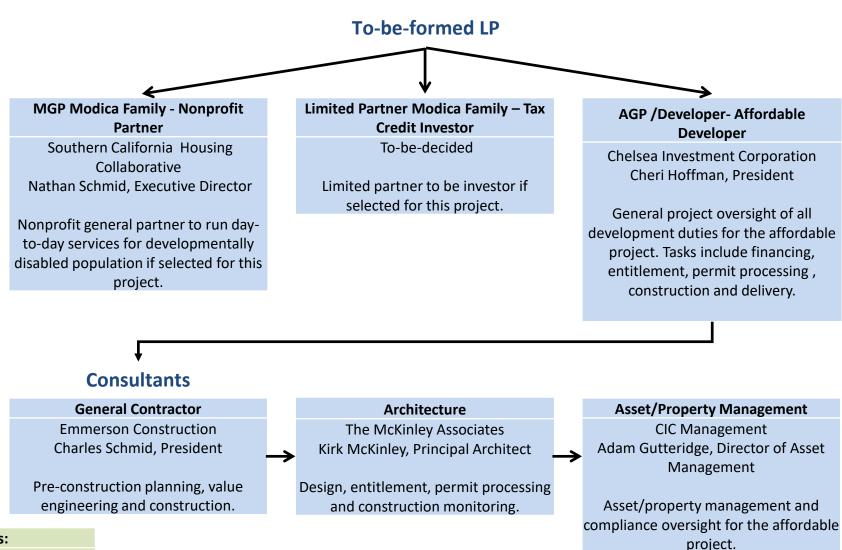
Development Team Organizational Chart – Messina Seniors



Affiliated Entities:

Chelsea, Emmerson, and CICM are owned by the Schmid Family Trust.

Development Team Organizational Chart – Modica Family



Affiliated Entities:

Chelsea, Emmerson, and CICM are owned by the Schmid Family Trust.



2. Project Team

Chelsea has assembled this proposed team for the Mount Etna Drive site:

Messina Seniors

Lead Developer: Chelsea Investment Corporation

Contact: Cheri Hoffman, President

Nonprofit /JV Partner: Serving Seniors

Contact: Paul Downey, President & CEO

Planning & Design Firm: The McKinley Associates
Contact: Kirk McKinley, Principal
Landscape Architect: Gillespie Moody Patterson

Contact: John Patterson, Principal Investor: The Richman Group

Contact: Terry Gentry, Executive Vice President

General Contractor: Emmerson Construction
Contact: Charles Schmid, President

Asset/Property Management: CIC Management

Contact: Adam Gutteridge, Director of Development

Modica Family

Lead Developer: Chelsea Investment Corporation

Contact: Cheri Hoffman, President

Nonprofit /JV Partner: Southern California Housing Collaborative

Contact: Nathan Schmid, Executive Director

Planning & Design Firm: The McKinley Associates
Contact: Kirk McKinley, Principal
Landscape Architect: Gillespie Moody Patterson
Contact: John Patterson, Principal

Investor: The Richman Group

Contact: Terry Gentry, Executive Vice President

General Contractor: Emmerson Construction
Contact: Charles Schmid, President

Asset/Property Management: CIC Management

Contact: Adam Gutteridge, Director of Development

All required forms have been submitted for each firm listed above.

The decision-making process will be spearheaded by Chelsea Investment Corporation with input from our affiliates and consultants. All information and decision with flow through and be made by Chelsea. Please see the organizational chart for team members and responsibilities.



Chelsea Investment Corporation will be the main point of contact for the County and all information will flow from our designated project executive and project manager, Cheri Hoffman.



Throughout both the pre-development and development periods, we propose to conduct weekly meetings via conference calls and in-person meetings as needed. With the use of GoToMeeting, we are able to share exhibits in real time. The County will be invited to such team meetings. Initially, meetings will be held at CIC's office in Carlsbad or Kearny Mesa. Occasionally, meetings will be held at consultant's offices. Once construction commences, meeting will be held on site.

CIC will provide monthly status reports for its partners and the County. These reports will provide critical information including schedule, budget, threat sand solutions, and other items important to the team.

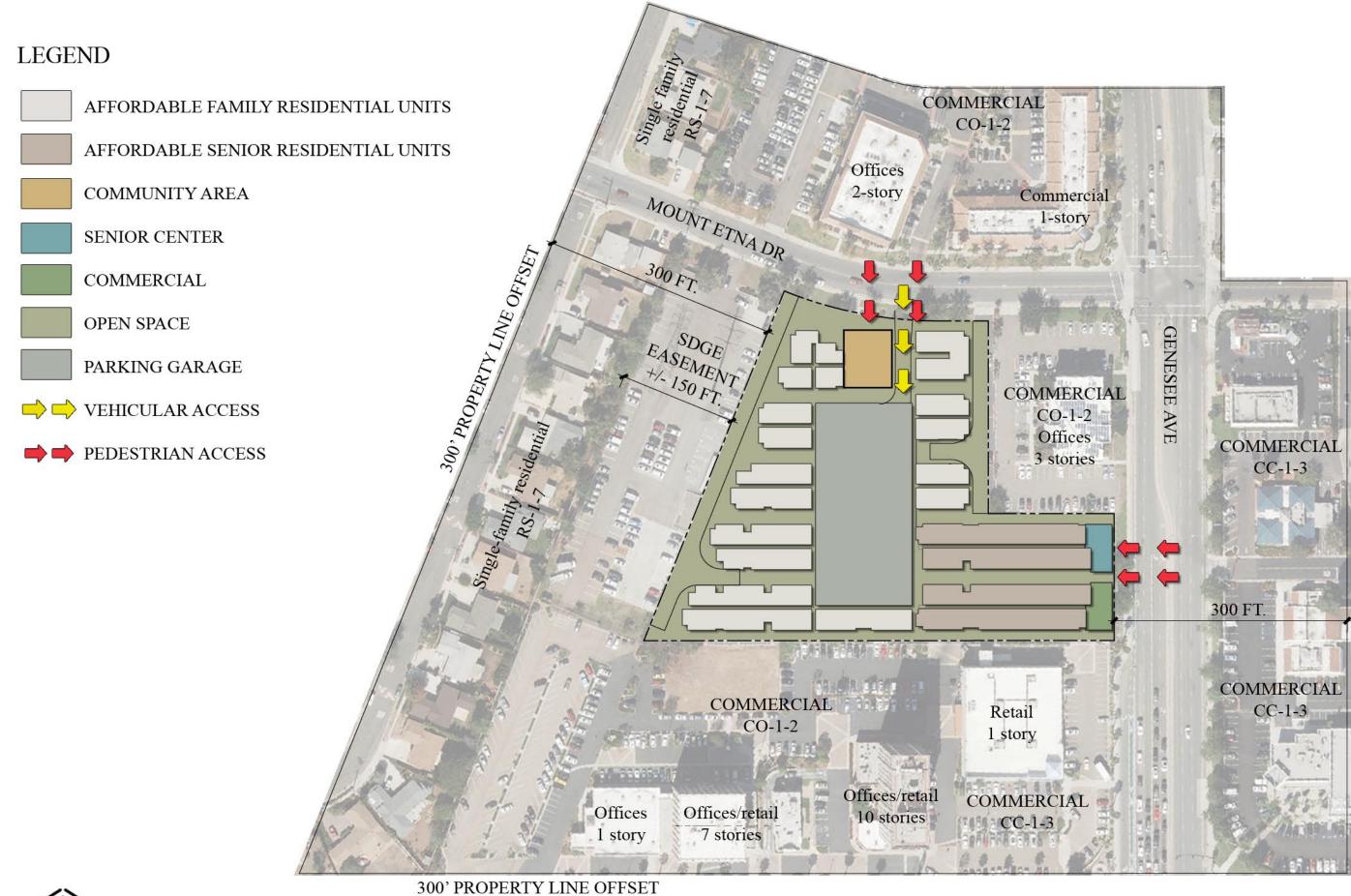


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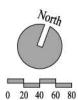




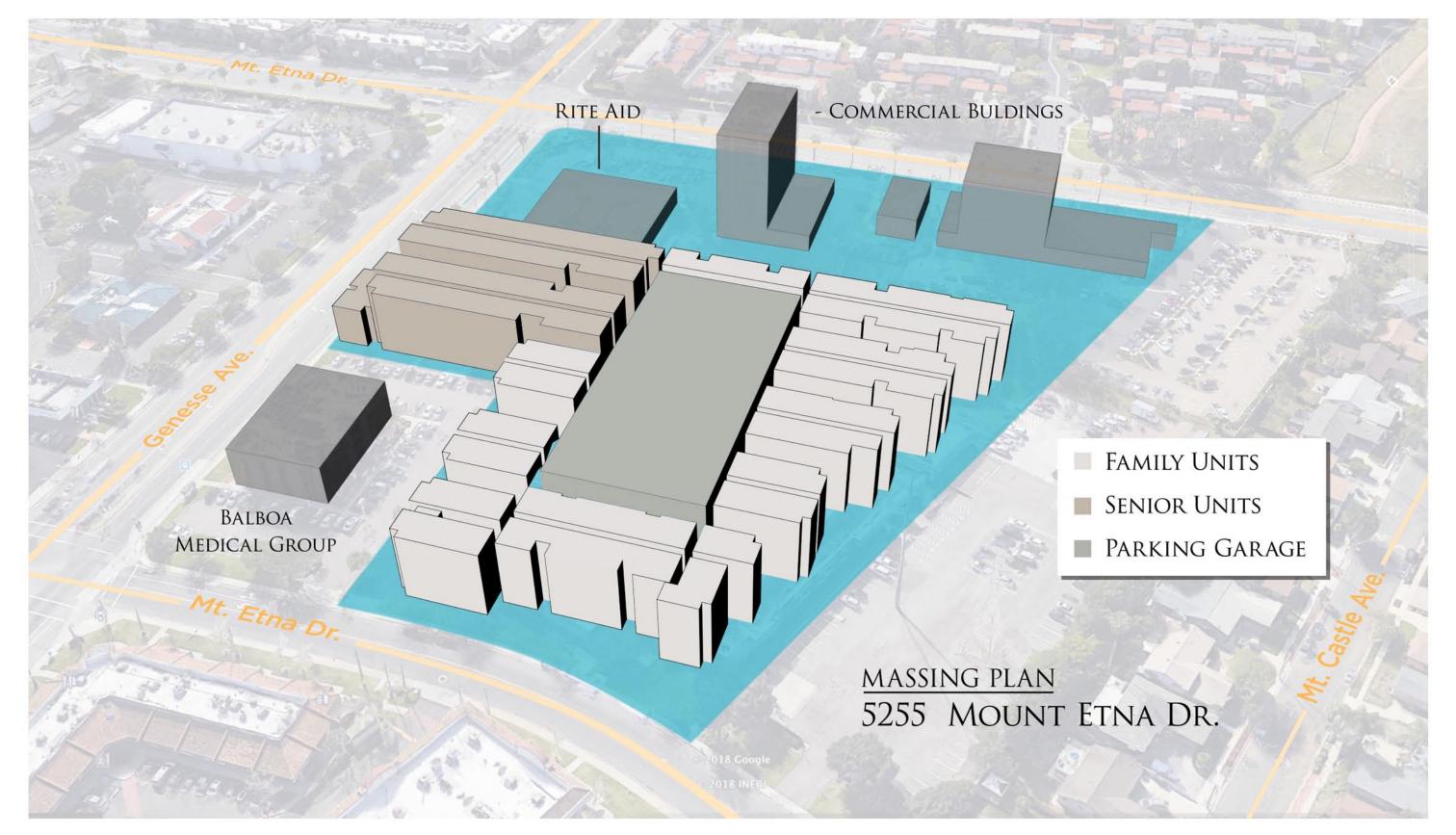


VICINITY PLAN

5255 MOUNT ETNA DRIVE

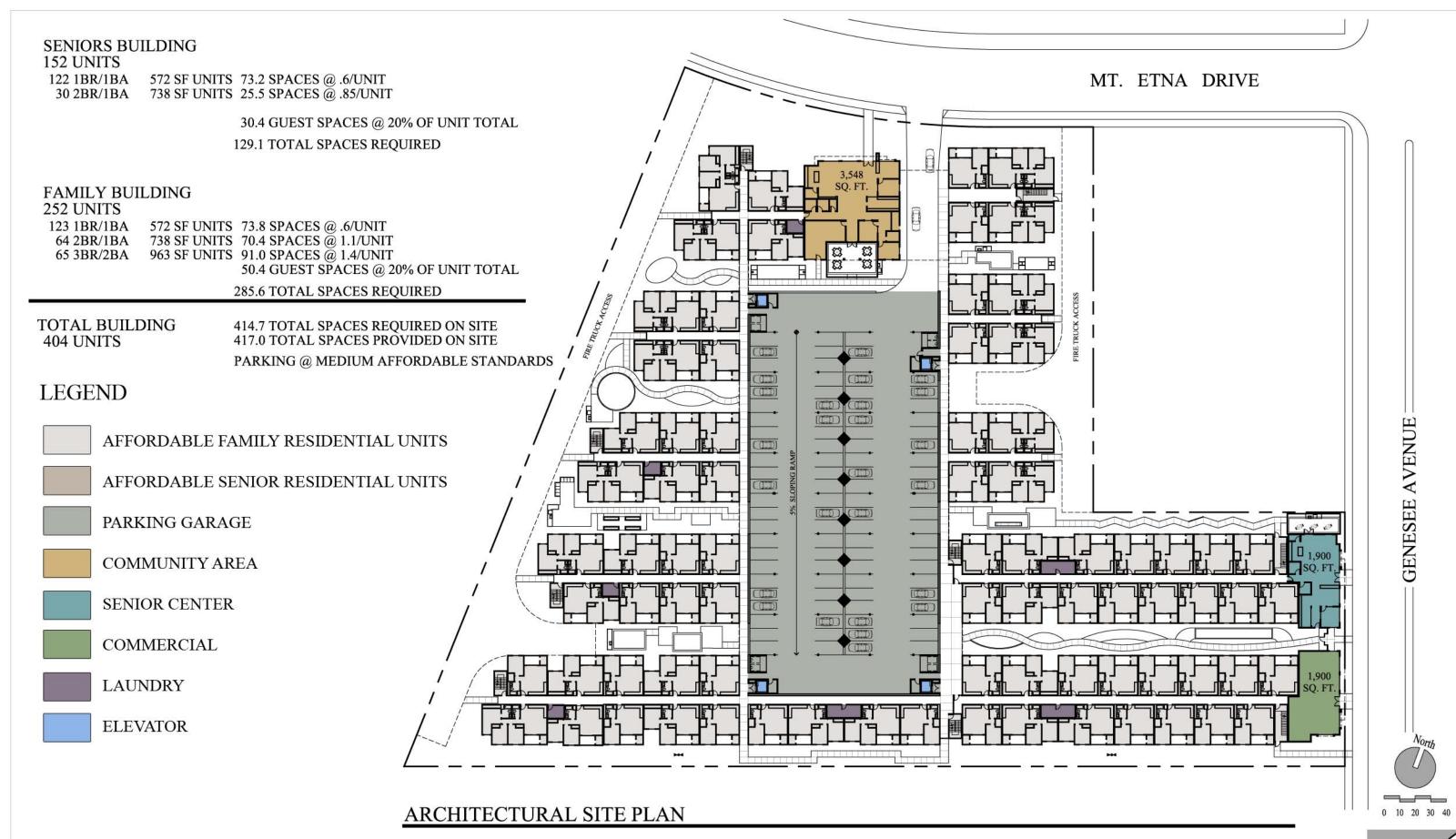














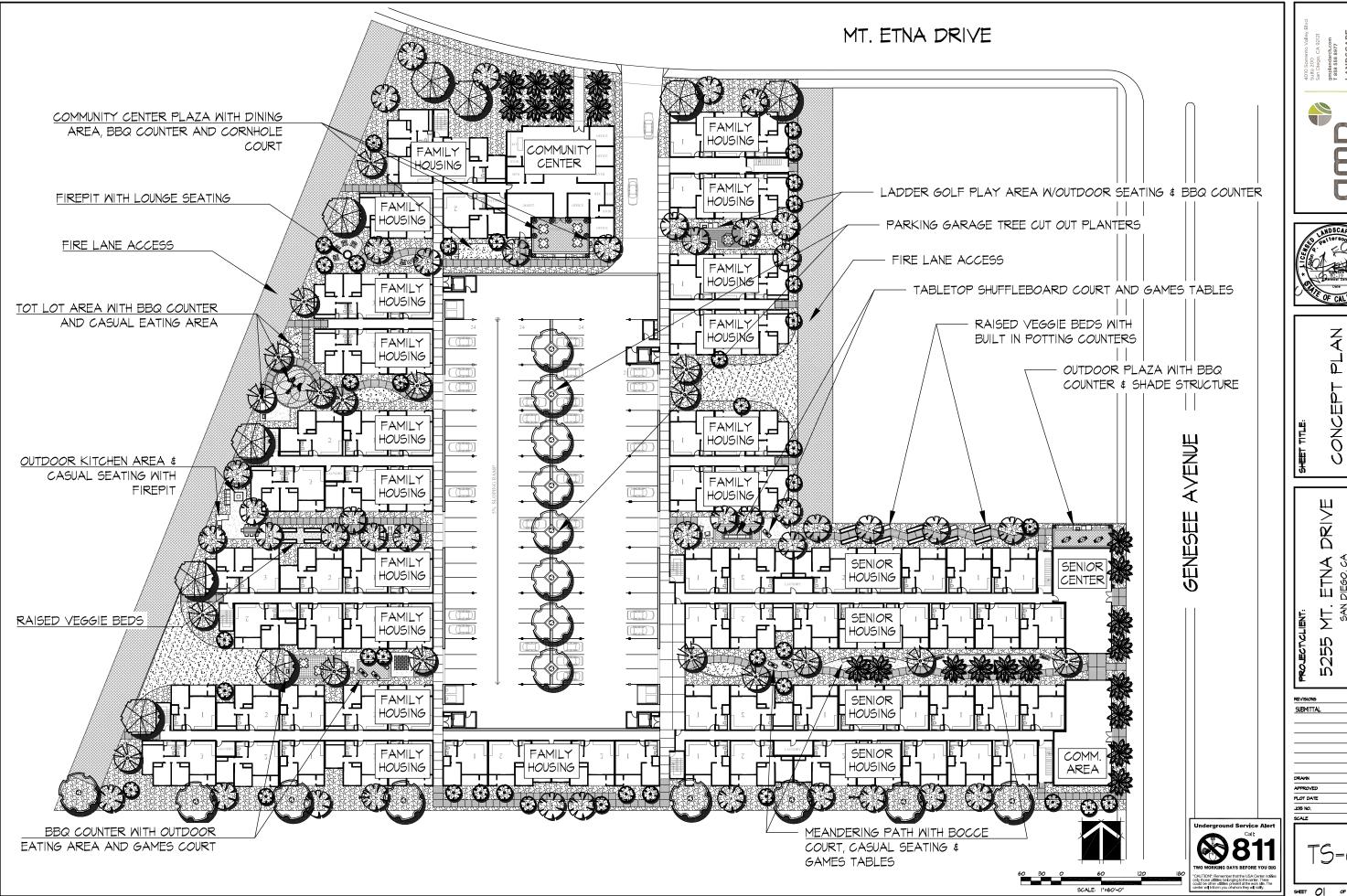
ARCHITECTURAL SITE PLAN
5255 MOUNT ETNA DRIVE

THE McKINLEY ASSOC., INC. ARCHITECTURE & PLANNING



JUNE 26, 2018

gmp







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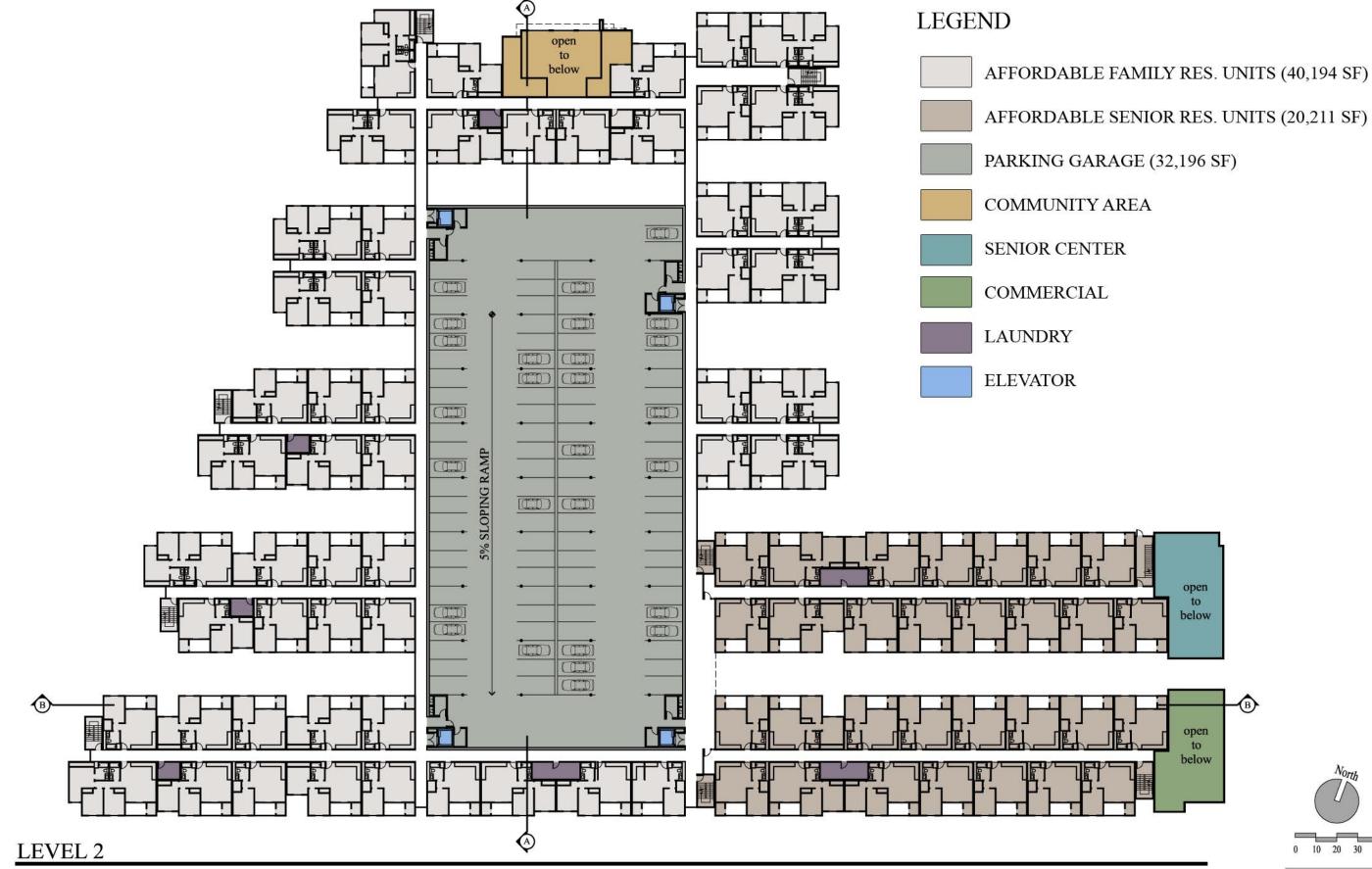




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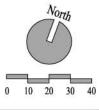




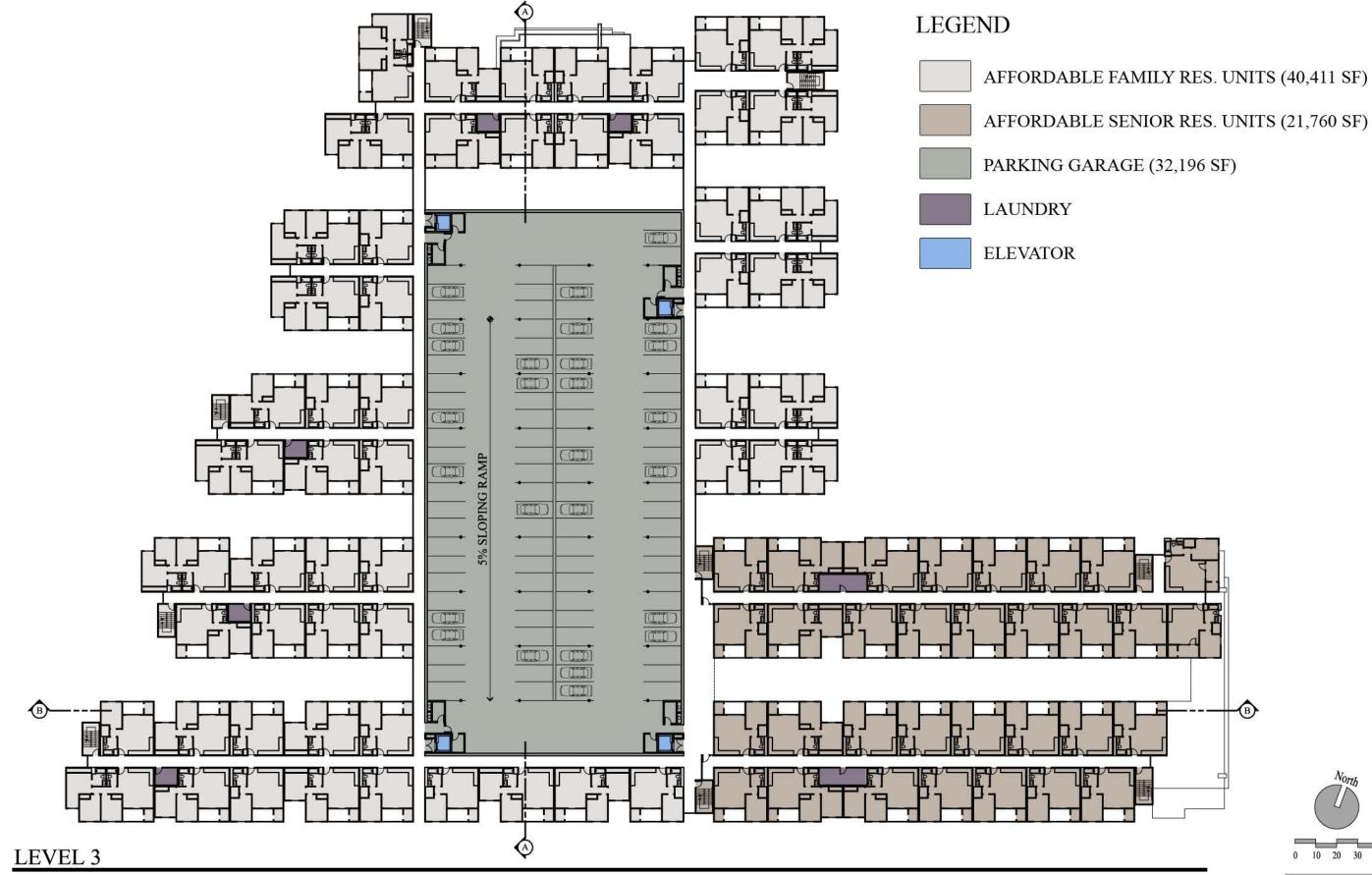


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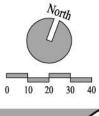






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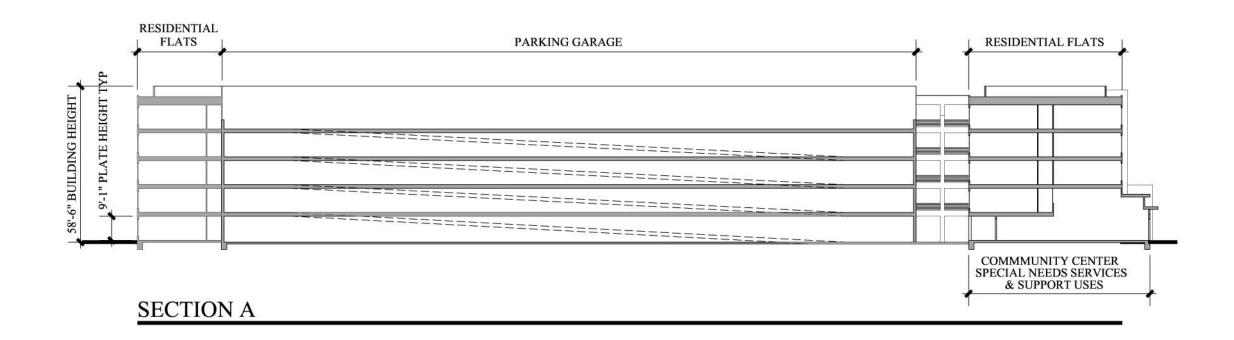


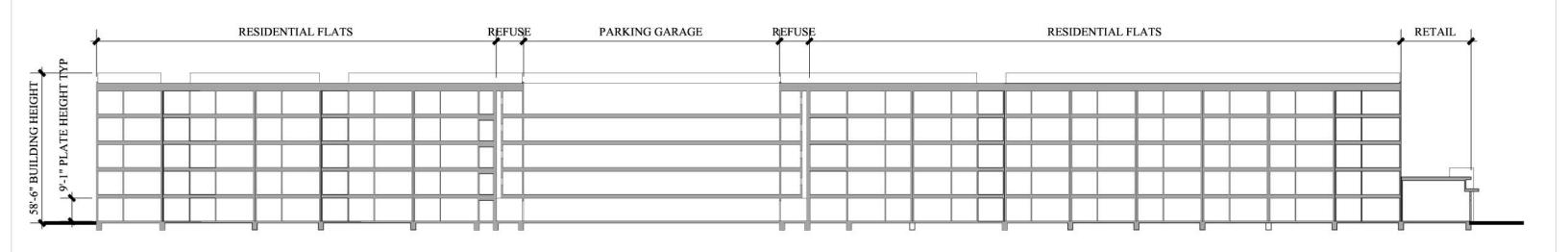


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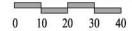
SECTION B







SOUTH ELEVATION





NORTH ELEVATION

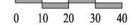
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WEST ELEVATION





EAST ELEVATION







Request for Proposals for the Ground Lease and Development of 5355 Mount Etna Drive San Diego (APN 361-661-12)



4. Development Vision

Chelsea's vision started with our approach to the development of the site. Our team studied the area and the surrounding uses. We took into consideration the County's objectives of providing housing and supportive services for the vulnerable populations in the area and concluded that an *intergenerational* development would best serve the community of Clairemont. Our proposal is for *an intergenerational community*, composed of two adjoining components for a total of 404 affordable apartments. The first component, Messina, is a 152-unit senior neighborhood along with a new senior center that will serve residents and the public. The second component, Modica, is a 252-unit affordable family development with 52 units set aside for developmentally disabled residents. Like our Duetta and Volta developments at Millenia in Otay Ranch, Messina and Modica will be developed and constructed concurrently. The combined community will include a parking structure that serves both residential components, as well as distinct community amenities that will benefit both our residents and the neighborhood. Messina and Modica, named for two cities that flank Mount Etna on the east coast of Sicily, Italy, will be grand in scale and will maximize the allowable units on the site (assuming the zoning will be delivered at RM-4-10). This new community represents a sizable endeavor to address the shortage of affordable housing in San Diego and will be a valuable addition to the Clairemont community.

We're partnering with leading nonprofit service provider, Serving Seniors, to deliver Messina, which will house seniors (aged 62 and up) at low to moderate income levels. Senior residents may also include veterans, persons with a diagnosed mental illness or chronic health condition, and people experiencing or at risk of homelessness. Messina and Modica's central location provides easy access to an abundance of services, retail, and transit, providing our residents with ready access to the amenities they need. The onsite Senior Center, accessed from Genesee Avenue, will be managed by Serving Seniors, and supportive services for both residents and the public may include, but not be limited to, case management, community outreach, behavioral health services, health benefits advocacy, arts and crafts workshops, a civic engagement program, healthcare and nutritional services, legal assistance and general support groups.

Similarly, for Modica we're partnering with nonprofit Southern California Housing Collaborative ("SCHC") to deliver 252 workforce apartments, including 52 units set aside for residents that have a developmental disability, such as autism or cerebral palsy. Supportive Services for Modica residents will include job training and placement, after school programs, computer and technology training, emergency assistance for persons with developmental disabilities, and training and counseling for families with persons with developmental disabilities among. These activities and other supportive services will be coordinated by SCHC.

The combined development will be an intergenerational campus that creates the opportunity for families, seniors, and individuals with developmental disabilities to become part of the fabric of this vibrant neighborhood.

Design and Sustainability

The preliminary project concept design has been prepared by local architect The McKinley Associates and will be finalized with community and stakeholder input. It will, at a minimum, be built to LEED Silver

Request for Proposals for the Ground Lease and Development of 5355 Mount Etna Drive San Diego (APN 361-661-12)



standards and will utilize solar energy to lower energy costs and include drought tolerant landscaping. Amenities being evaluated for the site include community gardening areas, dedicated dog/pet areas, meeting/community/media rooms, as well as active recreation areas targeted to both populations.

The development is composed of a series of residential "clusters" surrounding a common parking structure. Interspersed around the perimeter of the building are activated outdoor areas including tot lots, outdoor kitchen areas, raised vegetable gardens, ladder golf and other recreational opportunities as well as multiple locations for both communities to interact together. Messina and Modica will have pedestrian access from both Genesee Avenue (for Messina) and Mount Etna (for Modica). The buildings will measure five stories in overall height (58'-6" feet in building elevation). Modica will measure 270,308 gross square feet in size (180,183 square feet net rentable). Messina will measure 133,545 gross square feet in size (91,924 square feet net rentable). Both communities will be served by a central parking garage measuring 156,113 square feet in size. In addition to the residential units, there will be ground floor community buildings measuring 3,548 sf (Modica) and 1,900 sf (Messina) which will include leasing offices and amenities for the residents. The residential portion of the structure will be Type III wood frame adjacent to a Type I concrete parking structure with each floor having direct access to the parking level. Materials are anticipated to include wood framing and stucco with accent materials that may include metal and engineered products. The parking structure will be constructed of primarily concrete and steel reinforcement.

Parking

Parking will be provided in the form of a central 5-story parking structure surrounded by the residential units. Each floor of residential will have direct access to the same floor of the parking structure. The total number of parking spaces is calculated based on the community's anticipated needs (seniors and families) and is calculated based on the city's medium affordable standards. Based on the medium parking standards the project is required to have 414 parking spaces. We are currently showing 465 spaces but will work to reduce this through efficiencies in the parking structure design. In addition, there is a potential to reduce the parking structure size through use of the offsite parking area controlled by SDG&E. It is our intent (once selected) to negotiate with SDG&E with regard to a long-term use agreement for the surface parking immediately adjacent to the site. If successful, we anticipate eliminating two entire levels of parking structure. This could reduce garage construction costs by as much as \$4,000,000.

Common Area Maintenance

Common area maintenance will be managed by CIC Management, the proposed asset/property management company. All common areas will be professionally maintained and will not impact the surrounding streets. Chelsea takes price in managing its projects at the highest level. Many of our developments are surrounded by existing residential communities or new home neighborhoods. Our designs and resident services help our communities to blend in seamlessly. Chelsea understands the importance of common area maintenance and brings a long-term ownership perspective to each new development.

Request for Proposals for the Ground Lease and Development of 5355 Mount Etna Drive San Diego (APN 361-661-12)



Intergenerational Living

Intergenerational living is an **innovative** concept, which is based on the idea that blending of families with children and seniors creates an opportunity for residents of all ages to grow up, grow older, and grow together in a supportive community. An affordable intergenerational campus is the perfect complement to the Live Well San Diego initiative, which promotes healthy, safe, and thriving communities. Messina and Modica will have numerous **cross-generational programs** supported by our partnerships with nonprofit service providers. These programs will continue to evolve as the needs and circumstances of the residents evolve over their lifetimes. Messina and Modica will serve **vulnerable households in need** and provide them with free access to a custom-designed menu of supportive services, helping them become thriving households.

Messina and Modica will feature state-of-the-art spaces, including the Cyber Café and the Enrichment Center, providing a variety of intergenerational activities designed to improve the quality of life for all ages and abilities. Civic engagement and volunteer opportunities will play a large role in this effort.

The Cyber Café will be a fun, open and uplifting area where residents will have access to computers offering e-mail, internet access, and other programs. Those with no computer experience can learn how to use them while "tech-savvy" residents will enjoy the opportunity to jump online and connect to friends and family across the country. A coffee bar and healthy snacks will make this a fun, relaxing place to hang out.

Part classroom, part gym, and part studio, the Enrichment Center will be located adjacent to the Cyber Café for easy accessibility. It is a versatile room with space to hold large groups for a lecture or seminar, and small groups for interest-specific activities. The potential for this room is limitless because it could remain open in the evening and on weekends, allowing residents who may still work during the day a safe place to spend their recreation time.

Chelsea believes that our new community will not only not only provide quality housing for hundreds of vulnerable families and seniors but will ultimately also activate the area and become a true community asset.

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EXHIBIT "E"	WORK LETTER AGREEMENT
EXHIBIT "F"	LESSEE'S RESPONSE TO REQUEST FOR PROPOSALS
EXHIBIT "G"	FORM OF NON-DISTURBANCE AND ATTORNMENT AGREEMENT FOR SUBLEASES
EXHIBIT "H"	MEMORANDUM OF LEASE
EXHIBIT "I"	MEMORANDUM OF RESTRICTIVE CONVENANTS AND REGULATORY AGREEMENT

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CHELSEA INVESTMENT CORPORATION REVISIONS GROUND LEASE AGREEMENT

subdivision	("Commer of the State of	agreement (Lease) is made and entered into effective as of incement Date") by and between the County of San Diego, a political and California ("County"), and
	rms and condi	
	<u>SI</u>	ARTICLE 1 UMMARY OF BASIC LEASE PROVISIONS
1.1	<u>Lessor</u> .	County of San Diego, a political subdivision of the State of California
		Address for notice:
		County of San Diego
		Attention: Director
		Department of General Services
		5560 Overland Avenue
		Suite 410
		San Diego, California 92123
1.2	<u>Lessee</u> .	
		Address for notice:
1.3 Lease and is		The leased premises ("Premises") is defined in Section 2.1 of this eated on EXHIBIT "A" <u>DESCRIPTION OF PREMISES</u> attached to
this Lease.		
1.4		nd Lessee's Lease Administrators. This Lease shall be administered o
behalf of Co	ounty by the D	rirector, Department of General Services or a designee ("County's

Lease Administrator"), and on behalf of Lessee by:	
or by another person designated in writing by Lessee ("Lessee's Lease Administrator").	

- 1.5 <u>Commencement Date</u>. The Commencement Date is defined as the first day of the calendar month following approval of this Lease by the County's Board of Supervisors, adoption of an ordinance authorizing this Lease and execution of this Lease by the County's Director, Department of General Services.
- 1.6 <u>Term.</u> The <u>"Feasibility Period"</u>, "Pre-Construction Period", "Construction Period" and "Operations Period" that comprise the "Term" are defined and set forth in Section 3.1 <u>Term</u> of this Lease.
- 1.7 <u>Rent</u>. The "Pre-Construction Period Rent," "Construction Period Rent" and "Rent" are defined and set forth in Section 4.1 <u>Rent</u> of this Lease. "Pre-Construction Period Rent," "Construction Period Rent" are collectively referred to as "Contract Rent" in this Lease.
- 4.8 Rent Adjustments and Rent Redetermination. Periodic rent adjustments and rent renegotiation provisions are set forth in Section 4.2 Rent Adjustments and Section 4.3 Rent Redetermination of this Lease.
- 1.9 <u>Additional Rent</u>. Any and all sums of money or charges other than the Contract Rent required to be paid by Lessee to County pursuant to the provisions of this Lease shall be paid as "Additional Rent".
- 1.10 <u>Security DepositReserves</u>. The <u>security deposit ("Security Deposit")Project</u> <u>reserve requirements are</u> <u>is-</u>set forth in ARTICLE 5 <u>SECURITY DEPOSITRESERVES</u> of this Lease
- 1.11 <u>Permitted Use</u>. Lessee shall be authorized to use the Premises only for those purposes set forth in Section 6.1 <u>Permitted Uses</u> of this Lease.
- 1.12 <u>Exhibits</u>. The following exhibits are attached to this Lease and made a part of this Lease by this reference:

EXHIBIT "A" <u>DESCRIPTION OF PREMISES</u>

EXHIBIT "B" <u>INSURANCE REQUIREMENTS - PRE-</u>

CONSTRUCTION PERIOD

EXHIBIT "C" <u>INSURANCE REQUIREMENTS - CONSTRUCTION</u>

PERIOD

EXHIBIT "D" <u>INSURANCE REQUIREMENTS - OPERATIONS</u>

PERIOD

EXHIBIT "E" <u>WORK LETTER AGREEMENT</u>

EXHIBIT "F" LESSEE'S RESPONSE TO REQUEST FOR

PROPOSALS

EXHIBIT "G" FORM OF NON-DISTURBANCE AND ATTORNMENT

AGREEMENT FOR SUBLEASES

EXHIBIT "H" <u>MEMORANDUM OF LEASE</u>

EXHIBIT "I" <u>COUNTY OF SAN DIEGO</u>

MEMORANDUM OF RESTRICTIVE COVENANTS

AND REGULATORY AGREEMENT

1.13 <u>Construction of Lease Provisions</u>. The provisions of this article summarize for convenience only certain key terms of this Lease that are delineated more fully in the articles and sections referenced in this Lease. If a conflict between the provisions of this article and the balance of this Lease occurs, the balance of this Lease shall control.

ARTICLE 2 LEASE OF PREMISES

- 2.1 <u>Description of Premises</u>. County leases to Lessee and Lessee leases from County, for the Contract Rent and Additional Rent and upon the covenants and conditions set forth in this Lease, approximately ______ square feet of land ("Premises"). The Premises is further described in EXHIBIT "A" <u>DESCRIPTION OF PREMISES</u> of this Lease.
- 2.2 <u>Mineral Rights</u>. Notwithstanding any provision of this Lease to the contrary, County expressly reserves all rights, title and interest in and to any and all gas, oil, mineral and water deposits located upon or beneath the surface of the Premises. County shall have the no right to enter upon or use the surface of the Premises at any time during the Term for the purpose of operating or maintaining drilling or other installations as may be necessary or desirable for the development of any gas, oil, mineral or water deposits. Nothing herein shall be construed to prevent County from exploring for, developing and/or producing the oil, gas and/or other minerals in and under, or that may be produced from, the Premises by pooling or by directional drilling

under the Premises from sites located on other property.

2.3 <u>Easements and Reservations</u>. Lessee accepts the Premises subject to any and all existing easements, right-of-ways, reservations and encumbrances. <u>During the Term, County reserves the rightmay, with the consent of the Lessee, to establish, to grant or to use easements, right-of-ways, reservations and encumbrances over, under, along and across the Premises for access, underground sewers, utilities, thoroughfares or other facilities it deems necessary for the public good, whether or not the facilities directly or indirectly benefit the Premises, and to enter the Premises for any purpose related to the easements, right-of-ways reservations, or encumbrances. If damage occurs as a result of County's entry onto the Premises pursuant to the rights granted in this section, County shall restore the Premises to its preexisting condition <u>and shall indemnify, defend and hold harmless the Lessee for any losses in connection with such uses hereunder</u>. County shall not <u>unreasonably or substantially</u> interfere with Lessee's use of the Premises as a result of exercising its rights reserved in this section.</u>

ARTICLE 3 TERM

- 3.1 <u>Term.</u> The Term of this Lease shall be <u>ninety-nine_()</u>(99) years, beginning on the Commencement Date. The Term shall include the <u>Feasibility Period</u>, Pre-Construction Period, Construction Period, and Operations Period defined in subsections a., b. and c. below. The term "Lease Year" as used in this Lease shall mean the 12-month period beginning on the Commencement Date and each succeeding 12-month period thereafter during the Term.
- a. Prior to the start of the Pre-Construction Period Lessee shall have until the date that is one-hundred and twenty (120) days from the Commencement Date ("Feasibility Period") to complete its due diligence, feasibility analysis and other investigations and evaluations of the Premises and to deliver to County a written notice confirming its unconditional approval of such matters (an "Approval Notice"), including: (i) the physical condition of the Premises including the topography, size, dimensions and boundaries of the Premises, (ii) the feasibility of any improvements planned by Lessee, including the cost and availability of permits and other approvals necessary to construct such improvements and the cost of such improvements, (iii) title matters, including without limitation real property taxes and assessments, including the cost and availability of any additional title insurance coverage or endorsements desired by Lessee; (iv) compliance with applicable laws, including zoning and use restrictions; (v) the cost and availability of financing; (vi) environmental matters, including, without limitation, the potential existence of hazardous materials on, in or near the Premises; and (vii) all other matters relating to the Premises. Lessee and its agents, representatives and consultants may enter the Premises as reasonably necessary to make inspections and conduct

studies related to the Premises. As a condition to the right of entry set forth above, Lessee shall procure and maintain broad form commercial liability insurance, including direct contractual and contingent liability coverage, with limits of not less than \$1,000,000 per occurrence for bodily injury, property damage and personal injury, and \$2,000,000 general policy aggregate.

If Lessee does not deliver the Approval Notice to County prior to the expiration of the Feasibility Period, feasibility shall be deemed disapproved, and this Agreement is voidable at the sole and absolute discretion of Lessee. If, for any reason, Lessee determines in its sole discretion that it is not feasible for Lessee to lease the Premises, Lessee may terminate this Agreement by delivering a written notice of disapproval to County prior to the expiration of the Feasibility Period.

Within five (5) days of the Commencement Date, County shall deliver to Lessee all maps, permits, reports and plans relating to the Premises in its possession, including, without limitation, surveys, environmental reports, physical inspection reports, soils reports, appraisals and market studies or reports (collectively, the "Due Diligence Documents"). Lessee acknowledges and agrees that the Due Diligence Documents are provided for information and disclosure purposes only and the County makes no representation regarding their accuracy.

__The "Pre-Construction Period" of the Term begins on the Commencement Dateupon the receipt of an Approval Notice and expires upon the closing of the Lessee's construction financing which shall be no later than twenty-four months (24) months earlier of (i) () days from the Commencement Date; or (ii) Lessee's receipt of Entitlements (defined in the following sentence). During the Pre-Construction Period, Lessee shall diligently pursue obtaining all necessary permits, approvals and licenses ("Entitlements") for the development of the Required Improvements (defined in Section 10.1) at no cost to County. For purposes of this Lease, the Entitlements shall be deemed received when the Entitlements for the proposed development of the Required Improvements have been approved officially by the City of San Diego or its permitting authority through duly authorized resolution, ordinance, administrative determination, regulatory determination or similar action and all administrative appeal periods have expired or been waived. Lessee shall confirm the date of receipt of Entitlements or the earlier termination of this Lease as provided in Section 3.3 Early Termination During Pre-Construction Period in a written notice to County. Lessee may extend the Pre-Construction period for two (2) periods of one hundred eighty (180) days each by providing thirty (30) days prior written notice to County and payment of additional Pre-Construction Period Rent as provided in Section 4.1.1 of this Lease. County's Lease Administrator, at its sole discretion, may consider additional extensions of the Pre-Construction Period for one hundred eighty (180) day periods upon written request by Lessee and payment of additional Pre-Construction Rent as provided by Section 4.1.1 of this Lease.

Unless this Lease terminates pursuant to Section 3.3, the "Construction

- ed. The "Operations Period" of the Term commences upon the expiration of the Construction Period ("Operations Period Commencement Date") and continues until the expiration or earlier termination of this Lease.
- 3.2 <u>Holding Over</u>. If Lessee holds over in occupancy of the Premises after the expiration of the Term, Lessee shall become a tenant from month to month at a rate of one hundred twenty-five percent (125.0%) of the Rent in effect prior to the holdover. Any holdover shall be subject to the terms and conditions of this Lease, as applicable, and shall be subject to termination by County with thirty (30) days written notice to Lessee.
- 3.3 <u>Early Termination During Pre-Construction Period</u>. If Lessee is unable to secure Entitlements prior to the expiration of the Pre-Construction Period or any extension of the Pre-Construction Period, this Lease shall terminate and the Pre-Construction Period Rent described in Section 4.1.1 shall be retained by County.
- 3.4 <u>Ownership of Improvements; Surrender of the Premises; County Possession of Premises.</u>
- 3.4.1 Ownership of Improvements During Term. Title to all Improvements (defined in Section 10.1) constructed or placed on the Premises by Lessee and paid for by Lessee are and shall be vested in Lessee until the expiration or earlier termination of this Lease. County and Lessee agree for themselves and all persons claiming under County and Lessee that the Improvements are real property.
- 3.4.2 Ownership of Improvements Upon the Expiration or Earlier Termination of Lease. Unless County requires Lessee to restore the Premises pursuant to Section 3.4.3 of this Lease, aAll Improvements on the Premises upon the expiration or earlier termination of this Lease shall, without payment to Lessee, become County's property free and clear of all claims to or against them by Lessee and free and clear of all leasehold mortgages and any other taxes, liens and claims arising from Lessee's use and occupancy of the Premises as of the date of expiration

or earlier termination of this Lease. Lessee shall, upon the expiration or earlier termination of this Lease, deliver the Premises and Improvements to County in good order, condition and state of repair, ordinary wear and tear excepted, subject to Lessee's completion of the Assessment Repairs (defined in Section 3.4.3) and any other repairs and replacements that are the obligation of Lessee under this Lease. If Lessee does not remove any Fixtures (defined in Section 10.7) following direction by the County, County may remove, sell or destroy the Fixtures and upon receipt of an invoice, Lessee shall pay to County the reasonable cost of the removal, sale or destruction, together with the reasonable cost of repair of damages to County's property or Improvements or to the Premises resulting from the removal, sale or destruction of the Fixtures.

3.4.3 Restoration of Premises. Upon the expiration of this Lease, County may accept the Improvements pursuant to Section 3.4.2 of this Lease or require Lessee, at Lessee's sole expense, to restore the Premises prior to the expiration of the Term by demolishing the Improvements, leveling the site, removing any underground obstructions, and compacting filled excavations to ninety percent (90.0%) compaction ("Restoration"). Lessee, at Lessee's sole expense, shall provide County with a report prepared by a qualified independent consultant assessing the condition of the Improvements within four (4) years of the expiration of the Term ("Improvements Assessment"). The following shall be included in the Improvements Assessment: (i) an evaluation of the building structure, all building components and all systems serving the Improvements, (ii) the estimated cost of any identified repairs or replacements to the Improvements to deliver the Improvements to County in good order, condition and state of repair, ordinary wear and tear excepted ("Assessment Repairs"), and (iii) the estimated cost to complete a Restoration ("Restoration Costs"). County shall approve or disapprove the Assessment Repairs and Restoration Costs within ninety (90) days after submittal of the Improvements Assessment, which approval shall not be unreasonably withheld. Any disapproval shall be given to Lessee in writing with the reasons for disapproval and changes that would be sufficient to obtain approval. If County disapproves the Assessment Repairs or Restoration Costs, Lessee shall resubmit for County approval the Assessment Repairs or Restoration Costs within sixty (60) days of County's disapproval. If Lessee fails to resubmit Assessment Repairs or Restoration Costs satisfactory to County within sixty (60) days of County's disapproval, the County's Lease Administrator shall decide any dispute concerning the Assessment Repairs or Restoration Costs and Lessee shall be bound by the decision.

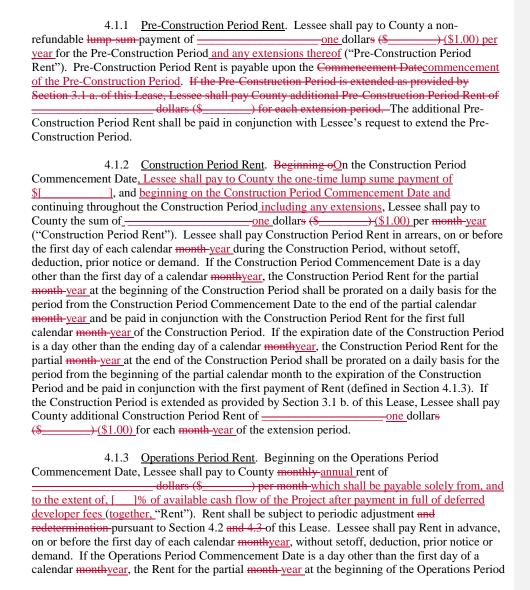
approve, for the as security for Lessee's faithful performance and completion of the Restoration. The Restoration Fund shall be maintained for the duration of the Term and any holdover and expended solely for the Restoration. The Restoration Fund shall also be explicitly available to County during or after the expiration of this Lease for any Restoration work not completed by Lessee. The amount by which the Restoration Fund, if any, exceeds the actual cost of the Restoration shall be delivered to Lessee in accordance with applicable law after completion of the Restoration. If the actual cost of the Restoration exceeds the Restoration Fund, Lessee shall be responsible for payment of any amounts in excess of the Restoration Fund.

If County elects to accept the Improvements pursuant to Section 3.4.2 of this Lease, County shall provide written notification to Lessee within three (3) years of the of the expiration of the Term. Lessee shall complete the Assessment Repairs to County's satisfaction, at Lessee's sole cost, prior to the expiration of the Term.

- 3.4.4 <u>Surrender of the Premises</u>. Lessee shall surrender possession of the Premises and Improvements (if any), to County upon expiration or earlier termination of this Lease. Upon the expiration or earlier termination of this Lease for any reason, including but not limited to termination because of default by Lessee, Lessee shall execute, acknowledge and deliver to County, within thirty (30) days following receipt of written demand, a good and sufficient deed where Lessee quitclaims all right, title and interest in the Premises and Improvements to County. If Lessee fails or refuses to deliver the quitclaim deed to County, County may prepare and record a notice reciting the failure of Lessee to record a quitclaim deed, and the notice shall be deemed conclusive evidence of the termination of this Lease and of all right of Lessee or those claiming under Lessee to the Premises and Improvements.
- 3.4.5 <u>County Possession of Premises</u>. If the manner or method employed by County to re-enter or take possession of the Premises pursuant to the provisions of this Lease gives Lessee a cause of action for damages or in forcible entry and detainer, the total amount of damages to which Lessee shall be entitled in any action shall be one dollar (\$1.00). This provision may be filed in any action brought by Lessee against County, and when filed shall constitute a stipulation by Lessee fixing the total damages to which Lessee is entitled in an action.

ARTICLE 4 RENT

4.1 <u>Rent</u>. Subject to the rent adjustment provisions in Section 4.2 and Section 4.3 of this Lease, Lessee shall pay as rent for the use and occupancy of the Premises the Pre-Construction Period Rent (defined in Section 4.1.1), the Construction Period Rent (defined in Section 4.1.2) and the Rent (defined in Section 4.1.3).

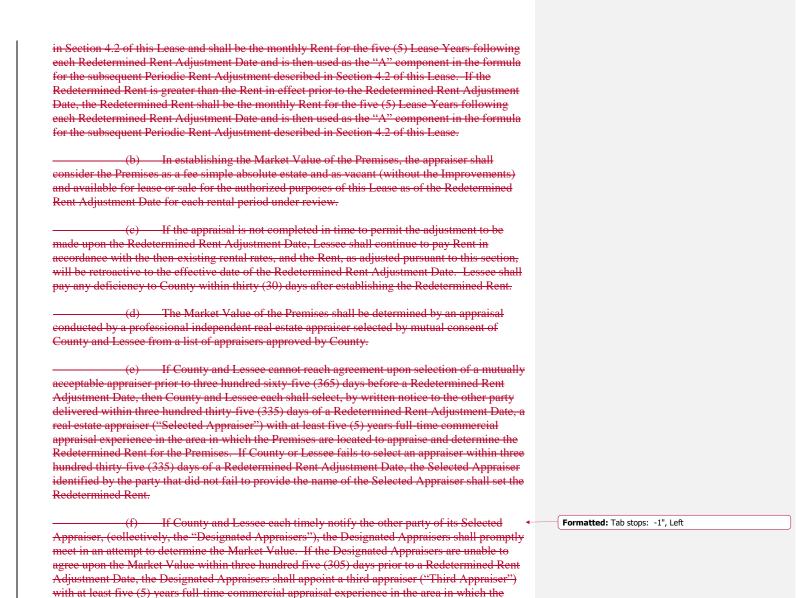


shall be prorated on a daily basis for the period from the Operations Period Commencement Date to the end of the partial calendar month year and be paid in conjunction with the Rent for the first full calendar month year of the Operations Period, 4.1.4 Commercial Rent. Commencing the calendar year following the execution of a sublease for the commercial space on the Premises by the Lessee, Lessee shall pay to County 50% of the net rental proceeds (after payment of all costs and expenses of the operation of the commercial space) annually in arrears. [NOTE: Rent adjustments are effective throughout the term. Add 5-year increments as necessary to Section 4.2] 4.2 Rent Adjustments. Beginning on the first day of the sixth (6th), eleventh (11th), sixteenth (16th), twenty-first (21st), twenty-sixth (26th), thirty-first (31st), thirty-sixth (36th), forty-first (41st), forty-sixth (46th), fifty-first (51st), fifty-sixth (56th), (_____) Lease Year ("Rent Adjustment Date"), the monthly Rent for the ensuing five (5) years of the Term or any partial period of less than five (5) years immediately prior to the expiration of the Term, shall be adjusted to reflect any increase in the Consumer Price Index for the previous five (5) years, but in no event to an amount less than the then current Rent ("Periodic Rent Adjustment") or "Periodic Rent Adjustments"). The base for computing the Periodic Rent Adjustment shall be the CPI for All Urban Consumers (1982-84=100) for the Los Angeles Riverside Orange County Area CPI U, as published by the U.S. Department of Labor, Bureau of Labor Statistics. Periodic Rent Adjustments shall be calculated by the use of the following formula: $R = A \times (B/C)$ Where. R equals the Periodic Rent Adjustment; A equals the Rent from the month prior to the current Rent Adjustment Date; B equals the average monthly value of the CPI during the first full calendar quarter immediately preceding the month prior to the current Rent Adjustment Date; and C For the first Periodic Rent Adjustment, C equals the average monthly value of the CPI during the first full calendar quarter immediately preceding the Commencement Date. For subsequent Periodic Rent Adjustments, C equals the average monthly value of the CPI

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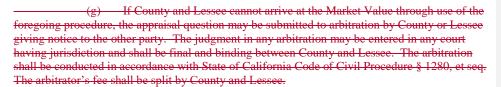
during the first full calendar quarter immediately preceding the prior Rent Adjustment Date.

——————————————————————————————————————	
[NOTE: Rent redeterminations are effective throughout the term. Add 15-year increments as necessary to Section 4.3]	
4.3 Rent Redetermination. Beginning on the first day of the eleventh (11th), twenty-sixth (26th), forty-first (41st), fifty-sixth (56th),	
(a) The Redetermined Rent shall be established by applying a capitalization rate of percent (%) of the market value ("Market Value") of the Premises as of the Redetermined Rent Adjustment Date, calculated as follows.	Formatted: Indent: Left: 0", First line: 0"
RR = (0. x MV) / 12	
Where,	
RR = The Redetermined Rent for each Redetermined Rent Adjustment Date [per month]	Formatted: Indent: Left: 0", First line: 0"
MV = The Market Value as established by appraisal as of each Redetermined Rent Adjustment Date	Formatted: Indent: Left: 0", First line: 0"
For example, if the Market Value of the Premises is twelve million dollars (\$12,000,000) and the capitalization rate is ten percent (10.0%), the Redetermined Rent is calculated as follows:	
${} \$100,000 = (0.10 \times \$12,000,000) / 12$	
\$100,000 = \$1,200,000 / 12	
If the Redetermined Rent is less than the Rent in effect prior to the Redetermined Rent Adjustment Date, the Rent in effect prior to the Redetermined Rent Adjustment Date shall be adjusted upward using the Periodic Rent Adjustment formula described	
11	



Premises are located. The Third Appraiser shall be appointed within two hundred eighty-five

(285) days of a Redetermined Rent Adjustment Date. If the Designated Appraisers fail to mutually select a Third Appraiser, then the Third Appraiser will be promptly determined in accordance with the rules of the American Arbitration Association. County and Lessee shall each pay the fee of its Designated Appraiser and one half (1/2) the fee of the Third Appraiser. Within sixty (60) days after the selection of the Third Appraiser, a majority comprised of the each Designated Appraiser and the Third Appraiser shall set the Market Value. If a majority of the appraisers are unable to agree, then the average of the three (3) appraisals shall be the Market Value; provided, however, if the low appraisal is more than ten percent (10.0%) lower and/or if the high appraisal is more than ten percent (10.0%) higher than the middle appraisal, then the low appraisal and/or high appraisal shall be disregarded in averaging the appraisals. If any of the appraisers fail to appraise and determine the Market Value for the Premises within the timeframes set forth in this Lease, then the Market Value shall be set based on the average of the appraisal(s) that were completed pursuant to this section.



(h) The County's Lease Administrator, in its sole discretion, may determine that no market value adjustment is necessary and waive the requirement for the appraisal process for any specific Redetermined Rent Adjustment Date. If waived, the Rent for the ensuing five (5) years of the Term or any partial period of less than five (5) years immediately prior to the expiration of the Term, shall be determined using the Periodic Rent Adjustment procedure described in Section 4.2 of this Lease.

4.4 Reserved.

- 4.5 Additional Rent. Lessee shall pay, as additional rent ("Additional Rent"), all sums of money required to be paid pursuant to the terms of this Lease that are not payable as Contract Rent. If time for payment of sums of money that qualify as Additional Rent are not expressly provided for in this Lease, the amounts or charges shall be payable as Additional Rent with the subsequent installment of Rent due. Nothing in this section shall be deemed to suspend or delay the payment of any Additional Rent at the time it becomes due and payable under this Lease or to limit any other remedy of County.
- 4.6 <u>Address for Rent Payments</u>. All Contract Rent and Additional Rent due under this Lease shall be made payable to the County of San Diego, and shall be considered paid when delivered to:

County of San Diego Department of General Services - Fiscal Section 5560 Overland Avenue Suite 410 San Diego, California 92123-1294

County may, at any time, by written notice to Lessee, designate a different address for the Contract Rent payments. County may, but is not obligated to, send monthly Construction Period Rent or Rent invoices to Lessee. Lessee assumes all risk of loss and responsibility for payment of late charges if Contract Rent or Additional Rent payments are made by mail.

4.7 Failure to Pay Contract Rent; Late Charge.

- The late payment by Lessee of any Contract Rent or Additional Rent will cause County to incur costs and expenses not contemplated under this Lease, the exact amount of which is difficult or impracticable to determine. These costs and expenses include, without limitation, administrative and collection costs, and processing and accounting expenses. If any Contract Rent is not received by County before the sixth day of each calendar month, on the sixth day of the calendar month Lessee shall immediately pay to County a late charge equal to five percent (5.0%) of the overdue amount. If any Additional Rent is not received when due under this Lease, on the sixth day after the due date, Lessee shall immediately pay to County a late charge equal to five percent (5.0%) of the overdue amount. These late charges represent a reasonable estimate of the costs and expenses and are fair compensation to County for its loss caused by Lessee's nonpayment. If Lessee pays the late charge but fails to pay all unpaid amounts of Construction Period Rent, Rent or Additional Rent due under this Lease, County's acceptance of the late charge shall not constitute a waiver of Lessee's default with respect to the nonpayment by Lessee nor prevent County from exercising all other rights and remedies available to County under this Lease or under law. If Lessee fails to pay Contract Rent or Additional Rent at the time it is due and payable, any unpaid amounts shall bear interest at the rate of ten percent (10.0%) per year from the date due to the date of payment, calculated on the basis of monthly compounding with actual days elapsed compared to a 360-day year. However, interest shall not be payable on late charges incurred by Lessee nor on any amounts on which late charges are paid to the extent this interest would cause the total interest to be in excess of that legally permitted.
- b. If a dispute arises between County and Lessee as to the correct amount of Contract Rent or Additional Rent owed by Lessee, County may accept any sum tendered by Lessee as payment, without prejudice to County's claim as to the proper amount of Contract Rent or Additional Rent owed. If it is subsequently determined that Lessee has not paid the full amount of Contract Rent or Additional Rent, the late charge specified in this Lease shall apply

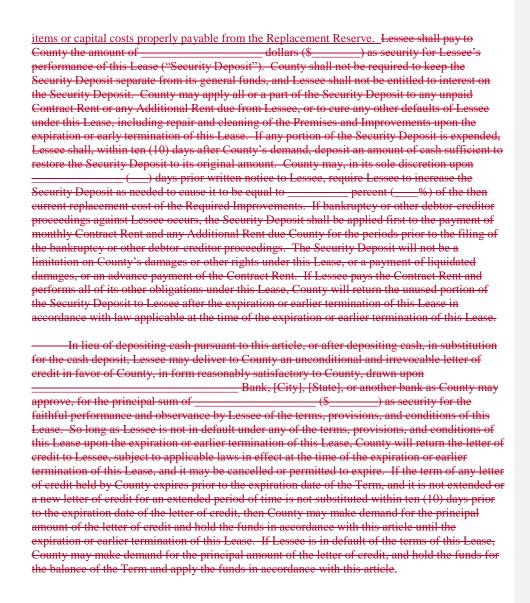
only to that portion of the rent still due and payable from Lessee. Notwithstanding any provision of this Lease to the contrary, County's Lease Administrator may in its sole discretion waive any interest or late charge upon written application of Lessee.

- 4.8 <u>Nonsufficient Funds Fee.</u> If Lessee pays <u>Monthly Contract</u> Rent or Additional Rent by check and the check is returned to County because of nonsufficient funds ("NSF"), Lessee shall pay County a service charge ("NSF Fee") of twenty-five dollars (\$25.00) for the first NSF occurrence and thirty-five dollars (\$35.00) for any subsequent NSF occurrence during the Term. The NSF Fee is in addition to any late charges due under this Lease. If more than one (1) NSF occurrence takes place during the Term, County may serve written notice to Lessee that the next rental payments, for a period of up to three (3) months, shall be paid in cash. In addition, County may serve, in accordance with State of California Civil Code Section 827, a thirty (30) day written notice that all future payments must be in the form of electronic funds transfer, cashier's check, or money order.
- 4.9 <u>Order of Payment</u>. Payments received from Lessee shall be applied first to NSF Fees, then any late charges or Additional Rent, then the oldest outstanding balance of Monthly Contract Rent.
- 4.10 <u>Affordable Housing</u>. Lessee shall maintain the <u>affordable affordability of the</u> housing developed pursuant to the terms of this Lease for a period not less than and pursuant to the terms and conditions set forth in the Regulatory Agreement attached hereto as Exhibit I.

ARTICLE 5 SECURITY DEPOSITRESERVES

- 5.1 Replacement Reserve. Upon the commencement of the Operations Period, Lesseeshall establish a capital replacement reserve for the Project (the "Replacement Reserve"). Funds in the Replacement Reserve shall be used only for capital repairs, improvements, and replacements to the Project fixtures and equipment which are normally capitalized under generally accepted accounting principles. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve or lessen Developer's obligation to undertake any and all necessary capital repairs, improvements, or replacements and to continue to maintain the Project in the manner prescribed herein.
- 5.2 Operating Reserve. Upon the commencement of the Operations Period, Lessee shall establish an operating reserve for the Project (the "Operating Reserve"). The Operating Reserve shall be used to cover shortfalls between Project revenue and actual operating expenses (including Contract Rent and Additional Rent), but shall in no event be used to pay for capital

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ARTICLE 6 POSSESSION AND USE

- 6.1 <u>Permitted Uses</u>. Lessee shall use the Premises for the sole purpose of the entitlement, development, construction, operation, maintenance and repair of the Improvements for residential use <u>and commerical space</u> as permitted under this Lease and for no other use, unless previously approved in writing at the sole discretion of County ("Permitted Uses"). No one other than Lessee, its <u>tenants</u>, invitees, contractors, agents, volunteers and employees, or any sublessee of Lessee approved by County <u>including any lessor or tenant of the commercial space</u> as provided in ARTICLE 15 <u>ASSIGNMENT</u>, <u>SUBLETTING AND ENCUMBRANCES</u>, is permitted to use the Premises for the purposes described in this Lease, and Lessee shall be fully responsible for the activities of its agents, volunteers, employees, guests, invitees and sublessees, if any, on the Premises.
- 6.2 <u>Duties and Prohibited Conduct.</u> If Lessee is reasonably in doubt as to the propriety of any particular use of the Premises, Lessee may request the written determination regarding the use from the County's Lease Administrator, and Lessee will not be in breach or default under this Lease if Lessee abides by the determination. Lessee shall not use nor permit the use of the Premises in any manner that will create waste or a nuisance. Lessee shall not use, nor permit any person or persons to use the Premises for the sale or display of any goods and/or services that, in the sole discretion of County, are inconsistent with the Permitted Uses of the Premises pursuant to this Lease. Lessee shall keep the Premises in a decent, safe and sanitary condition, free from any objectionable noises or odors, except as may be typically present for the Permitted Uses specified in this Lease.

6.3 Compliance with Laws.

- a. Lessee, at Lessee's sole expense, shall procure, maintain and hold available for County's inspection any governmental license or permit required for the proper and lawful conduct of Lessee's business. Lessee shall, at Lessee's sole expense, shall at all times during the Term promptly comply with all applicable federal, State and local laws, rules, regulations, orders, covenants and restrictions of record, and requirements regulating the use by Lessee of the Premises and Improvements ("Laws"), whether or not the Laws were in effect at the time this Lease was executed. The final judgment of any court of competent jurisdiction, or the admission of Lessee or any sublessee or permittee, in any action or proceeding against Lessee or any sublessee or permittee, whether or not the County is a party to the action or proceeding, that Lessee, or any sublessee or permittee, has violated any law, statute, ordinance, rule, regulation, orders, covenant, restriction or requirement pertaining to the use of the Premises and Improvements, shall be conclusive as to that fact as between County and Lessee.
 - b. Notwithstanding any other provision of this Lease to the contrary, Lessee

shall be responsible for payment of all costs of complying with the requirements of the Americans with Disabilities Act of 1990 ("ADA") (42 USCS Sections 12101-12213), Title 24 of the California Code of Regulations ("Title 24") and State of California Civil Code Section 54.1 as they may apply to the Premises and Improvements. Lessee's obligations under this Lease shall include, without limitation, all costs of bringing the Premises and Improvements into compliance, and thereafter maintaining compliance with the requirements of Title III of the ADA ("Title III") (42 USCS Sections12181 - 12189) applicable during the Term to public accommodations and commercial facilities, regardless of whether or not the particular requirements of compliance (i) are specifically required by the Permitted Uses of the Premises and Improvements, or (ii) may also be required of County under Title II of the ADA ("Title II") (42 USCS Sections12131 - 12165).

- c. Lessee's duty to comply with Laws shall include compliance with any and all zoning and land use regulations applicable to the Premises and Lessee's intended use of the Premises ("Land Use Regulations"). County's execution of this Lease shall in no way be deemed to constitute a determination by County that Lessee's intended use of the Premises complies with applicable Land Use Regulations, nor shall it imply any conclusion by County regarding Land Use Regulations, even if County is the agency that enacts or implements the Land Use Regulations applicable to the Premises.
- 6.4 <u>Substance Abuse</u>. Lessee and its employees and agents shall not use or knowingly allow the use of the Premises for the purpose of unlawfully driving a motor vehicle or aircraft under the influence of an alcoholic beverage or any drug, or for the purpose of unlawfully selling, serving, using, storing, transporting keeping, manufacturing or giving away alcoholic beverages or any "controlled substance", precursor or analog specified in Division 10 of the State of California Health and Safety Code, and violation of this prohibition shall be grounds for immediate termination of this Lease.
- 6.5 <u>Control of Premises</u>. Failure of Lessee to exercise control of the use of Premises to conform to the provisions of this Lease shall constitute a material breach of this Lease and are grounds for termination of this Lease.
- 6.6 <u>Compliance With Stormwater Laws</u>. Lessee's use of the Premises and Improvements is subject to all federal, state and local laws, regulations, orders, policies and guidelines ("Stormwater Laws") regarding the discharge of pollutants into the stormwater conveyance system. Lessee's compliance with Stormwater Laws may require Lessee to develop, install, implement and maintain pollution prevention measures, source control measures and Best Management Practices ("BMPs"). BMPs can include operational practices, water or pollutant management practices, physical site features, or devices to remove pollutants from stormwater to affect the flow of stormwater or to infiltrate stormwater to the ground. BMPs applicable to Lessee's use of the Premises or Improvements may include a requirement that all materials,

wastes or equipment with the potential to pollute urban runoff be stored in a manner that either prevents contact with rainfall and stormwater, or contains contaminated runoff for treatment and disposal. Lessee is required to, and shall use, operate, maintain, develop, redevelop and retrofit the Premises and Improvements, as necessary, in accordance with Stormwater Laws restricting the discharge of non-stormwater at or from the Premises or Improvements and Stormwater Laws requiring pollution prevention measures, source control measures, or the installation or use of BMPs. Lessee shall develop, install, implement and/or maintain at Lessee's sole cost and expense, any BMPs or similar pollution control devices required by Stormwater Laws and any implementing regulations or guidance. Lessee understands and acknowledges that the Stormwater Laws applicable to Lessee's use of the Premises or Improvements may be changed from time to time by federal, state and/or local authorities, and that additional requirements may become applicable based on changes in Lessee's activities or development or redevelopment by Lessee or County. Lessee shall conduct participate in annual stormwater training and perform regular stormwater self-inspections, maintain records of all stormwater training and selfinspections, and provide all necessary documentation to County upon request. Lessee shall promptly supply County with copies of notices of violations, notices of non-compliance, or other similar type notices received from regulatory agencies regarding any issues or conditions at the Premises or Improvements related to stormwater and non-stormwater management practices, any discharge in stormwater or non-stormwater from the Premises or Improvements, or any prohibited discharge of non-stormwater from the Premises or Improvements. Lessee shall also provide the County with copies of the final reports Lessee submits to any regulatory agency regarding investigation and/or remediation of stormwater or non-stormwater pollution related issues at the Premises or Improvements and/or prohibited discharges of non-stormwater from the Premises or Improvements. Lessee shall develop, install, implement, and maintain any requested BMPs, corrective actions, and/or other pollution control practices at the Premises or Improvements at Lessee's sole cost and expense. To the extent there is a conflict between any federal, State or local law, Lessee shall comply with the more restrictive provision. If County receives any fine or fines from any regulatory agency as a result of Lessee's failure to comply with Stormwater Laws, Lessee shall reimburse County for the entire amount of the fine(s).

6.7 Prevailing Wage. To the extent rent credits, reduced rent or other payment from County funds Lessee's construction, alteration, demolition, installation, repair, refuse and ready mix concrete hauling, or maintenance work performed on the Premises and the amount of the payment provided exceeds one thousand dollars (\$1,000), the project shall be deemed a "public work" for prevailing wage purposes. It is not the intent of this Lease to impose an obligation to pay prevailing wages on work otherwise exempt from State of California prevailing wage laws. Lessee shall be solely responsible for ensuring prevailing wages are paid when owed. Projects subject to the payment of prevailing wages are subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations. Lessee shall be responsible for ensuring all required job site postings and all certified payroll and other reporting applicable to it as an awarding body are completed in accordance with State of California

prevailing wage regulations. Information regarding prevailing wage requirements can be obtained from the Director, Department of Industrial Relations at www.dir.ca.gov, State of California Labor Code Section 1720, et seq., and Title 8 of the State of California Code of Regulations, Section 16000, et seq.

ARTICLE 7 UTILITIES

- Utilities. Lessee shall provide and pay for all initial utility deposits and fees, and 7 1 for all utilities and services necessary for its use of the Premises during the Term, including but not limited to gas, water, electricity, trash, sewer/septic tank charges and telephone. County shall have no responsibility to either provide or pay for any utilities or services. If any services are not separately metered or billed to Lessee but rather are billed to and paid by County, Lessee will pay to County its prorated share of the cost of the services, as determined by County, together with its prorated share of the cost of making the determination. County shall not be liable for any reason for any loss or damage resulting from an interruption of any of utilities or services. County shall have the right, at no charge from Lessee, to connect to any existing water, sewer, electrical, gas and communications lines or any water, sewer, electrical, gas and communications lines installed on the Premises during the Term, and shall have all necessary rights of access to construct and service any connections. Lessee shall have no obligation to pay any additional service fees or charges assessed by any governmental agency, or public or private utility company, for County's use of any connections to water, sewer, electrical, gas and communications lines.
- 7.2 <u>Energy Conservation by Lessee</u>. Lessee shall be responsible for using energy conservation measures in the operation of all activities on the Premises. Lessee shall cooperate with County in all forms of energy conservation including energy-efficient lighting, heating and air-conditioning systems, and fixtures and equipment. Lessee shall comply with all existing and newly-enacted laws, statutes, regulations, ordinances, policies or guidelines relating to the conservation of energy. Lessee shall comply with all reasonable requests and demands of County pertaining to the installation and maintenance of energy conservation systems, fixtures, and equipment.
- 7.3 <u>Water Conservation by Lessee</u>. Lessee shall be responsible for using water conservation measures in the operation of all activities on the Premises. Lessee shall cooperate with County, and any local water district or public agency having jurisdiction over the Premises, in all practical and reasonable forms of water conservation including drought-resistant landscaping, automatic flow-control irrigation systems, and low-flow plumbing fixtures and equipment as delineated in County Board of Supervisors Policy A-106 "Water Supply, Conservation, and Reclamation". Lessee shall comply with all existing and newly-enacted laws,

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statutes, regulations, ordinances, policies or guidelines relating to the conservation of water and any mandated emergency water conservation orders from the County and any local water district or public agency having jurisdiction over the Premises.

7.4 Recycling Program and Waste Reduction. Lessee shall comply with County recycling and waste reduction policies, procedures and programs as they apply to Lessee's use of the Premises. Lessee shall conduct its operations on the Premises in accordance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, requirements and guidelines pertaining to recycling and waste reduction.

ARTICLE 8 MECHANICS' LIENS

- 8.1 <u>Mechanics' Liens</u>. Lessee shall pay, or cause to be paid, all costs for work done by it, or caused to be done by it, on the Premises, and for all materials furnished for or in connection with any work on the Premises. If any lien is filed against the Premises, Lessee shall cause the lien to be discharged of record within ten (10) business days after it is filed. Lessee shall indemnify, defend and hold County harmless from any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for Lessee or persons claiming under Lessee.
- 8.2 Contest of Lien. Lessee shall have the right to contest by appropriate legal proceedings, and in good faith, without cost or expense to County, the validity of If Lessee contests any lien filed against the Premises, it shall furnish County, within the ten (10) day period following filing of the lien, security reasonably satisfactory to County of at least one hundred fifty percent (150.0%) of the amount of the lien, plus estimated costs and interest ("Lien Security Amount"), or a bond of a responsible corporate surety equal to the Lien Security Amount, conditioned on the discharge of the lien. If a final judgment establishing the validity or existence of a lien for any amount is entered, Lessee shall immediately pay and satisfy the judgment.
- 8.3 Right to Cure. If Lessee is in default in paying any charge for which a mechanics' lien claim and suit to foreclose the lien have been filed, and has not given County security equal to the Lien Security Amount to protect the property and County from liability for the claim of lien, County may, but shall not be required to, pay the claim. Any related costs, and the claim amount paid, together with reasonable attorneys' fees incurred in connection with paying the claim ("Lien Costs") shall be immediately due and payable from Lessee to County as Additional Rent, and Lessee shall pay the Lien Costs to County with interest at the rate specified

in Section 16.8 <u>Interest</u>, of this Lease calculated from the date(s) of County's payment of the Lien Costs to Lessee's payment of the Lien Costs to County.

- 8.4 <u>Notice of Lien</u>. If any claim of lien is filed against the Premises or any action against the Premises or any action affecting the title to the property of which the Premises is a part is commenced, the party receiving notice of the lien or action shall immediately give the other party written notice of the lien or action.
- 8.5 <u>Notice of Nonresponsibility.</u> County or its representatives shall have the right to enter and inspect the Premises at all reasonable times and shall have the right to post and keep posted on the Premises notices of nonresponsibility or other notices which County may deem to be proper for the protection of County's interest in the Premises. Lessee shall, before the commencement of any work which might result in any lien, give to County written notice of its intention to commence the work with a sufficient amount of time to enable County to post notices of nonresponsibility.

ARTICLE 9 SECURITY

Lessee, at its sole expense, shall be responsible for and shall provide for the security of the Premises.

ARTICLE 10 IMPROVEMENTS; PERSONAL PROPERTY; FIXTURES

10.1 <u>Improvements</u> . As partial consideration and secur	rity for the granting of this
Lease by County, Lessee shall prior to the expiration of the Cons	truction Period complete the
qualifying capital improvements ("Required Improvements") as set forth in EXHIBIT "E"	
WORK LETTER AGREEMENT on the Premises. The Required	d Improvements shall consist of
capital improvements a low-income residential apartment comple	x and related amenities, and
commerical space -constructed in accordance with the requireme	nts of this Lease, which shall
have an actual aggregate cost of no less than	(\$). In addition
Lessee may, at Lessee's sole expense and in compliance with all laws and with the other	
requirements of this Lease, from time to time during the Term make permanent alterations,	
nonstructural alterations, replacements, additions, changes, and/or improvements ("Optional	
Improvements") to the Premises as Lessee may find necessary or convenient for its purposes.	
Unless used singularly, references in this Lease to "Improvements" shall mean the Required	
Improvements and Optional Improvements. The value of the Pre	emises shall not be diminished
as a result of any Improvements performed by Lessee.	

- 10.2 <u>Construction Requirements</u>. All Optional Improvements made to the Premises that are structural improvements shall be made under the supervision of a competent architect or licensed structural engineer and made in conformity with plans and specifications approved in writing by County prior to the commencement of the work, if applicable. Lessee shall provide a minimum of three (3) sets of working drawings or plans showing the proposed Optional Improvements, for County's approval, prior to commencing work. All work with respect to any Optional Improvements must be performed in a good and workmanlike manner, commenced within ninety (90) days following County's approval, and be diligently completed to ensure that the Premises and Improvements shall at all times be a complete unit except during the period of work. Upon completion of the work, Lessee shall record a Notice of Completion in the office of the San Diego County Recorder, as required or permitted by law, and Lessee shall deliver to County, within ten (10) days after completion of the work, a copy of the Notice of Occupancy (if any) and the building permit for the work (if any). Lessee shall construct all Optional Improvements in accordance with all applicable laws and regulations. Lessee shall perform the work for any Optional Improvements in a manner that does not obstruct access to any Countyowned property adjoining the Premises.
- 10.3 <u>Construction Plans</u>. Within sixty (60) days following completion of any Optional Improvements on the Premises, Lessee shall furnish County with one (1) complete set of reproducible plans and two (2) sets of prints of "As-Built" plans and a magnetic tape, disk or other storage device containing the "As-Built" plans in a form usable by County, to County's satisfaction, on County's computer aided mapping and design ("CAD") equipment. CAD files are also to be converted to Acrobat Reader (*.pdf format), which shall be included on the disk, CD ROM or external storage device. Lessee shall furnish County with the final construction costs for the construction of the Optional Improvements.
- 10.4 <u>County's Costs</u>. Upon receipt of an invoice, Lessee shall reimburse County for all reasonable costs and expenses (including, without limitation, any architect and/or engineering fees) incurred by County in approving or disapproving Lessee's plans for Optional Improvements.
- 10.5 Performance Bond for Optional Improvements. Prior to the commencement of construction of any Optional Improvements, County, at County's sole discretion, may require Lessee or the Contractor (defined in Section 3.(b) of EXHIBIT "E" WORK LETTER AGREEMENT) for the Optional Improvements to obtain payment and performance bonds ("Optional Improvements Bonds") covering the faithful performance of the contract for the construction of the Optional Improvements and the payment of all obligations arising under the contract for the work comprising the Optional Improvements. The Optional Improvements Bonds shall be on forms approved by County and shall be issued by a surety satisfactory to County. The surety shall have a current A.M. Best rating of A.5, or better, and shall be currently

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licensed to transact its insurance business in the State of California. The Optional Improvements Bonds shall (i) name County as a primary co-obligee, (ii) name the Contractor for the Optional Improvements as principal, and (iii) assure full and satisfactory completion of the Optional Improvements. The Optional Improvements Bonds shall also guarantee that (i) all materials and workmanship supplied and/or installed as part of the Optional Improvements shall be free from original or developed defects, and (ii) any original or developed defects or failures which appear in the Optional Improvements within one (1) year after installation shall be repaired and/or replaced with all due diligence, at no cost to Lessee or County. The Optional Improvements Bonds shall be maintained in full force and effect by Lessee during the construction and installation of the Optional Improvements and for a period of one (1) year after completion of the Optional Improvements. Lessee shall ensure that the surety company familiarizes itself with all of the terms and conditions of this Lease and shall require the surety company to waive (i) notification of any modifications or alterations of the Optional Improvements, and (ii) its rights under the provisions of State of California Civil Code Section 2819. The cost of the Optional Improvements Bonds shall be paid by Lessee.

- 10.6 <u>Personal Property</u>. Subject to the provisions of Section 10.7 of this Lease, all of Lessee's trade fixtures, furniture, furnishings, signs and other personal property (collectively, "Personal Property") not permanently affixed to the Premises or Improvements shall remain the property of Lessee. Lessee shall, at its sole expense, immediately repair any damage caused to the Premises or Improvements by reason of the removal of any Personal Property.
- 10.7 <u>Fixtures and Improvements</u>. All fixtures, excepting Lessee's trade fixtures, permanently attached to the Premises or Improvements ("Fixtures") shall become the property of County upon expiration or earlier termination of this Lease. <u>County may require Lessee to remove any Fixtures at Lessee's sole expense upon the expiration or earlier termination of this Lease.</u> Any damage to the Premises or Improvements caused by removing Fixtures shall be repaired by Lessee in a good and workmanlike manner.

ARTICLE 11 TAXES, ASSESSMENTS AND FEES

11.1 Responsibility for Payment of Taxes and Assessments. County shall not pay any taxes or assessments accruing against Lessee on the Premises or any interest of Lessee in the Premises before, during or after the Term. All tax payments and assessments shall be the sole responsibility of Lessee. Lessee shall be solely responsible for payment of any taxes or assessments levied upon any Improvements, Fixtures or Personal Property located on the Premises, to the extent that the taxes or assessments result from the business or other activities of Lessee upon, or in connection with, the Premises.

- 11.2 <u>Definition of "Taxes"</u>. As used in this Lease, the term "taxes" means all taxes, governmental bonds, special assessments, Mello-Roos assessments, charges, rent income or transfer taxes, license and transaction fees, including, but not limited to, (i) any state, local, federal, personal or corporate income tax, or any real property or personal property tax, (ii) any estate inheritance taxes, (iii) any franchise, succession or transfer taxes, (iv) interest on taxes or penalties resulting from Lessee's failure to pay taxes, (v) any increases in taxes attributable to the sale of Lessee's leasehold interest in the Premises, or (vi) any taxes which are essentially payments to a governmental agency for the right to make improvements to the Premises.
- 11.3 <u>Creation of Possessory Interest.</u> Pursuant to the provisions of State of California Revenue and Taxation Code Section 107.6, Lessee is advised that the terms of this Lease may result in the creation of a possessory interest. If a possessory interest is vested in Lessee, Lessee may be subjected to the payment of real property taxes levied on the possessory interest. Lessee shall be solely responsible for the payment of any real property taxes. Lessee shall pay all taxes when due, and shall not allow any taxes, assessments or fees to become a lien against the Premises or any Improvements on the Premises. Lessee shall not be prevented or prohibited from contesting the validity of any tax, assessment or fee in a manner authorized by law. <u>County acknowledges that Lessee will apply for and may receive a welfare tax exemption for all or a portion of the Improvements.</u>

ARTICLE 12 REPAIRS; MAINTENANCE

- 12.1 Acceptance of Premises. Lessee acknowledges that Lessee has made a thorough inspection of the Premises prior to the Commencement Date of this Lease, and accepts the condition of the Premises as of the Commencement Date. Lessee acknowledges that County has made no oral or written representations or warranties to Lessee regarding the condition of the Premises, and that Lessee is relying solely on its inspection of the Premises with respect to the condition of the Premises. The Premises is being leased in an "as is" condition, with no warranty, express or implied by County as to the condition of the soil, water, geology, or the presence of known or unknown faults, or other site conditions. It shall be the sole responsibility of the Lessee, at Lessee's expense, to investigate and determine the condition and the suitability of the Premises for the Improvements to be constructed by Lessee. If the soil, water, geology, or the presence of known or unknown faults, or other site conditions is not in all respects entirely suitable for the Improvements it is the sole responsibility and obligation of Lessee to take the necessary action to place the Premises in a condition entirely suitable for the construction of the Improvements.
- 12.2 <u>Lessee's Repair and Maintenance Obligations</u>. Lessee, at its sole expense, shall at all times during the Term of this Lease repair, maintain in good and tenantable condition and

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replace, as necessary, the Premises, the Improvements, all Fixtures and other equipment installed in the Premises, including all items of repair, maintenance, alteration, improvement or reconstruction that may be required at any time or from time to time by a governmental agency having jurisdiction over the Premises. Lessee's obligations under this Lease shall apply regardless of whether the repairs, restorations and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or noncapital, or the fault or not the fault of Lessee, its agents, employees, invitees, visitors, sublessees or contractors. All replacements made by Lessee shall be made in accordance with this Lease and shall be of like size, kind and quality to the items replaced. Lessee shall provide for trash removal, at its sole expense, and shall maintain all trash receptacles and trash areas in a clean, orderly and first-class condition.

- 12.3 <u>Lessee's Failure to Maintain</u>. If Lessee refuses or neglects to repair, replace, or maintain the Premises and Improvements in a manner reasonably satisfactory to County, County may, upon giving Lessee written notice, make the repairs or perform the maintenance on behalf of and for the account of Lessee. If County makes or causes any repairs to be made or performed, as provided for in this Lease, Lessee shall pay the cost of the repairs or maintenance to County, including administrative costs, as Additional Rent, promptly upon receipt of an invoice for the work.
- 12.4 County Not Obligated to Repair or Maintain; Lessee's Waiver of State of California Civil Code Section 1942. To the extent that any remedies specified in this Lease conflict or are inconsistent with any provisions of State of California Civil Code Section 1942 ("CC Section1942"), or any successor statute to CC Section 1942, the provisions of this Lease shall control. Lessee specifically waives any right it may have pursuant to CC Section 1942 to effect maintenance or repairs to the Premises and to abate and resulting costs from Contract Rent or Additional Rent due to the County under this Lease.

ARTICLE 13 EXCULPATION, INDEMNIFICATION AND INSURANCE

- 13.1 <u>Definition of "Lessee Parties" and "County Parties"</u>. For purposes of this Lease, the term "Lessee Parties" refers singularly and collectively to Lessee and Lessee's officers, members, partners, agents, employees, and independent contractors as well as to all persons and entities claiming through any of these persons or entities. The term "County Parties" refers singularly and collectively to County and its elected officials, officers, directors, affiliated entities, personal representatives, assigns, licensees, invitees, agents, servants, employees, and independent contractors of these persons or entities.
- 13.2 <u>Exculpation</u>. The following exculpation provisions ("Exculpation Provisions") shall apply:

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- 13.2.1 <u>Exculpation.</u> To the fullest extent permitted by law, Lessee, on its behalf and on behalf of all Lessee Parties, waives all claims (in law, equity, or otherwise) against County Parties arising out of, knowingly and voluntarily assumes the risk of, and agrees that County Parties shall not be liable to Lessee Parties for any of the following:
 - (a) Injury to or death of any person; or
- (b) Loss of, injury or damage to, or destruction of any tangible or intangible property, including the resulting loss of use, economic losses, and consequential or resulting damage of any kind from any cause.

Provided, however, that the County Parties shall not be exculpated from liabilities arising out of the gross negligence or willful misconduct of not be liable under this section regardless of whether the liability results from any active or passive act, error, omission, or negligence of any of the County Parties; or is based on claims in which liability without fault or strict liability is imposed or sought to be imposed on any of the County Parties.

- 13.2.2 <u>Survival of Exculpation Provisions</u>. The provisions of this Section 13.2 shall survive the expiration or earlier termination of this Lease until all claims within the scope of the Exculpation Provisions are fully, finally, and absolutely barred by the applicable statutes of limitations.
- 13.2.3 <u>Lessee's Acknowledgment of Fairness</u>. Lessee acknowledges that the Exculpation Provisions of this Lease were negotiated with County, that the consideration for the Exculpation Provisions is fair and adequate, and that Lessee had a fair opportunity to negotiate, accept, reject, modify, or alter the Exculpation Provisions of this Lease.
- 13.2.4 <u>No Exculpation for Non-delegable Duties</u>. The Exculpation Provisions of this Lease may not be interpreted or construed as an attempt by County to be relieved of liability arising out of a non-delegable duty on the part of County.
- 13.2.5 <u>Waiver of Civil Code Section 1542</u>. With respect to the Exculpation Provisions of this Lease, Lessee waives the benefits of State of California Civil Code Section 1542, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

- 13.3 <u>Indemnification</u>. The following indemnification provisions ("Indemnification Provisions") shall apply:
- 13.3.1 <u>Lessee's Indemnification of County Parties</u>. To the fullest extent permitted by law, Lessee shall, at Lessee's sole expense and with counsel reasonably acceptable to County, indemnify, protect, defend, and hold harmless ("Lessee's Indemnification") County Parties from and against all Claims (defined in Section 13.3.2), from any cause, arising out of or relating (directly or indirectly) to this Lease, the tenancy created under this Lease, or the Premises and Improvements, including, without limitation:
- (a) The use or occupancy, or manner of use or occupancy, of the Premises and Improvements, by Lessee Parties, or of any invitee, guests, sublessee, or licenses, or any other person occupying or using the Premises and Improvements;
- (b) Any act, error, omission, or negligence of Lessee Parties or of any invitee, guest, sublessee or licensee of Lessee Parties in, on, or about the Premises and Improvements;
 - (c) Lessee's conducting of its business;
- (d) Any alterations, activities, work, or things done, omitted, permitted, allowed, or suffered by Lessee Parties in, at, or about the Premises and Improvements, including construction of Improvements, and also including the violation of or failure to comply with any applicable laws, standards, rules, regulations, orders, decrees, or judgments in existence on the Commencement Date or enacted, promulgated, or issued after the Commencement Date; and
- (e) Any breach or default in performance of any obligation on Lessee's part to be performed under this Lease, whether before or during the Term or after the expiration or earlier termination of the Term.
- 13.3.2 <u>Definition of Claims</u>. For purposes of this Lease, "Claims" means any and all claims, losses, costs, damage, expenses, liabilities, liens, actions, causes of action (whether in tort or contract, law or equity, or otherwise), charges, assessments, fines, and penalties of any kind (including consultant and expert expenses, court costs, and attorneys' fees actually incurred).
- 13.3.3 <u>Type of Injury or Loss</u>. Lessee's Indemnification extends to and includes Claims for:
 - (a) Injury to any persons (including death at any time resulting from

that injury);

- (b) Loss of, injury or damage to, or destruction of property (including all loss of use resulting from that loss, injury, damage, or destruction); and
- (c) All economic losses and consequential or resulting damage of any kind.
- 13.3.4 Active or Passive Negligence; Strict Liability. Except as provided in this section, Lessee's Indemnification shall apply, without limitation, to Claims caused by the concurrent negligent act or omission, whether active or passive, of County Parties, and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on County Parties. Lessee's Indemnification shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a Claim against one County Party—was caused solely—by the negligence or willful misconduct of that a County Party—In that event, however, Lessee's Indemnification obligations shall remain valid for all other County Parties.
- 13.3.5 <u>Indemnification Independent of Insurance Obligations</u>. The Indemnification Provisions provided in this Lease may not be construed or interpreted as in any way restricting, limiting, or modifying Lessee's insurance or other obligations of this Lease and is independent of Lessee's insurance and other obligations. Lessee's compliance with the insurance requirements and other obligations of this Lease shall not in any way restrict, limit, or modify Lessee's Indemnification obligations under this Lease.
- 13.3.6 <u>Survival of Indemnification</u>. The Indemnification Provisions of this Section 13.3 shall survive the expiration or earlier termination of this Lease until all Claims against County Parties involving any of the indemnified matters are fully, finally, and absolutely barred by the applicable statutes of limitations.
- 13.3.7 <u>Duty To Defend</u>. Lessee's duty to defend County Parties is separate and independent of Lessee's duty to indemnify County Parties. The duty to defend includes claims for which County Parties may be liable without fault or strictly liable. The duty to defend applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of Lessee Parties have been determined. The duty to defend applies immediately, regardless of whether County Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of County and Lessee that County Parties be entitled to obtain summary adjudication or summary judgment regarding Lessee's duty to defend County Parties at any stage of any claim or suit within the scope of the Indemnification Provisions.
 - 13.4 <u>Insurance</u>. Without limiting Lessee's Indemnification obligations under this

Lease, Lessee shall at its sole expense provide and maintain during the Term and for any other period required in this Lease, insurance in the amounts and form specified in this section and in EXHIBIT "B" INSURANCE REQUIREMENTS - PRE-CONSTRUCTION PERIOD and EXHIBIT "D" INSURANCE REQUIREMENTS - OPERATIONS PERIOD of this Lease.

13.4.1 <u>Compliance with Insurer Requirements</u>. Lessee shall, at Lessee's sole expense, comply with all requirements, guidelines, rules, orders, and similar mandates and directives pertaining to the use of the Premises, whether imposed by Lessee's insurers, County's insurers, or both. If Lessee's business operations, conduct, or use of the Premises cause any increase in the premium for any insurance policies carried by County, Lessee shall, within ten (10) business days after receipt of written notice from County, reimburse County for the increase. Lessee shall, at Lessee's sole expense, comply with all rules, orders, regulations, or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) or any successor and of any similar body.

13.4.2 <u>Survival of Insurance Requirements</u> . Lessee shall, at Lessee's sole
expense, maintain in full force and effect the insurance required under this Lease and shall name
County Parties and any lender specified by County as additional insureds, for a period of no less
than() [e.g., two (2)] years after expiration or earlier termination of this
Lease.

13.4.3 <u>Insurance Independent of Exculpation and Indemnification</u>. The insurance requirements set forth in this Lease are independent of Lessee's exculpation, indemnification, and other obligations under this Lease and shall not be construed or interpreted in any way to restrict, limit, or modify Lessee's exculpation, indemnification, and other obligations or to limit Lessee's liability under this Lease.

ARTICLE 14 HAZARDOUS MATERIALS

14.1 <u>Hazardous Materials Laws</u>. As used in this Lease, the term "Hazardous Materials Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including "common law") relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises, soil and ground water conditions or other similar substances or conditions, including without limitation the Resource Conservation and Recovery Act of 1976 (42 U.S.C., Section 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C., Section 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C., Section 1801 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C.,

Section 6901 et seq.), the California Hazardous Waste Control Act and the Carpenter-Presley-Tanner Hazardous Substance Act, State of California Health and Safety Code Section 25100, et seq., and Section 25300, et seq., the Safe Drinking Water and Toxic Enforcement Act (Cal. Health & Safety Code Section 25249.5, et seq), the Porter-Cologne Water Quality Control Act (Cal. Water Code Section 13000, et seq.), and the California Environmental Quality Act of 1970, and any amendments to and regulations implementing, the foregoing.

- 14.2 <u>Hazardous Materials</u>. As used in this Lease the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that:
- a. Is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; or
- b. Is controlled, referred to, designated in or governed by any Hazardous Materials Laws; or
- c. Gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws: or
- d. Is any other material or substance giving rise to any liability, responsibility or duty upon the County or Lessee with respect to any third person under any Hazardous Materials Law.

"Hazardous Materials" do not include any substances or materials used in the construction, development, maintenance or operation of the Improvements, so long as the same are used in accordance with all Hazardous Materials Laws.

- 14.3 <u>Lessee's Representations and Warranties</u>. Lessee represents and warrants that, during the Term of this Lease, or for any longer period specified in this Lease, Lessee shall comply with the following provisions unless otherwise specifically approved in writing by County's Lease Administrator:
- a. Lessee shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the Premises or the Improvements by Lessee, its agents, employees, sublessees, assigns, contractors or invitees, except as required by Lessee's Permitted Uses of the Premises, as described in Section 6.1 Permitted Uses of this Lease.
- b. Any handling, transportation, storage, treatment or usage by Lessee of Hazardous Materials that occurs on the Premises or the Improvements following the Commencement Date shall be in compliance with all applicable Hazardous Materials Laws.

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- c. Any leaks, spills, release, discharge, emission or disposal of Hazardous Materials which occur on the Premises or the Improvements following the Commencement Date shall be promptly and thoroughly cleaned and removed from the Premises or the Improvements by Lessee at its sole expense, and any discharge shall be promptly reported in writing to County, and to any other appropriate governmental regulatory authorities.
- d. No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by Lessee in the Premises or the Improvements.
- e. No underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells shall be located by Lessee on the Premises or the Improvements without County's prior written consent.
- f. Lessee shall conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from, or affecting the Premises or the Improvements in accordance with all applicable Hazardous Materials Laws and to the satisfaction of County.
- g. Activities proposed by the Lessee that involve disturbing asbestos materials on site shall only be conducted in accordance with all federal, state and local asbestos rules and regulations including, but not limited to, the California Occupational Safety and Health Administration ("Cal/OSHA"), Environmental Protection Agency ("EPA") and Air Pollution Control District [APCD], with prior written consent of the County, as follows:
- (1) Prior to conducting asbestos related activities, Lessee shall notify County of the proposed work at least one (1) month in advance. The notification shall include the location of work, type of asbestos containing material ("ACM") to be removed and a work plan indicating the work practices and methods of control to be used during the abatement activity to control asbestos fiber release. The County Occupational Health Program shall review the work plan and may modify the plans as necessary.
- (2) Any asbestos related activities shall be performed by a contractor that is registered with Cal/OSHA and certified by the California Contractors State Licensing Board to perform asbestos work. Any asbestos related activities shall be overseen by a California Certified Asbestos Consultant ("CAC"), or a Certified Site Surveillance Technician under the direction of a CAC.
- (3) Replacement products used in tenant improvements or other construction activities shall not contain asbestos. Any replacement products used by Lessee shall be verified as non-asbestos products by using Material Safety Data Sheets [MSDS] and/or having the architect or project engineer verify that ACMs were not used.

- h. Lessee shall promptly supply County with copies of all notices, reports, correspondence, and submissions made by Lessee to the EPA, the United Occupational Safety and Health Administration, and any other local, state or federal authority that requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials Laws.
- i. Lessee shall promptly notify County of any liens threatened or attached against the Premises or the Improvements pursuant to any Hazardous Materials Law. If a lien is filed against the Premises, then within twenty (20) days following the filing or before any governmental authority commences proceedings to sell the Premises or the Improvements pursuant to the lien, whichever occurs first, Lessee shall either: (i) pay the claim and remove the lien from the Premises or the Improvements, or (ii) furnish either (1) a bond or cash deposit reasonably satisfactory to County in an amount not less than the claim from which the lien arises, or (2) other security satisfactory to County in an amount not less than that which is sufficient to discharge the claim from which the lien arises. Upon the expiration or earlier termination of this Lease, Lessee shall surrender the Premises and Improvements (subject to Section 3.4.4) to County free of any and all Hazardous Materials and in compliance with all Hazardous Materials Laws affecting the Premises and Improvements.
- 14.4 Indemnification by Lessee. Without limiting Lessee's indemnification obligations to County under Section 13.3 of this Lease, Lessee (and, if applicable, each of its general partners) and its successors, assigns, and guarantors, if any, jointly and severally shall protect, indemnify, defend (with counsel selected by County) reimburse and hold County and its elected officials, officers, employees and agents harmless from any Claims, judgments, damages, penalties, fines, costs or expenses (known or unknown, contingent or otherwise), liabilities (including sums paid in settlement of Claims), personal injury (including wrongful death), property damage (real or personal) or loss, including any attorneys' fees, consultant fees, and expert fees (consultants and experts to be selected by County) which arise during or after the Term from or in connection with the presence or suspected presence of Hazardous Materials, including the soil, ground water or soil vapor on or under the Premises or the Improvements. The indemnification provided by this section shall cover costs incurred in connection with investigation of site conditions or any cleanup, remedial, removal or restoration work required by any Hazardous Materials Laws because of the presence of Hazardous Materials in the soil, ground water or soil vapor on the Premises, and the release or discharge of Hazardous Materials by Lessee during the course of Lessee's alteration or improvement of the Premises.
- 14.5 <u>Remedies Cumulative; Survival</u>. The provisions of this article shall be in addition to any and all common law obligations and liabilities Lessee may have to County, and any remedies and the environmental indemnities provided for in this article shall survive the expiration or earlier termination of this Lease and/or any transfer of all or any portion of the

Premises, or of any interest in this Lease, and shall be governed by the laws of the State of California.

14.6 <u>Inspection</u>. County and County's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by County, may (but without the obligation or duty to do so), at any time and from time to time, inspect the Premises or the Improvements to determine whether Lessee is complying with Lessee's obligations set forth in this article, and to perform environmental inspections and samplings, at reasonable hours (except in the event of an emergency). If Lessee is not in compliance with Lessee's obligations set forth in this article, County shall have the right, in addition to County's other remedies available at law and in equity, to enter the Premises or the Improvements immediately and take any action that County in its sole judgment deems appropriate to remediate any actual or threatened contamination caused by Lessee's failure to comply. County will use reasonable efforts to minimize interference with Lessee's use of Premises or the Improvements but shall not be liable for any interference caused by County's entry and remediation efforts. Upon completion of any sampling or testing County will (which will be conducted at Lessee's expense if County's actions are a result of Lessee's default under this Lease) restore the affected area of the Premises or Improvements from any damage caused by County's sampling and testing.

ARTICLE 15 ASSIGNMENT, SUBLETTING AND ENCUMBRANCES

- Control by Specified Individuals or Entities. County and Lessee agree that the personal qualifications of the parties controlling the entity named as Lessee in the response to a request for proposals attached as EXHIBIT "F" LESSEE'S RESPONSE TO REQUEST FOR PROPOSALS is part of the consideration for the granting of this Lease. The entity named in this Lease as the The administrative general partner of the original Lessee shall remain owned and controlled directly or indirectly by --Chelsea Investment Corporation, the Schmid Family Trust or James Schmid, at least to the extent of fifty one percent (51.0%) of the issued stock, partnership interests, membership interests or other ownership interests (collectively "Ownership Interests") of the entity named in this Lease as the original Lessee. Prior to the completion of the Required Improvements to be constructed on the Premises, sale or transfer of stock or divestment of any interest in the entity named as the original Lessee by the above named persons in excess of fifty percent (50.0%), whether in one or more related or unrelated transactionschange of control of the administrative general partner of the Lessee, shall be considered an Assignment and shall be treated in accordance with the provisions of Section 15.2 of this Lease.
 - 15.2 <u>County's Consent to Assignment Required</u>. Lessee shall not voluntarily or

Commented [NO2]: The Lessee will be a tax credit limited partnership that includes and entity affiliated with the applicant as administrative general partner, a nonprofit managing general partner, and a tax credit investor that holds a 99.99% limited partnership interest.

involuntarily assign, sublease, mortgage, encumber, or otherwise transfer (collectively, a "Transfer") all or any portion of the Premises or its interest in this Lease without the prior written consent of County's Lease Administrator. County may withhold its consent until Lessee has complied with the provisions of this Lease. Any attempted Transfer without County's consent shall be void and shall constitute a material breach of this Lease. As used in this Lease, the term "Transfer" shall include: (i) an arrangement (including without limitation management agreements, concessions, and licenses) that allows the use and occupancy of all or part of the Premises by anyone other than Lessee, and (ii) the transfer of any stock or interest in Lessee as a corporation, partnership or other business entity which, in the aggregate, exceeds twenty-five percent (25.0%) of the total ownership interest in Lessee. County's consent shall not be required for: (i) a Transfer to an Affiliate (defined in Section 15.6), (ii) the assignment of this Lease to any Beneficiary (defined in Section 15.4) pursuant to foreclosure or similar proceedings, or pursuant to an assignment or other transfer of this Lease to a Beneficiary in lieu of foreclosure or similar proceedings, or the subsequent assignment of this Lease by a Beneficiary, (iii) a transfer of ownership interests in Lessee that does not result in a change in control, or (iv) for a sublease of a portion of the Improvements for residential use, (v) any transfer of the limited partnership interests in Lessee, either directly or indirectly, in whole or in part, (vi) the removal of any general partner of Lessee by a limited partner of Lessee for cause pursuant to Lessee's agreement of limited partnership. Notwithstanding anything to the contrary set forth in this Lease, any Beneficiary shall be liable to perform the obligations in this Lease imposed on Lessee only for and during the period it is in possession or ownership of the leasehold estate created by this Lease.

15.3 County's Election to Consent to a Transfer. Lessee's request for consent to any Transfer for which County's consent is required shall be accompanied by the Transfer Fee (defined in Section 15.5.1) and a written statement setting forth the details of the proposed Transfer, including: (i) the name, address, business, business history and financial condition of the proposed assignee or sublessee (collectively, "Transferee") sufficient to enable County to determine the financial responsibility and character of the Transferee, (ii) a copy of the proposed assignment or sublease and the financial details of the proposed Transfer (including the duration, the rent and any security deposit payable under an assignment or sublease), (iii) the Transferee's proposed use of the Premises, and (iv) any other related information which County may reasonably require. County shall have the right to: (i) withhold consent to the Transfer, if reasonable; (ii) grant consent; or (iii) grant consent provided that County is paid, as Additional Rent under this Lease, all sums or other consideration to be paid to Lessee under the terms of the Transfer in excess of the total Contract Rent due under this Lease.

15.3.1 <u>Effectiveness of Assignment or Sublease</u>. County's consent to an assignment or sublease which consent is required pursuant to Section 15.2 shall not be effective until: (i) a fully executed copy of the instrument accomplishing a Transfer ("Transfer Instrument") has been delivered to County, including, without limitation, a copy of any trust

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deed encumbering Lessee's leasehold and the note secured by the trust deed, (ii) in the case of a sublease that is not a residential lease, County has received from Lessee an original of the executed sublease that contains the requirements of this Lease concerning subleases and, when County is requested by Lessee to execute a Non-Disturbance and Attornment Agreement ("NDA"), a NDA in the form attached as EXHIBIT "G" FORM OF NON-DISTURBANCE AND ATTORNMENT AGREEMENT FOR SUBLEASES executed by Lessee and its sublessee, and (iii) in the case of an assignment, County has received a written instrument in which the assignee has assumed and agreed to perform all of Lessee's obligations under this Lease.

Any rights acquired by a Transferee pursuant to any Transfer Instrument shall be subject to each and every covenant, condition and restriction set forth in this Lease and to all of the rights and interest of County under this Lease except as may be otherwise specifically provided in this Lease. If a conflict between the provisions of this Lease and the provisions of any Transfer Instrument occurs, the provisions of this Lease shall control.

- 15.3.2 <u>Denial of Consent</u>. If County denies its consent to the proposed Transfer, Lessee may within ten (10) business days of notice of denial request in writing a statement of the basis on which County denied its consent. Lessee shall have the burden of proving that County's consent to the proposed Transfer was withheld unreasonably. Notwithstanding any of the foregoing provisions of this section to the contrary, the following shall be deemed to be reasonable grounds for County to withhold consent to a Transfer for purposes of compliance with State of California Civil Code Section 1951.4:
- a. Lessee or any of its successors, assigns or sublessees are in default as to any term, covenant or condition of this Lease, whether or not a notice of default has been given to Lessee by County.
- b. The prospective assignee or sublessee has not agreed in writing to keep, perform and be bound by all of the terms, covenants and conditions of this Lease.
- c. County reasonably objects to the business or financial condition of the prospective assignee or sublessee and/or to the financial details of the proposed Transfer.
- d. All of the terms, covenants and conditions of the assignment or sublease, including any consideration for the proposed Transfer, have not been disclosed in writing to County.
- e. Any construction of Improvements required of Lessee as a condition of this Lease has not been completed to the satisfaction of County.
 - f. Nonpayment of the Transfer Fee (defined in Section 15.5.1).

If Lessee believes that County has unreasonably withheld its consent to a Transfer, Lessee's sole remedy will be to seek a declaratory judgment that County has unreasonably withheld its consent or an order of specific performance or mandatory injunction requiring County's consent. Lessee shall not have any right to recover damages or to terminate this Lease as a result of County denial of any Transfer.

- 15.3.3 Non-Disturbance and Attornment Agreement for Subleases. Subject to the provisions of Section 15.3.1 of this Lease, County agrees for the benefit of any non-residential sublessee for which an NDA has been executed upon request and subject to payment of the document processing fee in accordance with Section 15.5 of this Lease, that upon the termination of this Lease pursuant to the provisions of ARTICLE 16 of this Lease or otherwise (except upon expiration of the Term), County shall recognize the sublessee under the sublease as the direct lessee of County under all terms and conditions contained in the sublease and for a term equal to the then unexpired term of the sublease; provided, however, that at the time of the termination of this Lease: (i) not more than three (3) month's rent shall have been prepaid under the sublease, (ii) there are no defaults existing under the sublessee's sublease which at the time would permit Lessee, as the lessor under the sublease, to terminate the sublease or to exercise any dispossession remedy provided for in the sublease, and (iii) the sublessee shall deliver to County a NDA confirming the agreement of the sublessee to attorn to County and to recognize County as the sublessee's lessor under the sublease. If requested by Lessee, County agrees to execute an NDA, in substantially the same form of EXHIBIT "G" FORM OF NONDISTURANCE AND ATTORNMENT AGREEMENT FOR SUBLEASES and upon payment of the Transfer Fee described in Section 15.5.1 of this Lease.
- 15.4 <u>Encumbering the Leasehold Estate with a Mortgage</u>. Any Transfer which consists of the grant of a deed of trust or similar encumbrance (collectively, "Mortgage") by Lessee to secure the beneficial interest of a lender ("Beneficiary") in the Premises or Lessee's interests under this Lease, shall be subject to all of the provisions of this article pertaining to the conclusion and approval of other Transfers, except for the payment of a Transfer Fee, and shall also be subject to the additional terms and conditions set forth below:
- a. No Mortgage granted by Lessee shall encumber the County's fee title to the Premises at any time.
- b. Immediately following the recordation of any Mortgage affecting the Premises or Lessee's interest in this Lease, Lessee, at Lessee's expense, shall cause to be recorded in the office of the San Diego County Recorder, a written request for delivery to County of a copy of any notice of default and of any notice of sale under the Mortgage, as provided by the statutes of the State of California. The Mortgage documents shall include a provision requiring that a copy of any notice of default or any notice of sale to be delivered to the

County. County shall have thirty (30) days in which to cure any default after the time for Lessee to cure the default has expired. Neither County's right to cure any default nor any exercise of the right to cure a default shall constitute an assumption of Lessee's liability under the Mortgage. If any default is noncurable, it shall not be grounds for foreclosure of the Mortgage if County, or lessee-in-possession of the Premises, promptly performs all other provisions of the Mortgage.

c. The Mortgage documents shall provide that any proceeds from fire or extended coverage insurance shall be used for repair or rebuilding of the leasehold Improvements and not to repay part of the outstanding mortgage.

d.—No permitted Mortgage shall cover any interest in any real property other than interests specifically subjected to mortgage by this Lease. No Mortgage permitted by this Lease shall cover more than one indebtedness.

15.4.1 <u>Curable and Noncurable Defaults Under the Lease; County's Covenant of Forbearance</u>. Where County has consented to a Mortgage encumbering Lessee's leasehold as required pursuant to this article, then County, notwithstanding anything to the contrary in this Lease, shall not exercise its remedies under this Lease for Lessee's default during the periods specified in this section as long as the Beneficiary of the Mortgage takes the following actions:

- 15.4.1.1 <u>Curable Defaults</u>. If a curable default of this Lease occurs, a Beneficiary shall have the right to begin foreclosure proceedings and to obtain possession of the Premises, as long as Beneficiary complies with the conditions set forth below:
- a. Cures Lessee's default within the same time period allotted to Lessee to cure the default, plus an additional thirty (30) days (except that only ten (10) additional days shall be permitted in the case of a monetary default by Lessee);
- b. Notifies County, within ten (10) days following receipt of County's notice of Lessee's default, of its intention to cure Lessee's default;
- c. Institutes immediate steps or legal proceedings to foreclose on or recover possession of the Premises, and proceeds to pursue the remedy or legal proceedings to cure the default to completion with due diligence and continuity; and
- d. Keeps and performs, during the period until the Premises is either: (i) sold upon foreclosure pursuant to the Mortgage, or (ii) released or reconveyed pursuant to the Mortgage (the "Foreclosure Period"), all of the covenants and conditions of this Lease, including, without limitation, payment of all Contract Rent and Additional Rent, taxes, assessments, utility charges and insurance premiums required by this Lease to be paid by Lessee and which become due during the Foreclosure Period.

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- 15.4.1.2 <u>Noncurable Defaults</u>. If a noncurable default of this Lease occurs, a Beneficiary shall have the right to begin foreclosure proceedings and to obtain possession of the Premises, so long as Beneficiary complies with the conditions set forth below:
- a. Notifies County, within ten (10) days after receipt of County's notice of Lessee's default, of its intention to pursue this remedy;
- b. Institutes immediate steps or legal proceedings to foreclose on or recover possession of the Premises, and proceeds to pursue the remedy or legal proceedings to cure the default to completion with due diligence and continuity; and
- c. Keeps and performs, during the Foreclosure Period, all of the covenants and conditions of this Lease requiring the payment of money, including, without limitation, payment of all Contract Rent and Additional Rent, taxes, assessments, utility charges and insurance premiums required by this Lease to be paid by Lessee and which become due during the Foreclosure Period.
- 15.4.1.3 <u>County's Covenant of Forbearance</u>. If Lessee fails to cure to completion any curable default within the time period allowed for the cure in this Lease, no cure by a Beneficiary of any default in the manner allowed under this Lease shall reinstate Lessee in good standing under this Lease. If, following expiration of the cure period applicable to Lessee, the Beneficiary fails or refuses to comply with any or all of the conditions of this Lease applicable to Lessee's default, including failing to expeditiously obtain title to Lessee's leasehold interest, then County shall be released from its covenant of forbearance under this Lease, and may immediately terminate this Lease.
- 15.4.2 Transfer of Leasehold Estate; County's Option to Purchase. Any Beneficiary who acquires title to the leasehold estate shall immediately provide County with written notice of the transfer. Notwithstanding any provision of this Lease to the contrary, following a transfer of the leasehold estate to a Beneficiary in any manner, County shall have the option to purchase all right, title and interest in and to the leasehold and the Premises directly from the Beneficiary.
- 15.4.2.1 <u>County's Election Not to Purchase</u>. Should County elect to not exercise its option to purchase the leasehold described in Section 15.4.2 of this Lease, then, subject to the provisions of Section 15.5.1 <u>Transfer Fee</u>, Section 15.6 <u>No Release of Lessee</u>, and Section 15.8 <u>No Merger</u> of this Lease, and so long as the Beneficiary has observed all of the conditions of Section 15.4.1 <u>Curable and Noncurable Defaults Under the Lease; County's Covenant of Forbearance</u> of this Lease, then the following breaches, if any, relating to the prior Lessee shall be deemed cured: (i) attachment, execution of or other judicial levy upon the

leasehold estate, (ii) assignment of creditors of Lessee, (iii) judicial appointment of a receiver or similar officer to take possession of the leasehold estate or the Premises or (iv) filing any petition by, for or against Lessee under any chapter of the Federal Bankruptcy Code. Any further Transfer ("Further Transfer") of the leasehold estate, however (whether by a Beneficiary or by a third-party bidder acquiring the estate at a foreclosure sale), shall be subject to the following conditions:

- a. The provisions of Section 15.2 <u>County's Consent To</u>
 <u>Assignment Required</u> and Section 15.3 <u>County's Election</u> of this Lease shall apply to the Further Transfer, and County's consent shall be required for the Further Transfer; and
- b. By its acceptance of the leasehold estate, the Transferee of the Further Transfer assumes this Lease as to the entire leasehold estate and covenants with County to be bound by this Lease.
- 15.4.3 <u>Article Controlling</u>. In the event of any conflict between the provisions of this article of this Lease and any other provision of this Lease, this article shall control.
- 15.4.4 <u>Failure to Give Notice</u>. Except as expressly set forth in this article of this Lease, County shall have no obligation to any Beneficiary or to give any notice to any Beneficiary, and County's failure to provide any Beneficiary with any notice of any default under this Lease shall not create any right or claim against County on behalf of Lessee or any Beneficiary.
- 15.5 <u>Transfer Fee; Estoppel Fee; Subordination, Attornment and Non-Disturbance Agreement Fee</u>.
- 15.5.1 <u>Transfer Fee</u>. If County is requested to consent to a Transfer under this Lease, Lessee shall reimburse County for all legal fees incurred resulting from the request, and pay County a nonrefundable fee ("Transfer Fee") to reimburse County or County's agent for costs and expenses incurred in connection with the request. The Transfer Fee shall be delivered to County concurrently with Lessee's request for consent. The Transfer Fee in effect as of the Commencement Date of this Lease is one thousand dollars (\$1,000.00).
- 15.5.2 Estoppel Fee. If County is requested to issue an estoppel certificate, Lessee shall pay County a nonrefundable fee ("Estoppel Fee") for County's costs incurred in connection with the request. The Estoppel Fee shall be delivered to County concurrently with Lessee's request for the estoppel. The Estoppel Fee in effect as of the Commencement Date of this Lease is five hundred dollars (\$500.00).

15.5.3 <u>Non-Disturbance and Attornment Fee</u>. If County is requested to execute a NDA, Lessee shall pay County a nonrefundable fee ("NDA Fee") for County's costs incurred in connection with the request. The NDA Fee shall be delivered to County concurrently with Lessee's request to execute the NDA. The NDA Fee in effect as of the Commencement Date of this Lease is seven hundred fifty dollars (\$750.00).

15.5.4 Fee Adjustments. County reserves the right to adjust the Transfer Fee, Estoppel Fee and NDA Fee from time to time during the Term of this Lease ("Fee Adjustment"). The base for computing a Fee Adjustment shall be the Consumer Price Index for All Urban Consumers (1982-84=100) for the Los Angeles-Riverside-Orange County Area CPI-U, as published by the U.S. Department of Labor, Bureau of Labor Statistics. The Fee Adjustment shall be determined by use of the following formulas:

Transfer Fee: A = \$1,000.00 x (B/C)Estoppel Fee: A = \$500.00 x (B/C)NDA Fee: A = \$750.00 x (B/C)

Where:

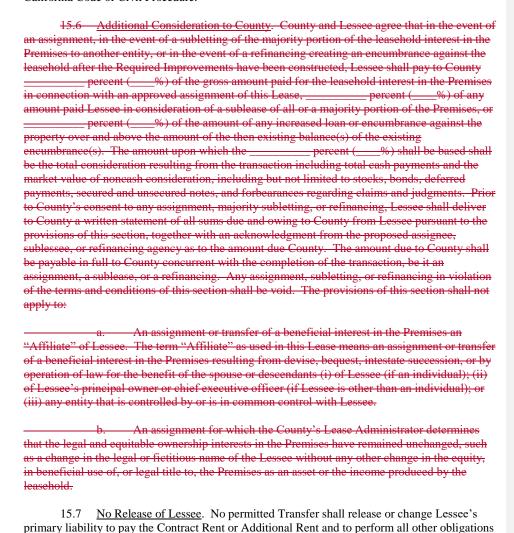
"A" equals the adjusted Transfer Fee, Estoppel Fee or NDA Fee;

"B" equals the monthly "Consumer Price Index", as described in Section 15.5.5 of this Lease, published for the month most closely preceding the date of request for consent to transfer; and

"C" equals the monthly "Consumer Price Index", as described in Section 15.5.5 of this Lease, published for the month of the Operations Period Commencement Date of this Lease.

15.5.5 Consumer Price Index for Fee Adjustments. The consumer price index which shall be used as the source for the Consumer Price Index numbers in Section 15.5.4 shall be that published by the United States Department of Labor, entitled United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for the Los Angeles-Riverside-Orange County Area, all items of the index entitled "Consumer Price Index for All Urban Consumers" for the Los Angeles-Riverside-Orange County Area (1982-84 = 100). If the index used for the Fee Adjustment is discontinued or revised during the Term, then County and Lessee shall agree upon a substitute index or computation for purposes of computing the Fee Adjustment. If County and Lessee cannot agree on a substitute index, the substitute index or computation shall be determined by arbitration pursuant to the provisions of the State of

California Code of Civil Procedure.



of Lessee under this Lease, except to the extent this Lease is terminated as described in this Lease. Lessee may not amend the assignment or sublease in a way that reduces or delays

payment of amounts that are provided in the assignment or sublease approved by County. County's acceptance of Contract Rent or Additional Rent from any other person is not a waiver of any provision of this Lease or a consent to a Transfer. County's consent to one Transfer shall not be deemed to imply County's consent to any subsequent Transfer. If Lessee's Transferee defaults under this Lease, County may proceed directly against Lessee without pursuing remedies against the Transferee. County may consent to subsequent assignments or modifications of this Lease by Lessee's Transferee, without notifying Lessee or obtaining its consent, and the action shall not relieve Lessee's liability under this Lease.

- 15.8 <u>County Issued Estoppel Certificates</u>. Within thirty (30) days after the written request of Lessee or any Beneficiary, and payment of the Estoppel Fee, County shall provide Lessee or Beneficiary with an estoppel certificate in a commercially reasonable form and content reasonably satisfactory to County and Beneficiary, which shall certify to Beneficiary upon County's knowledge: (i) as to the amount and status of all Contract Rent, Additional Rent or Security Deposit under this Lease, (ii) as to the full satisfaction and compliance by Lessee of any other conditions required under this Lease, (iii) that Lessee is not in default in the payment, performance or observance of any other condition or covenant to be performed or observed by Lessee under this Lease, (iv) that there are no offsets or counterclaims on the part of County, and (v) as to other matters related to this Lease as Lessee or Beneficiary may reasonably request from time to time. In no event shall County be required to issue more than three (3) estoppel certificates during any single calendar year.
- 15.9 No Merger. No merger shall result from a Transfer pursuant to this Lease, Lessee's surrender of this Lease, or a mutual cancellation of this Lease in any other manner except at the express election of County and the consent of the mortgagee or mortgagees under all mortgages existing under provisions of this Lease relating to the purchase or construction of Improvements. If a merger occurs, County may either terminate any or all subleases or succeed to the interest of Lessee under the sublease, except for any active subleases for which the County has executed a NDA.
- 15.10 Approval of Temporary or Limited Activities. Notwithstanding any provision of this Lease to the contrary, County's Lease Administrator may, at its sole discretion, and without charging a Transfer Fee, give written authorization for the following activities on the Premises: (I) activities of a temporary nature, not to exceed one hundred twenty (120) calendar days, and (ii) activities of a limited nature which do not exceed ten (10) hours per week. Lessee shall maintain, on an approved County form, a listing of all activities approved by the County, stating the nature, duration and other relevant matters regarding the activities, and shall make the form available to County for inspection upon request. Nothing in this Lease shall relieve Lessee from its responsibilities under this Lease, and Lessee shall be responsible for insuring that any activity approved by the County complies with all of the provisions of this Lease. Any temporary or limited activity shall be subject to immediate termination upon delivery of written notification

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ARTICLE 16 DEFAULTS BY LESSEE; COUNTY'S REMEDIES

- 16.1 <u>Events of Default</u>. The occurrence of any of the following shall constitute a default by Lessee and a breach of this Lease:
- a. Failing or refusing to pay any amount of Contract Rent or Additional Rent when due in accordance with the provisions of this Lease, and the default continues for five (5) business days after notice from County. Lessee will not be entitled to more than one (1) notice for default in payment of Construction Period Rent, Rent or Additional Rent during any twelve-month period, and if, within twelve (12) months after any default notice, any Construction Period Rent, Rent or Additional Rent is not paid when due, an event of default will have occurred without further notice; or
- b. Failing or refusing to occupy and operate the Premises in accordance with the provisions of this Lease; or
- c. Failing or refusing to perform fully and promptly any covenant or condition of this Lease, other than those specified in subparagraphs (a) and (b) above, the breach of which Lessee is capable of curing after reasonable notice from County; or
- d. Maintaining, committing or permitting on the Premises waste, a nuisance, or use of the Premises for an unlawful purpose, or assigning or subletting this Lease in a manner contrary to the provisions of this Lease; or
- e. The occurrence of any of the events set forth in Section 19.1 <u>Right of Termination</u> of this Lease; or
- f. Failure to complete the Required Improvements by the expiration of the Construction Period.
- 16.2 <u>Notices</u>. Following the occurrence of any of the defaults specified in this Lease, County shall give Lessee a written notice specifying the nature of the default and the provisions of this Lease breached and demanding that Lessee either fully cure each default within the time period specified in this Lease or quit the Premises and surrender the Premises to County:
- a. For nonpayment of Construction Period Rent, Rent or Additional Rent, five (5) business days;

- b. For a curable default, a reasonable period not to exceed ten (10) business days. If the default cannot be cured within ten (10) business days, Lessee shall be deemed to have cured the default if Lessee notifies County in writing, commences cure of the default within ten (10) business days, and thereafter diligently and in good faith continues to cure the default to completion; and
- c. For a noncurable default, County shall give Lessee a written notice specifying the nature of the default and the provisions of this Lease breached and County shall have the right to demand in the notice that Lessee, and any sublessee, quit the Premises in accordance with applicable Laws.

To the extent permitted by applicable State of California law, the time periods provided in this section for cure of Lessee's defaults under this Lease or for surrender of the Premises shall be in lieu of, and not in addition to, any similar time periods described by State of California law as a condition precedent to the commencement of legal action against Lessee for possession of the Premises.

- 16.3 <u>County's Rights and Remedies</u>. If Lessee fails to cure any defaults within the time periods specified in this Lease, or fails to quit the Premises and surrender the Premises and Improvements to County as required by this Lease, County may exercise any of the following rights without further notice or demand to Lessee or any other person, except as may otherwise be required by applicable State of California law:
- a. The right of County to terminate this Lease and Lessee's right to possession of the Premises and Improvements and to reenter the Premises and Improvements, take possession of the Premises and Improvements and remove all persons from the Premises and Improvements, following which Lessee shall have no further claim on the Premises and Improvements under this Lease;
- b. The County has the remedy described in State of California Civil Code Section 1951.4 (County may continue lease in effect after Lessee's breach and abandonment and recover Construction Period Rent, Rent or Additional Rent as it becomes due, if Lessee has right to sublet or assign, subject only to reasonable limitations). The right of County without terminating this Lease and Lessee's right to possession of the Premises and Improvements, to reenter the Premises and Improvements and occupy the whole or any part of the Premises and Improvements for and on account of Lessee and to collect any unpaid Construction Period Rent, Rent, Additional Rent or other charges, which have become payable, or which may thereafter become payable pursuant to State of California Civil Code Section 1951.4., excerpted as follows:
 - "(a) The remedy described in this section is available only if the lease provides for this

remedy. In addition to any other type of provision used in a lease to provide for the remedy described in this section, a provision in the lease in substantially the following form satisfies this subdivision: The lessor has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations)."

- (b) Even though a lessee of real property has breached the lease and abandoned the property, the lease continues in effect for so long as the lessor does not terminate the lessee's right to possession, and the lessor may enforce all the lessor's rights and remedies under the lease, including the right to recover the rent as it becomes due under the lease, if any of the following conditions is satisfied:
- (1) The lease permits the lessee, or does not prohibit or otherwise restrict the right of the lessee, to sublet the property, assign the lessee's interest in the lease, or both.
- (2) The lease permits the lessee to sublet the property, assign the lessee's interest in the lease, or both, subject to express standards or conditions, provided the standards and conditions are reasonable at the time the lease is executed and the lessor does not require compliance with any standard or condition that has become unreasonable at the time the lessee seeks to sublet or assign. For purposes of this paragraph, an express standard or condition is presumed to be reasonable; this presumption is a presumption affecting the burden of proof.
- (3) The lease permits the lessee to sublet the property, assign the lessee's interest in the lease, or both, with the consent of the lessor, and the lease provides that the consent shall not be unreasonably withheld or the lease includes a standard implied by law that consent shall not be unreasonably withheld.
- (c) For the purposes of subdivision (b), the following do not constitute a termination of the lessee's right to possession:
 - (1) Acts of maintenance or preservation or efforts to relet the property.
- (2) The appointment of a receiver upon initiative of the lessor to protect the lessor's interest under the lease.
- (3) Withholding consent to a subletting or assignment, or terminating a subletting or assignment, if the withholding or termination does not violate the rights of the lessee specified in subdivision (b)."

or;

c. The right of County, even though it may have reentered the Premises and Improvements in accordance with subparagraph (b) of this section, to elect after reentering the Premises and Improvements to terminate this Lease and Lessee's right to possession of the Premises and Improvements.

If County reenters the Premises and Improvements under the provisions of subparagraph (b) of this section, County shall not be deemed to have terminated this Lease, the liability of Lessee to pay Construction Period Rent, Rent, Additional Rent or other charges accruing after the County reenters the Premises and Improvements, or Lessee's liability for damages under any of the provisions of this Lease, by any reentry or by any action, in unlawful detainer or otherwise, to obtain possession of the Premises and Improvements, unless County has notified Lessee in writing that it has elected to terminate this Lease and Lessee's right to possession. Lessee further covenants that the service by County of any notice pursuant to the unlawful detainer statutes of the State of California and the surrender of possession pursuant to the notice shall not (unless County elects to the contrary at the time of, or at any time subsequent to, the serving of the notice and the election is evidenced by a written notice to Lessee) be deemed to be a termination of this Lease. If any reentry or taking possession of the Premises and Improvements occurs, County shall have the right, but not the obligation, at Lessee's expense, to remove from the Premises and Improvements (i) all or any part of the buildings or structures placed on the Premises by Lessee or its agents, and (ii) any or all merchandise, Fixtures or Personal Property located in the Premises and to place the merchandise, Fixtures or Personal Property in storage at a public warehouse at the expense and risk of Lessee. The rights and remedies given to County in this Lease shall be additional and supplemental to all other rights or remedies which County may have under laws in force when the default occurs.

- 16.4 <u>County's Damages</u>. If County terminates this Lease and Lessee's right to possession of the Premises and Improvements pursuant to the provisions of Section 16.3 (a) or Section 16.3(c) of this Lease, County may recover from Lessee as damages any or all of the following:
- a. The worth at the time of award of any unpaid rent that had been earned at the time of termination;
- b. The worth at the time of award of the amount by which (i) the unpaid Construction Period Rent, Rent or Additional Rent that would have been earned after termination until the time of award exceeds the amount of the Construction Period Rent, Rent or Additional Rent loss Lessee proves could have been reasonably avoided;
- c. The worth at the time of award of the amount by which (i) the unpaid Construction Period Rent, Rent or Additional Rent for the balance of the Term after the time of award exceeds the amount of Construction Period Rent, Rent or Additional Rent loss that Lessee

proves could be reasonably avoided;

- d. Any other amount necessary to compensate County for all the detriment proximately caused by Lessees failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result, including, without limitation, any costs or expense incurred by County in (i) retaking possession of the Premises and Improvements, including reasonable attorneys' fees, (ii) maintaining or preserving the Premises and Improvements for reletting to a new tenant, including repairs or alterations to the Premises and Improvements to relet the Premises, (iv) leasing commissions, and (v) any other costs necessary or appropriate to relet the Premises and Improvements; and
- e. At County's election, any other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by the laws of the State of California.

As used in subparagraphs (a) and (b) of this section, the "worth at the time of award" is computed by allowing interest at the maximum rate allowed by State of California law. As used in subparagraph (c) of this section, the "worth at the time of award" is computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1.0%).

- 16.5 <u>Fixtures and Personal Property</u>. If Lessee is in default of this Lease, all of Lessee's merchandise, Fixtures and Personal Property shall remain on the Premises and, continuing during the length of the default, County shall have the right to take the exclusive possession and use of the merchandise, Fixtures and Personal Property free of rent or charge until all defaults have been cured or, at its option, County requires Lessee to remove the merchandise, Fixtures and Personal Property.
- 16.6 County's Security Interest. To secure Lessee's performance of any and all of Lessee's obligations under this Lease, Lessee grants County an express first and prior contractual lien and security interest in Lessee's merchandise, Fixtures and Personal Property located on the Premises that shall be subordinate to the liens of the senior Mortgagee, and also upon all proceeds of any insurance that may accrue to Lessee by reason of the destruction or damage of the merchandise, Fixtures and Personal Property. Lessee waives the benefit of all exemption laws in favor of this lien and security interest. This lien and security interest is given in addition to County's statutory lien and is cumulative with the statutory lien. If a Lessee default occurs, these liens may be foreclosed with or without court proceedings by public or private sale, so long as County gives Lessee at least fifteen (15) days' notice of the time and place of the sale. County shall have the right to become the purchaser if County is the high bidder at the sale. To perfect the County's security interest, Lessee shall execute and deliver to County any financing statements required by the applicable Uniform Commercial Code that County may request.

- 16.7 <u>Lessee's Waiver</u>. Notwithstanding anything to the contrary in this Lease, Lessee waives to the fullest extent permitted under law any written notice other than any notice this article specifically requires which any statute or law now or hereafter in force prescribes be given Lessee. Lessee further waives any and all rights of redemption under any existing or future law in the event its eviction from, or dispossession of, the Premises and Improvements for any reason, or in the event County reenters and takes possession of the Premises and Improvements in a lawful manner.
- 16.8 <u>Interest.</u> Any amounts, other than Construction Period Rent, Rent or Additional Rent, due from Lessee under the provisions of this Lease which are not paid when due shall bear interest at the rate of four percent (4.0%) over the discount rate charged from time to time by the Federal Reserve Bank of San Francisco, but not to exceed the maximum rate which County is permitted by law to charge.

ARTICLE 17 DEFAULTS BY COUNTY; REMEDIES

If County neglects or fails to perform or observe any of the terms, covenants, or conditions of this Lease on its part to be performed or observed within thirty (30) days after written notice of default or, when more than thirty (30) days is required because of the nature of the default, and County fails to proceed diligently to cure the default after written notice of the default, then County shall be liable to Lessee for any and all damages sustained by Lessee as a result of County's breach; provided, however, that: (i) any money judgment resulting from any default or other claim arising under this Lease shall be satisfied only out of the current rents, issues, profits and other income County receives from its operation of Premises, net of all current operating expenses, liabilities, reserves and debt service associated with the operation of the Premises (for purposes of this Article 17 only, "Net Income"), (ii) no other real, personal or mixed property of County, wherever located, shall be subject to levy on any judgment obtained against County, (iii) if the Net Income is insufficient to satisfy the judgment, Lessee will not institute any further action, suit, claim or demand, in law or in equity, against County for or on the account of the deficiency, and (ivii) the neglect or failure shall not constitute consent by County for Lessee to perform or observe the terms, covenants or conditions of this Lease at County's expense. Lessee waives, to the extent permitted under law, any right to satisfy any money judgment against County except from Net Income.

> ARTICLE 18 ABANDONMENT

Lessee shall not vacate or abandon the Premises and Improvements at any time during the term of this Lease nor permit the Premises to remain unoccupied for a period of longer than five (5) consecutive days during the term of this Lease. If Lessee abandons, vacates or surrenders the Premises, or is dispossessed by process of law, or otherwise, any Personal Property or Fixtures belonging to Lessee and left on the Premises shall, at the option of County, be deemed abandoned. County may dispose of any Personal Property and Fixtures deemed abandoned in any manner provided by State of California law and is relieved of all liability for disposing any Personal Property or Fixtures. These provisions shall not apply if the Premises are closed and business temporarily discontinued due to a Force Majeure event as defined in Section 29.10 of this Lease.

ARTICLE 19 BANKRUPTCY

- 19.1 <u>Right of Termination</u>. If any of the following events occur, County may terminate this Lease and any interest of Lessee in this Lease, effective with the commencement of the event:
- a. Proceedings are instituted where all, or substantially all, of Lessee's assets are placed in the hands of a receiver, trustee or assignee for the benefit of Lessee's creditors, and the proceedings continue for at least thirty (30) days;
- b. Any creditor of Lessee institutes a judicial or administrative process to execute on, attach or otherwise seize any of Lessee's merchandise, Fixtures or Personal Property, located on the Premises and Lessee fails to discharge, set aside, exonerate by posting a bond, or otherwise obtain a release of the property within thirty (30) days;
- c. A petition is filed for an order of relief under the Federal Bankruptcy Code or for an order or decree of insolvency or reorganization or rearrangement under any state or federal law, and is not dismissed within thirty (30) days; and
- d. Lessee makes a bulk sale of all, or substantially all, of Lessee's merchandise, Fixtures or Personal Property located on the Premises, except in accordance with the provisions of Article 10 <u>IMPROVEMENTS</u>; <u>PERSONAL PROPERTY</u>; <u>FIXTURES</u> or except in connection with a permitted assignment or subletting under this Lease, and fails to replace the merchandise, Fixtures or Personal Property with similar items of equal or greater

value and utility within three (3) days. If a court of competent jurisdiction determines that any of the foregoing events is not a default under this Lease, and a trustee is appointed to take possession (or if Lessee remains a debtor in possession), and the trustee or Lessee transfers Lessee's interest under this Lease, then County shall receive, as Additional Rent, the difference, if any, between the rent (or other consideration) paid in connection with the transfer, minus the Rent payable by Lessee under this Lease. Any assignee pursuant to the provisions of any bankruptcy law shall be deemed without further act to have assumed all of the obligations of the Lessee under this Lease arising on or after the date of the assignment. Any assignee shall upon demand execute and deliver to County an instrument confirming the assumption.

19.2 <u>Request for Information</u>. Within ten (10) days after County's request, Lessee shall provide County and any mortgagee or proposed mortgagee specified by County, any financial, legal and business information concerning any of the events described in this article.

ARTICLE 20 DAMAGE OR DESTRUCTION

- 20.1 <u>Damage and Restoration</u>. If, at any time during the Term, all or any part of the Premises and Improvements are damaged or destroyed by fire, other casualty, damage or action of the elements ("Casualty"), Lessee shall, at Lessee's sole expense, repair, restore and reconstruct the Premises and Improvements using substantially the Plans (defined in EXHIBIT "F" <u>WORK LETTER AGREEMENT</u>), or as subsequently modified pursuant to this Lease, as existed immediately prior to the Casualty and to substantially the same condition that existed immediately prior to the Casualty, subject to any changes made to comply with then applicable Laws and with any upgrades or improvements that Lessee may propose as Optional Improvements, and subject to the rights of Lessee's senior lender. This Article 20 shall not apply to cosmetic damage or alterations.
- 20.2 <u>Restoration</u>. If any repair, restoration or reconstruction of the Premises and Improvements commences pursuant to this Article 20, all work performed by Lessee shall be constructed in a good and workmanlike manner according to and in conformance with all Laws and the requirements of this Lease applicable to the construction of the Required Improvements and Optional Improvements.
- 20.3 <u>No Rental Abatement</u>. Lessee shall not be entitled to any rent abatement, allowance, reduction, or suspension of Contract Rent or Additional Rent because part or all of the Premises and Improvements become untenantable as a result of the partial or total damage or destruction of the Premises and Improvements, and Lessee's obligation to pay Contract Rent and Additional Rent under this Lease, and Lessee's obligation to keep and perform all other

covenants and agreements on its part to be kept and performed under this Lease, shall not be decreased or affected in any way by any destruction of or damage to the Premises and Improvements.

- 20.4 Application of Insurance Proceeds. If following the occurrence of the Casualty, Lessee is obligated to or otherwise elects to repair, restore and reconstruct the Premises and Improvements pursuant to this Article, then, subject to the rights of the Lessee's senior lender, all proceeds from the insurance required to be maintained by Lessee on the Premises and the Improvements shall be applied to fully repair, restore, and reconstruct the Premises and Improvements, and any excess proceeds shall be paid to Lessee and any deficit in necessary funds plus the amount of any deductible shall be paid by Lessee. If the insurance proceeds are insufficient to pay all costs to fully repair, restore and reconstruct the Premises and Improvements as determined by Lessee's senior lender, Lessee shall pay the deficiency and shall proceed to complete the repair, restoration and reconstruction of the Premises and Improvements and pay the cost of completing the repair, restoration and reconstruction. Subject to the provisions of ARTICLE 8 MECHANICS' LIENS of this Lease, any balance of the insurance proceeds remaining over and above the cost of the restoration shall be paid to Lessee.
- 20.5 <u>Exclusive Remedies</u>. Notwithstanding any destruction or damage to the Premises and Improvements, Lessee shall not be released from any of its obligations under this Lease, except to the extent and upon the conditions expressly stated in this article. County and Lessee expressly waive the provisions of State of California Civil Code Sections 1932(2) and 1933(4) with respect to any damage or destruction of the Premises and Improvements and agree that their rights shall be exclusively governed by the provisions of this article.

ARTICLE 21 EMINENT DOMAIN

- 21.1 <u>Condemnation</u>. If all of the Premises is taken under eminent domain proceedings by a party other than County, or, if less than all of the Premises is taken under an eminent domain proceeding and in the opinion of County's Lease Administrator the portion of the Premises taken substantially impairs the ability of Lessee to use the remainder of the Premises for the purposes permitted by this Lease, then either County or Lessee may terminate this Lease as of the date the condemning authority takes possession of the Premises by delivery of written notice of the election within twenty (20) days after the party has been notified of the taking or, in the absence of written notice, within twenty (20) days after the condemning authority has taken possession of the Premises.
- 21.2 <u>Continuation of Lease After Condemnation</u>. If a partial taking of the Premises occurs and this Lease is not terminated by County or Lessee, this Lease shall remain in full force and effect as to any portion of the Premises remaining, and:
- a. This Lease will no longer be in effect as of the date of possession for the portion of the Premises taken by the public entity; and
- b. Prepaid Construction Rent or Rent will be allocated in proportion to the relationship that the compensation paid to Lessee and County by the public entity for the portion of the Premises taken, including any amount paid to Lessee for damages to the remainder of the Premises, bears to the value of the Premises as a whole as of the date possession of the portion of the Premises taken by the public entity; and
- c. Construction Rent or Rent shall be reduced in proportion to the relationship that the compensation paid to Lessee and County by the public entity for the portion of the Premises taken, including any amount paid to Lessee for damages to the remainder of the Premises, bears to the value of the Premises as a whole as of the date possession of the portion of the Premises taken by the public entity; and
- d. At its sole expense, Lessee shall restore the remaining portion of the Premises as required to create a reasonably sound architectural (or economically feasible) unit substantially suitable for the purposes for which they were used immediately before the taking, using good workmanship and new first class materials, in accordance with the requirements of Article 10 IMPROVEMENTS; PERSONAL PROPERTY; FIXTURES of this Lease.
- 21.3 <u>Lessee's Award</u>. In connection with any taking of the Premises, Lessee may prosecute its own claim by separate proceedings against the condemning authority for damages

legally due to Lessee (such as the loss of Fixtures that Lessee was entitled to remove and moving expenses) only so long as Lessee's award does not diminish or otherwise adversely affect County's award resulting from the taking.

21.4 Allocation of Condemnation Award for a Total Taking of the Premises. All awards for the total taking of the Premises or proceeds from the sale of the Premises made under the threat of the exercise of the power of eminent domain shall be paid to the lender holding the most senior Leasehold Mortgage and shall be applied by such lender in accordance with the terms and conditions of its Leasehold Mortgage relating to the application of such proceeds (and no amendment of those provisions, terms and conditions shall be binding upon County for purposes of this provision). Under no circumstances shall such senior Lender be permitted to retain any amount of condemnation awards that are greater than necessary to cause restoration of the Improvements (assuming the restoration conditions of the Leasehold Mortgage are met and the Lease remains in effect) or payment of all amounts owing under such senior lender's loan documents, as applicable. Any amounts remaning after application of such funds by the senior lender the property of County, whether made as compensation for diminution of value of the leasehold estate, for the taking of the fee, or as severance damage; provided, however, that Lessee shall be entitled to any award for (i) the value of Lessee constructed Improvements minus depreciation by that percentage per year which is derived by dividing 100 years by the length of the initial Term, and (ii) loss of or damage to Lessee's Fixtures, and removable Personal Property. Notwithstanding the foregoing, any amount of condemnation compensation due to Lessee pursuant to this Lease shall go first, to County to satisfy (i) County's attorneys' fees, appraisal fees, and other costs incurred in prosecuting the claim for the award, (ii) County's lost rent and the value of the reversion as of the date of possession by the public entity taking the Premises, and (iii) any financial obligations of Lessee to County pursuant to the provisions of this Lease, and second, to any creditors of Lessee to satisfy the remaining balance of any balance due to a creditor from any County-approved loan encumbering the Premises.

ARTICLE 22 SALE OR MORTGAGE BY COUNTY

22.1 Sale or Mortgage. Landlord shall not, sell, transfer, mortgage or otherwise encumber its interest in the Property (referred to as a "Fee Mortgage") without the prior written consent of (a) Lessee, which Lessee may withhold in its sole discretion, and (b) each Leasehold Mortgagee (each in its sole discretion). Any Fee Mortgage, including amendments thereto, shall be subordinated to this Lease and the holder of such Fee Mortgage shall, in the event of a foreclosure of the Fee Mortgage, be unconditionally obligated to recognize the rights of Lessee under this Lease (and all encumbrances on the same), and the holder of any Fee Mortgage shall be obligated to execute, acknowledge and deliver to Lessee a statement confirming such subordination from time-to-timeCounty may at any time, without the consent of Lessee, sell,

purchase, exchange, transfer, assign, lease, encumber or convey County's interest in whole or in part, in this Lease, the Premises, the realty underlying the Premises and/or any portion of or interest in the realty or improvements on the Premises (collectively, "Sale").

22.2 <u>Release on Sale</u>. Upon the completion of a Sale, County shall be released from all liability toward Lessee and Lessee's successors and assigns arising from this Lease because of any act, occurrence or omission of County occurring after the Sale.

ARTICLE 23 SUBORDINATION; ATTORNMENT

- 23.1 <u>Subordination</u>. Without the necessity of any other document being executed and delivered by Lessee, this Lease is and shall be junior, subject and subordinate to any existing or future permits or approvals issued by the United States of America or any local, State of California or federal agency affecting the control or operation of the Premises. Lessee shall be bound by the terms and provisions of any permits or approvals. This Lease is and shall also be subject, subordinate and junior to all ground leases, mortgages, deeds of trust and other security instruments of any kind now covering the Premises, or any portion of the Premises.
- 23.2 <u>Attornment</u>. If any proceedings are brought for foreclosure, or if the exercise of the power of sale under any mortgage or deed of trust made by County covering the Premises occurs, Lessee shall attorn to the purchaser upon any foreclosure or sale of the Premises and recognize the purchaser as landlord under this Lease.

ARTICLE 24 COUNTY'S RIGHT OF ACCESS

- 24.1 <u>County's Right to Enter the Premises</u>. County, its agents, employees, and contractors may enter the Premises and Improvements at any time in response to an emergency, and at reasonable hours to:
 - a. Inspect the Premises and Improvements; or
 - b. Exhibit the Premises and Improvements to prospective purchasers or tenants; or
- c. Determine whether Lessee is complying with its obligations under this Lease (including its obligations with respect to compliance with Hazardous Materials Laws); or
 - d. Post notices of non-responsibility or similar notices; or

- e. Make repairs to any adjoining County space or utility services; or
- f. Exercise County's rights pursuant to Section 2.3 Easements and Reservations.
- g. Perform any work in the Premises or Improvements that may be necessary to comply with any laws, rules or regulations of any public authority; or
- h. Perform any repairs or work County may deem necessary to prevent waste or deterioration in connection with the Premises or Improvements if Lessee does not make, or cause to be made, the repairs or perform, or cause to be performed, the work promptly after receipt of written demand from County, or
- i. Perform any work in the Premises or Improvements that County may deem necessary in connection with the expansion, reduction, remodeling, protection or renovation of any County-constructed or owned facilities on or off the Premises.

All work will be done as promptly as reasonably possible and in a manner that causes as little interference to Lessee as reasonably possible. Nothing in this Lease shall imply any duty on the part of County to do any work which, under any provision of this Lease, Lessee may be required to do, nor shall County's performance of any repairs on behalf of Lessee constitute a waiver of Lessee's default in failing to do the work. If County exercises any of its rights under this Lease, Lessee shall not be entitled to any compensation, damages or abatement of Contract Rent or Additional Rent from County for any resulting injury or inconvenience.

24.2 Lessee's Waiver of Damages Claims. Lessee waives any claim of injury or inconvenience to Lessee's business, interference with Lessee's business, loss of occupancy or quiet enjoyment of the Premises and Improvements, or any other loss caused by County's entry onto the Premises. If necessary, Lessee shall provide County with keys to unlock all of the doors in the Premises (excluding Lessee's vaults, safes, and similar areas designated in writing by Lessee in advance). County will have the right to use any means that County may deem proper to open doors in the Premises and to the Premises in an emergency. County's entry onto the Premises by any means shall not be considered to be a forcible or unlawful entry into the Premises or a detainer of the Premises or an eviction, actual or constructive, of Lessee from the Premises, or any part of the Premises, nor shall County's entry onto the Premises entitle Lessee to damages or an abatement of Construction Period Rent, Rent or Additional Rent or other charges that this Lease requires Lessee to pay. Notwithstanding any provision of this Lease to the contrary, should County's entry on the Premises temporarily interfere with the use of any or all of the Premises by Lessee, County's Lease Administrator, in its sole discretion, may temporarily reduce the Construction Period Rent or Rent in proportion to the interference with Lessee's use of the Premises. Nothing in this Section shall apply to any actions in eminent

domain, which shall be governed solely by ARTICLE 21 EMINENT DOMAIN of this Lease.

ARTICLE 25 <u>QUIET ENJOYMENT</u>

Upon Lessee's paying Contract Rent or Additional Rent and performing its other obligations under this Lease, Lessee shall peacefully and quietly have, hold and enjoy the Premises throughout the Term, without hindrance, ejection or molestation by County, or any person lawfully claiming through or under County.

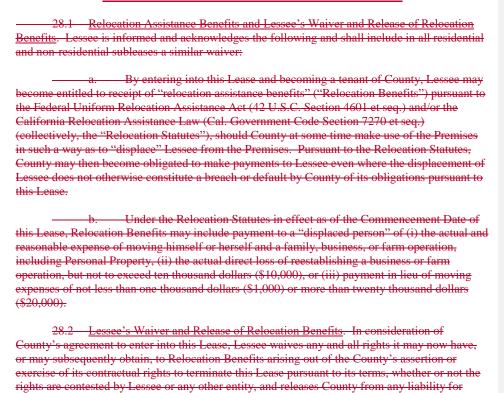
ARTICLE 26 NOTICES

- 26.1 Notices. All notices, demands, requests or other communication required or permitted to be given or served under this Lease ("Notice" or "Notices") shall be in writing, and (i) delivered in person to an officer or authorized representative of the other party, (ii) sent by United States Postal Service First Class Mail, postage prepaid, (iii) sent by courier delivery service, or (iv) delivered by facsimile, with the original document subsequently delivered by United States Postal Service First Class Mail, postage prepaid to the other party at the addresses specified in ARTICLE 1 of this Lease. Notices mailed by the United States Postal Services or sent by a courier delivery service shall be deemed to have been given, delivered and received three (3) business days after the date the Notice is postmarked by the United States Postal Service or dated by the courier delivery service. All other Notices or other communications shall be deemed given, delivered and received upon actual receipt. Either party may, by written Notice delivered pursuant to this section, at any time designate a different address to which Notices shall be sent.
- 26.2 <u>Default Notices</u>. Notwithstanding anything to the contrary in this Lease, any Notice County is required or authorized to deliver to Lessee in order to advise Lessee of alleged violations of Lessee's covenants under this Lease must be in writing but shall be deemed to have been duly given or served upon Lessee by County attempting to deliver at the Premises during normal business hours a copy of the Notice to Lessee or its managing employee and by County mailing a copy of the Notice to Lessee in the manner specified in Section 26.1 of this Lease.

ARTICLE 27
AFFIRMATIVE ACTION PROGRAM FOR VENDORS

During the Term of this Lease, Lessee shall comply with the Affirmative Action Program for Vendors pertaining to employment of disabled persons, as set forth in Article IIIK (commencing at Section 84) of the San Diego County Administrative Code, which is incorporated into this Lease by this reference. Lessee is informed that the County's Affirmative Action Program for Vendors provides that its requirements shall not apply to any lessee, or subcontractor of a Lessee, who has a regular, paid workforce of less than fifteen (15) employees. A copy of this Affirmative Action Program will be furnished to Lessee by the County's Lease Administrator upon Lessee's request.

ARTICLE 28 WAIVER OF RELOCATION ASSISTANCE BENEFITS



payment of Relocation Benefits. Lessee does not waive its rights to Relocation Benefits to the extent that Lessee's entitlement to Relocation Benefits may arise out of any condemnation or pre-condemnation actions taken by the County or any other public agency with respect to the Premises. Lessee shall in the future execute any further documentation of the release and waiver provided by this article as reasonably required by County.

ARTICLE 28 MORTGAGEE AND INVESTOR PROTECTIVE PROVISIONS

28.1 Lender's Rights.

So long as any Leasehold Mortgage permitted by this Lease exists, or any Lender (or its nominee) owns all or any portion of the leasehold estate created hereunder, and until such time as the lien (or estate) of any Leasehold Mortgage (or its holder) has been extinguished (which provisions shall be for the benefit of the Leasehold Mortgagee):

28.1.1 Following Lender's acquisition of Lessee's interest in this Lease pursuant to a foreclosure or an assignment in lieu of foreclosure, the Lender shall be entitled to assign its interest in this Lease without County's prior consent, subject to compliance with the terms and conditions of this Article 28. All subsequent Transfers by the Transfere of Lender shall comply with the provisions of this Lease, including all restrictions on Transfer set forth herein; and

28.1,2 If, in connection with securing by Lessee of any Leasehold Mortgage, the affected Lender requests an amendment with respect to the Lender protection rights set forth in this Article 28, County agrees not to unreasonably withhold its consent to any such amendment; provided, that County shall not be required to consent to such an amendment if it would, in County's reasonable determination, materially impair any of County's rights or materially increase any of County's obligations under this Lease.

28.1,3 Default Notice. County, upon providing Lessee with any "Notice of Default" under this Lease, shall, at the same time, provide a copy of such notice to every Lender who has given written notice to County of its interest in the leasehold estate and the limited partner of the Lessee (the "Limited Partner"). From and after such notice has been given to a Lender and Limited Partner, such Lender and Limited Partner shall have the same period for remedying the Default complained of as the cure period provided to Lessee hereunder, plus the additional period provided to such Lender and Limited Partner, as specified below. County shall accept performance by or at the instigation of such Lender or Limited Partner as if the same had been done by Lessee.

28.2 Lender and Limited Partner Cure Rights.

Notwithstanding anything to the contrary contained in this Lease, County shall have no right to terminate this Lease on account of an uncured Default of Lessee unless, following

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expiration of Lessee's applicable cure period, County, first provides each Lender, and if during the tax credit Compliance Period, the Limited Partner, not less than sixty (60) days notice of its intent to terminate, if Lessee's Default can be cured by the payment of money (a "Monetary Default"), and not less than ninety (90) days notice of its intent to terminate, if Lessee's Default is of any other type (a "Non-monetary Default"), and each Lender, and the Limited Partner, as applicable, fails to cure such Monetary Default within sixty (60) days after receipt of such notice or each Lender andthe Limited Partner fails to cure or, in good faith and with reasonable diligence and continuity, commence to cure such Non-monetary Default within said ninety (90) day period.

Nothing herein shall require a Lender who acquired Lessee's leasehold interest and has taken possession of the Leased Premises to cure any non-monetary Default which is not reasonably capable of being cured by such Lender, and such Default shall be deemed to be waived following Lender's acquisition of Lessee's leasehold interest and such Lender's timely cure of all monetary Defaults and all non-monetary Defaults which are reasonably capable of cure by such Lender in accordance with the foregoing provisions.

28.3 New Lease.

Except as expressly provided in the last sentence of this Section, in the event of a termination of this Lease for any reason including, without limitation, by reason of any Default or the rejection or disaffirmance of this Lease pursuant to bankruptcy law or other law affecting creditors rights, County shall give prompt notice thereof to any Lenders who have requested notice from County, in writing and furnished their names and addresses to County, County, shall, on written request of any such Lender, made at any time within ninety (90) days after the giving of such notice by County, enter into a new lease of the Leased Premises with such Lender within twenty (20) days after the receipt of such request, which new lease shall be effective as of the date of such termination of this Lease and shall be for the remainder of the Term of this Lease, at the rent provided for herein, and upon the same terms, covenants, conditions and agreements as are herein contained; provided that such Lender shall: (i) pay to County, at the time of the execution and delivery of said new lease any and all sums for Rent payable by Lessee hereunder to and including the date thereof, less the net amount (i.e., net of all reasonable expenses) of all sums received by County from any SubLessees in occupancy of any part or parts of the Leased Premises and/or Improvements up to the date of commencement of such new lease; (ii) pay all reasonable costs resulting from the preparation and execution of such new lease; and (iii) on or prior to the execution and delivery of said new lease, agree in writing that promptly following the delivery of such new lease, such Lender will perform or cause to be performed all of the other covenants and agreements herein contained on Lessee's part to be performed to the extent that Lessee shall have failed to perform the same to the date of delivery of such new lease, except where such failure to perform by Lessee is, by its nature, a non-monetary Default not reasonably susceptible of cure by such Lender. Nothing herein contained shall be deemed to impose any obligation on the part of County to deliver physical possession of the Premises to such Lender unless County at the time of

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the execution and delivery of such new lease shall have obtained physical possession thereof. Notwithstanding anything contained in this Section 28.3 to the contrary, Lender's leasehold interest in the Leased Premises pursuant to the new lease shall be subject to any claims by Lessee that it has a right to possession of the Leased Premises. It is the intent of the Parties that any new lease made pursuant to this Section shall have the same priority with respect to any lien, charge or encumbrance on the fee of the Leased Premises as did this Lease and that the Lessee under such new lease shall have the same right, title and interest in and to the Leased Premises as Lessee had under this Lease.

28.4 Notices.

Notices from County to any Lender or Limited Partner shall be mailed to the address of the Lender set forth in the Leasehold Mortgage furnished to County or at such other address as may have been furnished to County by such Lender or Limited Partner. All notices from the Lender or Limited Partner to County shall be mailed to the address designated pursuant to the provisions of Section 26 or such other address as County may designate in writing from time to time. All notices to a Lender, Limited Partner or to County shall be given in the manner described in Section 26 and shall in all respects be governed by the provisions of such Section.

ARTICLE 29 GENERAL PROVISIONS

- 29.1 <u>Authority</u>. Lessee represents and warrants that it has full power and authority to execute and fully perform its obligations under this Lease pursuant to its governing instruments, without the need for any further action, and that the person(s) executing this Lease on behalf of Lessee are the duly designated agents of Lessee and are authorized to act on behalf of Lessee.
- 29.2 <u>Brokers</u>. Lessee warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation and/or execution of this Lease. If any broker other than the brokers acknowledged in writing by County make claim for monies owed, Lessee shall indemnify, defend and hold County harmless from the claim.
- 29.3 <u>Captions</u>. The captions, headings and table of contents appearing in this Lease are inserted for convenience only and in no way define, limit, construe, or describe the scope or intent of the provisions of this Lease.
- 29.4 <u>County Approval</u>. Except where stated in this Lease to the contrary, the phrases "County's approval" and "County's written approval" or similar phrases shall mean approval of County's Lease Administrator or a designee.

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- 29.5 <u>Business Days</u>. The term "business days" as used in this Lease means any calendar day other than a Saturday, Sunday or official County holiday.
- 29.6 <u>Cumulative Remedies</u>. If a default under this Lease occurs, each party's remedies shall be limited to those remedies set forth in this Lease. The remedies under this Lease are cumulative and not exclusive of any other remedies under this Lease to which the non-defaulting party may be entitled.
- 29.7 <u>Exhibits</u>. All exhibits referred to in this Lease are attached to this Lease and incorporated into this Lease by reference.
- 29.8 <u>Entire Agreement</u>. This Lease, together with all addenda, exhibits and riders attached to this Lease, constitutes the entire agreement between County and Lessee with respect to the subject matter of this Lease, and all prior or contemporaneous agreements, understandings and representations, oral or written, are superseded
- 29.9 Estoppel Certificate. Lessee shall at any time during the term of this Lease, within five (5) business days of written notice from County, execute and deliver to County a statement in writing certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of the modification. Lessee's statement shall include other details requested by County, such as the date to which Contract Rent, Additional Rent and other charges are paid, the current ownership and name of Lessee, Lessee's knowledge concerning any outstanding defaults with respect to County's obligations under this Lease and the nature of any defaults. Lessee's statement may be relied upon conclusively by any prospective purchaser or encumbrancer of the Premises. Lessee's failure to deliver the statement within five (5) business days of written notice from County shall be conclusively deemed to mean that this Lease is in full force and effect, except to the extent any modification has been represented by County, and that there are no uncured defaults in the County's performance under this Lease, and that not more than one (1) month of Contract Rent or Additional Rent has been paid in advance.
- 29.10 Force Majeure. If County or Lessee is prevented or delayed from performing any act or discharging any obligation under this Lease, except for the payment of Construction Period Rent, Rent or Additional Rent by Lessee, because of any and all causes beyond either party's reasonable control, including unusual delays in deliveries, abnormal adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, governmental restrictions, regulations or controls, any hostile government actions, civil commotion and fire or other casualty, legal actions attacking the validity of this Lease or the Lessee's occupancy of the Premises, or any other casualties beyond the reasonable control of either party except casualties resulting from Lessee's negligent operation or maintenance of the Premises ("Force Majeure"), performance of the act shall be excused for the period of the delay, and the period for performance of the act shall be extended

for a period equivalent to the period of the delay. Force Majeure shall not include any bankruptcy, insolvency, or other financial inability by Lessee.

- 29.11 <u>Governing Law</u>. This Lease shall be governed, construed and enforced in accordance with the laws of the State of California.
- 29.12 <u>Interpretation</u>. The language of this Lease shall be construed simply according to its plain meaning and shall not be construed for or against either party.
- 29.13 <u>Joint and Several Liability</u>. If more than one person or entity executes this Lease as Lessee, each of them is jointly and severally liable for all of the obligations of Lessee under this Lease.
- 29.14 <u>Lessee's Lease Administration</u>. Lessee confirms that Lessee's Lease Administrator has been given full operational responsibility for compliance with the terms of this Lease. Lessee shall provide County with a written schedule of its normal hours of business operation on the Premises, and Lessee's Lease Administrator or a representative designated by Lessee shall be (i) available to County on a twenty-four (24) hour a day, seven (7) days a week, basis, and (ii) present on the Premises during Lessee's normal business hours, to resolve problems or answer questions pertaining to this Lease and Lessee's operations on the Premises.
- 29.15 <u>Liquidated Damages</u>. Any payments by Lessee to County under this Lease described as liquidated damages represent the parties' reasonable estimate of County's actual damages under the described circumstances, the actual damages being uncertain and difficult to ascertain in light of the impossibility of foreseeing the state of the leasing market at the time of the various deadlines set forth in this Lease.
- 29.16 <u>Modification</u>. The provisions of this Lease may not be modified, except by a written instrument signed by County and Lessee.
- 29.17 <u>Partial Invalidity</u>. If any provision of this Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected by the determination. Each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.
- 29.18 <u>Payments</u>. Except as may otherwise be expressly stated in this Lease, each payment required to be made by Lessee shall be in addition to, and not a substitute for, other payments to be made by Lessee under this Lease.
- 29.19 <u>Successors and Assigns</u>. This Lease shall be binding on an inure to the benefit of County and Lessee and their successors and assigns, except as may otherwise be provided in this

Lease.

- $29.20~\underline{\text{Time of Essence}}.$ Time is of the essence of each and every provision of this Lease.
- 29.21 Waiver. No provision of this Lease or the breach of any provision of this Lease shall be deemed waived, except by written consent of the party against whom the waiver is claimed. The waiver by County of any breach of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of the term, covenant or condition of any subsequent breach of the term, covenant or condition, or of any other term, covenant or condition contained in this Lease. County's subsequent acceptance of partial Contract Rent or Additional Rent or performance by Lessee shall not be deemed to be an accord and satisfaction or a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease or of any right of County to a forfeiture of this Lease by reason of the breach, regardless of County's knowledge of the preceding breach at the time of County's acceptance. The failure on the part of County to require exact or full and complete compliance with any of the covenants, conditions of agreements of this Lease shall not be construed as in any manner changing or waiving the terms of this Lease or as estopping County from enforcing in full the provisions of this Lease. No custom or practice which may arise between County and Lessee in the course of administering this Lease shall be construed to waive, estop or in any way lessen County's right to insist upon the full performance of, or compliance with, any term, covenant or condition of this Lease by Lessee, or construed to inhibit or prevent County's exercise of its rights with respect to any default, dereliction or breach of this Lease by Lessee.
- 29.22 <u>Memorandum of Lease</u> Within thirty (30) days after the Commencement Date of this Lease, Lessee shall have the right, but not the obligation, to cause a "Memorandum of Lease" in the form attached to this Lease as EXHIBIT "H" <u>MEMORANDUM OF LEASE</u> to be recorded in the Official Records of the San Diego County Recorder. If Lessee exercises this right, County shall execute the Memorandum of Lease in recordable form.
- 29.23 <u>Survival</u> Any obligation which accrues under this Lease prior to its expiration or termination shall survive the expiration or earlier termination of this Lease.
- 29.24 <u>Counterparts</u> This Lease may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.

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THE SIGNATURE PAGE FOLLOWS.

SIGNATURES

County and Lessee have duly executed this Lease as of the day and year written below. The Lease shall be effective as of the date of its execution by the County's Lease Administrator.

County:
County of San Diego, a political subdivision of the State of California
By: Marko Medved, P. E., CEM, Director Department of General Services
Date:
Approved as to form and legality:
By:, Senior Deputy County Counsel

EXHIBIT "A" <u>DESCRIPTION OF PREMISES</u> Location Map

EXHIBIT "A" <u>DESCRIPTION OF PREMISES</u> Site Map

EXHIBIT "A" <u>DESCRIPTION OF PREMISES</u> Legal Description

EXHIBIT "B" INSURANCE REQUIREMENTS - PRE-CONSTRUCTION PERIOD

Insurance Requirements

Within ten (10) business days prior to the Commencement Commencement Date of this Lease of the Preconstruction Period, Lessee shall submit to County certificates of insurance and appropriate separate endorsements to the actual insurance policy, evidencing that Lessee has obtained for the Term of this Lease, at its sole expense, insurance in the following forms of coverage and minimum amounts specified from insurance carriers with a Best's Rating of not less than A-, VII or a company of equal financial stability approved in writing by County Risk Management.

- a. An occurrence policy of Commercial General Liability insurance insuring Lessee against liability for bodily injury, personal injury or property damage arising out of or in connection with the Lessee's performance of work or service under this Lease of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) general aggregate. The County, its officers, agents, employees, and volunteers shall be added as Additional Insured by separate endorsement to the policy (at least as broad as ISO from CG 2010 11 85 or both CG 2010, CG 2026, CG 2033, or CG 2038; and CG 2037 forms if later revisions used).
- Comprehensive Automobile Liability covering all owned, non-owned and hired vehicles for bodily injury and property damage of not less than one million dollars (\$1,000,000) each accident.
- c. Statutory Workers' Compensation, as required by State of California and Employer's Liability at one million dollars (\$1,000,000) each accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of County.
- d. Certificates of insurance provided by Lessee shall state that the insurer providing the policy must give County written notice of cancellation in accordance with the policy provisions, at the address shown in Section 22 <u>Notices</u> of this Lease, of any cancellation, lapse, reduction or other adverse change to the insurance required of Lessee under this Lease.

If Lessee maintains broader coverage and/or higher limits than the minimums shown above, County requires and shall be entitled to the broader coverage and/or higher limits maintained by Lessee. As a requirement of this Lease, any available insurance proceeds in excess of the specified minimum limits and coverage stated above, shall also be available to County.

Review of Coverage

County shall retain the right to review the coverage, form and amount of insurance required under this Lease and may require Lessee to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required. County requirements shall be reasonable. County retains the right to demand a certified copy of any insurance policy required under this Lease with fifteen (15) days' notice.

Self-Insurance

Lessee may, with the prior written consent of County Risk Management, fulfill some or all of the insurance requirements contained in this Lease under a plan of self-insurance. Lessee shall only be permitted to utilize self-insurance if in the opinion of County Risk Management, the Lessee's (i) net worth, and (ii) reserves for payment of claims of liability against Lessee are sufficient to adequately compensate for the lack of other insurance coverage required by this Lease. Lessee's utilization of self-insurance shall not in any way limit liabilities assumed by Lessee under this Lease.

EXHIBIT "C" INSURANCE REQUIREMENTS - CONSTRUCTION PERIOD

Insurance Requirements

Without limiting Lessee's indemnification obligations under this Lease, Lessee shall provide at its sole expense and maintain during the term of the Construction Period of Lease, or as may be further required in this Lease, the insurance specified in this EXHIBIT "C". Lessee's insurance shall protect Lessee against claims which may arise out of or result from Lessee's construction operations under this Lease and for activities which Lessee may be legally liable, whether the operations are performed by Lessee or by a Contractor (defined in Section 3.(b) of EXHIBIT "E" WORK LETTER AGREEMENT) or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- Commercial General Liability, Occurrence form, Insurance Services Office form CG0001.
- B. Automobile Liability covering all owned, non-owned and hired auto, Insurance Services Office form CA0001. If any type of hazardous substances is transported that could cause environmental harm the policy shall contain a Pollution Coverage Endorsement (MCS-90B) or Pollution Liability-Broadened Coverage for Covered Autos-Business Auto, Motor Carrier and Truckers Coverage Forms, Form # CA9948 0902.

Policy shall contain a Pollution Coverage Endorsement (MCS-90B) or Pollution Liability-Broadened Coverage for Covered Autos-Business Auto, Motor Carrier and Truckers Coverage Forms, Form # CA9948 0902 for any vehicle if transporting hazardous materials.

- Workers' Compensation, as required by State of California and Employer's Liability Insurance.
- D. Professional Errors and Omissions Liability required if Lessee provides or engages any type of professional services including but not limited to engineers, architects and project or construction management.
- E. Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions required if project involves environmental hazards.

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- F. Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions required if project involves environmental hazards.[duplicates E above]
- G. Builder's Risk covering all new construction and materials which are the subject of this Lease.

2. Minimum Limits of Insurance

The insurance required shall be written for not less than limits of liability specified in this Lease or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the work until date of final payment and termination of any coverage required to be maintained after final payment. Lessee may use a combination of primary and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the insurance provisions. As a requirement of this Lease, any available insurance proceeds in excess of the specified minimum limits and coverage stated below, shall also be available to County. The indemnity provisions of this Lease shall apply to the full amount of damages and are not limited by the minimum limits stated below.

Lessee shall maintain limits no less than:

- A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability, Independent Contractors Liability, Broad Form Property Damage, and Explosion, Collapse and Underground Damage (XCU): \$52,000,000 per occurrence for bodily injury and property damage. Products and Completed Operations with limits of not less than \$52,000,000 per occurrence to be maintained for three years following Acceptance of work by the County. The General Aggregate limit shall be \$105,000,000 and shall be a Project Specific Aggregate.
- B. Comprehensive Automobile Liability covering all owned, non-owned and hired vehicles for bodily injury and property damage of not less than one million dollars (\$1,000,000) each accident.
- C. Statutory Workers' Compensation, as required by State of California and Employer's Liability at one million dollars (\$1,000,000) each accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of the County.
- D. Professional Errors and Omissions Liability: \$51,000,000 per claim with an aggregate limit of not less than \$105,000,000. Any self-retained limit shall not be greater than \$1,000,000 per occurrence/event without County Risk Management

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approval. If policy contains one or more aggregate limits, a minimum of 50% of the aggregate limit must remain available at all times; if over 50% of the aggregate limit has been paid or reserved, County will require additional coverage to be purchased by Lessee to restore the required limits. This coverage shall be maintained for a minimum of three (3) years following termination or completion of Lessee's work pursuant to this Lease.

- E. Pollution Legal Liability Insurance: \$21,000,000 per claim with an aggregate limit of not less than \$42,000,000. Any self-retained limit shall not be greater than \$50,000 per occurrence/event without County Risk Management approval. Coverage shall include contractual liability coverage. If policy contains one or more aggregate limits, a minimum of 50% of the aggregate limit must remain available at all times; if over 50% of the aggregate limit has been paid or reserved, County will require additional coverage to be purchased by Contractor to restore the required limits. This coverage shall be maintained for a minimum of three (3) years following termination of completion of Contractor's work pursuant to this Lease.
- F. Builder's Risk: All risk or special form perils including theft of building materials (and including earthquake and flood, unless waived by the County) covering completed value of project with no coinsurance penalty. Coverage shall be in an amount of no less than the full replacement value of the property at the time of loss. Coverage shall be provided on the work and materials which is the subject of this Lease, whether in process or manufacture or finished, including "in transit" coverage to the final agreed upon destination of delivery and including loading and unloading operations.

3. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by County Risk Management. At the option of the County, either: the insurer shall reduce or eliminate the deductibles or self-insured retentions as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

A. <u>Additional Insured Endorsement</u>. The County of San Diego, the members of the Board of Supervisors of the County and the officers, agents, employees and

volunteers of the County, individually and collectively are to be covered as additional insureds on the General Liability policy with respect to liability arising out of work or operations performed by or on behalf of Lessee including materials, parts, or equipment furnished in connection with the work or operations and automobiles owned, leased, hired or borrowed by or on behalf of Lessee. General Liability coverage can be provided in the form of an endorsement to the Lessee's insurance (at least as broad as ISO from CG 2010 11 85 or both CG 2010, CG 2026, CG 2033, or CG 2038; and CG 2037 forms if later revisions used).

- B. Primary Insurance Endorsement. For any claims related to this Lease, Lessee's insurance coverage, including any excess liability policies, shall be primary insurance at least as broad as ISO CG 2001 04 13 as respects County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively. Any insurance or self-insurance maintained by County, its officers, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
- Notice of Cancellation. Notice of Cancellation shall be provided in accordance with policy provisions.
- D. <u>Severability of Interest Clause</u>. Coverage applies separately to each insured, except with respect to the limits of liability, and that an act or omission by one of the named insureds shall not reduce or avoid coverage to the other named insureds.
- E. <u>Loss Payee Clause</u>. Builder's Risk policy shall name County as loss payee as its interests may appear. Loss, if any, shall be adjustable with and payable to the County as trustee for all entities having an insurable interest, except in cases that may require payment of all or a proportion of the insurance to be made to a mortgagee as its interest may appear.

General Provisions

5. Qualifying Insurers

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of

not less than A, VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by County Risk Management.

6. Evidence of Insurance

Prior to the Commencement Date of this Lease, Lessee shall furnish County with certificate(s) of insurance and amendatory endorsements effecting coverage required by this clause. Renewal certificates and amendatory endorsements shall be furnished to County within thirty days of the expiration of the term of any required policy. Lessee shall permit County at all reasonable times to inspect any required policies of insurance. Insurance documents shall be issued and sent to the name and address listed in Section 26.1 Notices of this Lease.

7. Failure to Obtain or Maintain Insurance; County's Remedies

Lessee's failure to provide insurance specified or failure to deliver certificates of insurance and amendatory endorsements, or failure to make premium payments required by the insurance, shall constitute a material breach of this Lease, and County may, at its option, terminate this Lease for any default by Lessee.

8. No Limitation of Obligations

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Lessee, and any approval of said insurance by the County are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Lessee pursuant to this Lease, including, but not limited to, the provisions concerning indemnification.

9. No Recourse

The insurer shall have no recourse against County for payment of any premium or for assessments under any insurance policy maintained in connection with this Lease.

10. Review of Coverage

County retains the right at any time to review the coverage, form and amount of insurance required in this Lease and may require Lessee to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

11. Self-Insurance

Lessee may, with the prior <u>written</u> consent of County Risk Management, fulfill some or all of the insurance requirements contained in this Lease under a plan of self-insurance.

Contractor shall only be permitted to utilize self-insurance if in the opinion of County Risk Management, Lessee's (i) net worth, and (ii) reserves for payment of claims of liability against Lessee, are sufficient to adequately compensate for the lack of other insurance coverage required by this Lease. Lessee's utilization of self-insurance shall not in any way limit liabilities assumed by Lessee under this Agreement.

12. Claims Made Coverage

If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, the policy shall provide that:

- A. The policy retroactive date coincides with or precedes Lessee's commencement of work under this Lease (including subsequent policies purchased as renewals or replacements).
- B. Lessee shall make every effort to maintain similar insurance during the required extended period of coverage following expiration of this Lease.
- C. If insurance is terminated for any reason, Lessee shall purchase an extended reporting provision of at least three years to report claims arising in connection with this Lease.
- D. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

13. Subcontractors' Insurance

Lessee shall require and verify that all subcontractors maintain insurance meeting all the requirements stated in this Lease, and Lessee shall ensure that County is an additional insured on insurance required from subcontractors. The Additional Insured endorsement shall be attached to the certificate of insurance in order to be valid and on a form at least as broad as ISO from CG 2010 11 85 or both CG 2010, CG 2026, CG 2033, or CG 2038; and CG 2037 forms if later revisions used. If any subcontractor's coverage does not comply with the foregoing provisions, Lessee shall defend and indemnify the County from any damage, loss, cost, or expense, including attorneys' fees, incurred by County as a result of subcontractor's failure to maintain required coverage. In addition to the foregoing, Lessee shall require that any and all subcontractors performing any excavation

of the Project have Explosion, Collapse and Underground Damage Liability (XCU) Insurance and coverage in the amount of \$2,000,000 per occurrence.

14. Waiver of Subrogation

Lessee hereby agrees to waive rights of subrogation which any insurer of Lessee may acquire from County by virtue of the payment of any loss. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of County for all work performed by the Contractor, its employees, agents and subcontractors.

EXHIBIT "D" INSURANCE REQUIREMENTS - OPERATIONS PERIOD

Insurance Requirements

Without limiting Lessee's indemnification obligations to County under this Lease, Lessee shall provide and maintain during the Operations Period of this Lease insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the Premises and Improvements identified in this Lease. The cost of the insurance shall be borne entirely by Lessee.

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- A. Commercial General Liability, Occurrence form, Insurance Services Office Form CG0001.
- B. Workers Compensation, as required by State of California and Employer's Liability Insurance.
- C. Property Insurance against all risk or special form perils, including Replacement Cost coverage, without deduction for depreciation, for Lessee's merchandise, fixtures owned by Lessee, any items identified in this Lease as Improvements to the Premises constructed and owned by Lessee, and the personal property of Lessee, its agents and employees.
- D. Rental Income Insurance assuring County of receiving the Contract Rent from the time the Premises are damaged or destroyed with a minimum period of coverage for one (1) year.

2. Minimum Limits of Insurance

Lessee shall maintain limits no less than:

A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability and Independent Contractors: One million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be two million dollars (\$2,000,000) and shall be a Per Location Aggregate. Fire Damage Limit (Any One Fire) three hundred thousand dollars (\$300,000) and Medical Expense Limit (Any One Person) five thousand dollars (\$5,000).

- B. Employers Liability: One million dollars (\$1,000,000) each accident for bodily injury or disease. Coverage shall include a waiver of subrogation endorsement in favor of County.
- C. Property: Full replacement cost with no coinsurance penalty provision.
- D. Rental Income Replacement assuring County of receiving the Contract Rent from the time the Premises and Improvements are damaged or destroyed with a minimum period of coverage of one (1) year.

If the Lessee maintains broader coverage and/or higher limits than the minimums shown above, County requires and shall be entitled to the broader coverage and/or higher limits maintained by Lessee. As a requirement of this Lease, any available insurance proceeds in excess of the specified minimum limits and coverage stated above, shall also be available to County.

3. Deductibles and Self-Insured Retention's

Any liability deductible or self-insured retention must be declared to and approved by County Risk Management. The property insurance deductible shall not exceed five thousand dollars (\$5,000) per occurrence and shall be borne by Lessee.

4. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- A. Additional Insured Endorsement. The County of San Diego, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively are to be covered as additional insureds on the General Liability policy with respect to liability arising out of work or operations performed by or on behalf of the Lessee including materials, parts, or equipment furnished in connection with the work or operations. General Liability coverage can be provided in the form of an endorsement to the Lessee's insurance (at least as broad as ISO from CG 2010 11 85 or both CG 2010, CG 2026, CG 2033, or CG 2038; and CG 2037 forms if later revisions used).
- B. Primary Insurance Endorsement. For any claims related to this Lease, the Lessee's insurance coverage shall be primary insurance at least as broad as ISO CG 2001 04 13 as respects County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively. Any insurance or self-insurance maintained by County, the members of the Board of Supervisors of the County, its officers,

officials, employees, or volunteers shall be excess of Lessee's insurance and shall not contribute with it.

 Notice of Cancellation. Notice of cancellation shall be in accordance with policy provisions.

General Provisions

5. Qualifying Insurers

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A-, VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by County Risk Management.

6. Evidence of Insurance

Prior to the commencement of the Operations Period of this Lease, Lessee shall furnish the County with certificates of insurance and amendatory endorsements effecting coverage required by this Lease. Renewal certificates and amendatory endorsements shall be furnished to County within thirty (30) days of the expiration of the term of any required policy. Lessee shall permit County at all reasonable times to inspect any required policies of insurance.

7. Failure to Obtain or Maintain Insurance; County's Remedies

Lessee's failure to provide insurance specified or failure to furnish certificates of insurance and amendatory endorsements or failure to make premium payments required by the insurance, shall constitute a material breach of this Lease and County may, at its option, terminate this Lease for any default by Lessee.

8. No Limitations of Obligations

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Lessee, and any approval of the insurance by the County are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Lessee pursuant to this Lease, including, but not limited to, the provisions concerning indemnification.

9. Review of Coverage

County retains the right at any time to review the coverage, form and amount of insurance required by this Lease and may require Lessee to obtain insurance reasonably

sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

10. Self-Insurance

Lessee may, with the prior written consent of County Risk Management, fulfill some or all of the insurance requirements contained in this Lease under a plan of self-insurance. Lessee shall only be permitted to utilize self-insurance if in the opinion of County Risk Management, Lessee's (i) net worth, and (ii) reserves for payment of claims of liability against Lessee, are sufficient to adequately compensate for the lack of other insurance coverage required by this Lease. Lessee's utilization of self-insurance shall not in any way limit liabilities assumed by Lessee under this Lease.

11. Sublessee's Insurance Requirements

If Commercial Sublessee or Sublessee

Lessee shall require any commercial sublessee and any commercial sub-sublessee, of all or any portion of the Premises and Improvements to provide minimum insurance coverage described in this Lease prior to occupancy.

If Residential Sublessee or Sub-sublessee

Without limiting sublessee's and any sub-sublessee's indemnification, sublessee shall provide and maintain, during the term of their lease, at their sole expense, insurance at least in the amounts and form specified below.

- A. <u>Liability Insurance</u>. Lessee shall procure Personal Liability insurance including incidental Workers' Compensation coverage applying to the use and occupancy of the Premises and Improvements, or any part of the Premises and Improvements, or any areas adjacent to the Premises and Improvements, and in an amount not less than one hundred thousand dollars (\$100,000).
- B. <u>All Risk Insurance</u>. A standard fire policy including all-risk or special form perils, providing Replacement Cost Coverage, without deduction for depreciation for (i) Lessee's personal property, (ii) fixtures owned by Lessee, and (iii) any items identified in this Lease as improvements to the Premises constructed and owned by Lessee. The deductible for the required fire insurance policy shall not exceed one thousand dollars (\$1,000) per occurrence and shall be borne by Lessee.

12. Waiver of Subrogation

Lessee and County waive all rights to recover against each other or against any other tenant or occupant of the building, or against the officers, directors, shareholders, partners, employees, agents or invitees of each other or of any other occupant or tenant of

the building, from any Claims (as described in ARTICLE 13 EXCULPATION, INDEMNIFICATION AND INSURANCE of this Lease) against either of them and from any damages to the fixtures, personal property, Lessee's improvements, and alterations of either County or Lessee in or on the Premises and Improvements, to the extent that the proceeds received from any insurance carried by either County or Lessee, other than proceeds from any program of self-insurance, covers any Claim or damage. Included in any policy or policies of insurance provided by Lessee shall be a standard waiver of rights of subrogation against County by the insurance company issuing the policy or policies.

EXHIBIT "E" WORK LETTER AGREEMENT

This Work Letter Agreement ("Agreement") states the agreement of County and Lessee regarding the construction of the Required Improvements by Lessee.

1. <u>REQUIRED IMPROVEMENTS.</u> Lessee shall complete, at Lessee's expense, the Required Improvements to the Premises referenced in Section 10.1 of this Lease and as set forth in this Agreement. The Required Improvements shall consist of the entitlement, development, design, construction and operation of County's review, direction or approval throughout the design and construction process of the Required Improvements shall not diminish, modify or alter the duties, responsibilities and obligations of Lessee as specified in this Lease, nor shall it impose any financial obligation or other liability upon County.
2. <u>PLANS AND SPECIFICATIONS</u> .
(a) <u>Final Plans</u> . Lessee shall deliver to County's Lease Administrator plans and specifications ("Plans") prepared by Lessee's architect (i) for those Required Improvements consisting of construction of, within () days prior to scheduled commencement of construction, and (ii)
for any Optional Improvements proposed by Lessee during the course of construction of the Required Improvements.
The Plans shall include, as applicable, the following:
 Site layout Building design and architectural treatment Exterior elevations Signage Landscaping
County's Lease Administrator shall have the right to approve the Plans and all material changes to the Plans, which approval shall not be unreasonably withheld. County's Lease Administrator shall approve or disapprove the Plans and any modifications to the Plans within () business days after receipt. If County's Lease Administrator disapproves the Plans, County and Lessee shall promptly meet and resolve any dispute. "Final Plans" as used in this Lease means the Plans as approved by County's Lease Administrator and Lessee.

(b)

Drawings") for the Required Improvements, at Lessee's expense, in conformance with the Final
Plans. Lessee shall submit the Working Drawings to County's Lease Administrator within
() days after the County's Lease Administrator's approval of the Final
Plans. County's Lease Administrator shall have the right to approve the Working Drawings and
all material changes to the Working Drawings, but County's Lease Administrator shall not
unreasonably disapprove the Working Drawings if they are consistent with the Final Plans.
County's Lease Administrator shall approve or disapprove the Working Drawings within
() days after receipt.

PRE-CONSTRUCTION REQUIREMENTS.

- (a) <u>Building Permit</u>. Within ten (10) days following County's Lease Administrator's approval of the Working Drawings for the Required Improvements, Lessee shall submit and diligently process an application for building permits with the permitting authority for the City of San Diego. Lessee shall obtain, at Lessee's expense, all other governmental permits required to complete the Required Improvements and shall comply with all conditions of the permits and with all other applicable governmental laws, regulations and requirements.
- Bonds. Prior to the commencement of construction of any of the Required Improvements, Lessee shall obtain or cause its contractor ("Contractor") to obtain payment and performance bonds ("Bonds") covering the faithful performance of the contract for the construction of the Required Improvements and the payment of all obligations arising under the contract. The Bonds shall be on forms approved by County and shall be issued by a surety satisfactory to County. The surety shall have a current A.M. Best rating of A-5, or better, and shall be currently licensed to transact its insurance business in the State of California. The Bonds shall (i) name County as a primary co-obligee, (ii) name Contractor as principal, and (iii) assure full and satisfactory completion of the Required Improvements by the expiration of the Construction Period. The Bonds shall also guarantee that (i) all materials and workmanship supplied and/or installed as part of the Improvements shall be free from original or developed defects, and (ii) any original or developed defects or failures which appear in the Required Improvements within one (1) year after installation shall be repaired and/or replaced with all due diligence, at no cost to Lessee or County. The Bonds shall be maintained in full force and effect by Lessee during the construction and installation of the Required Improvements and for a period of one year after completion of the Required Improvements. Lessee shall ensure that the surety company familiarizes itself with all of the terms and conditions of this Lease and shall require the surety company to waive (i) notification of any modifications or alterations of the Final Plans or Working Drawings (including any extension of the Construction Period), and (ii) its rights under the provisions of State of California Civil Code Section 2819. The cost of the Bonds shall be paid by Lessee.
- $\begin{array}{ccc} (c) & \underline{Insurance}. & From \ commencement \ of \ construction \ of \ the \ Required \ Improvements, \\ Lessee \ shall \ maintain, \ or \ cause \ to \ be \ maintained, \ public \ liability, \ workers' \ compensation \ and \\ \end{array}$

property damage insurance in the form and amounts specified in this Lease, and shall also maintain, during the course of and until completion of construction of the Required Improvements, Builder's Risk Insurance in an amount equal to the expected value of the Required Improvements when construction is completed. Prior to commencement of construction, Lessee shall provide written evidence to County of the insurance coverage.

- (d) <u>Contract for Construction</u>. County reserves the right to approve Contractor, but County's approval shall not be unreasonably withheld. County's right to approve Contractor shall not give rise to an obligation on County's part to assume Lessee's obligations and rights under the contract if Lessee defaults under this Lease. The Contractor shall be bondable and shall meet all licensing and insurance requirements of the State of California. The items set forth below shall be incorporated as "Special Conditions" into the contract between Lessee and its contractor (with a copy of the contract to be furnished County for County's reasonable approval prior to the commencement by Lessee of the Required Improvements):
- (1) Prior to start of the Required Improvements, Contractor shall provide County with a construction schedule in "bar graph" form indicating the completion dates of all phases of the Required Improvements.
- (2) Contractor shall be responsible for the repair, replacement or cleanup of any damage done by Contractor to others' property.
- (3) Contractor shall contain its storage of materials and its operations within the Premises and other space as Contractor may be assigned by Lessee or County. Should Contractor be assigned space outside of the Premises, Contractor shall move to the other space as directed by County from time to time to avoid interference or delays with any other County operations.
- (4) All trash and surplus construction materials shall be stored within the Premises and shall be promptly removed from the Premises at the sole cost of the Contractor.
- (5) Contractor shall provide temporary utilities, portable toilet facilities and potable drinking water as required for its work within the Premises.
- (6) Contractor shall notify the County's Lease Administrator of any planned work to be performed on weekends or other than regular job hours.
- (7) Contractor shall be responsible for compliance with all applicable codes and regulations of duly constituted authorities having jurisdiction insofar as the performance of the work and completed improvements are concerned for all work performed by Contractor, and all applicable safety regulations, and Contractor shall save and hold County harmless for the work as provided in this Lease.

- (8) Contractor or subcontractors shall not post signs on any part of the Premises without the prior approval of County, which may be withheld, conditioned or revoked at County's sole discretion.
- 4. <u>COMMENCEMENT OF WORK</u>. As used in this Lease, the "commencement" of work on the Required Improvements shall be deemed to have occurred upon fulfillment by Lessee, and acceptance by County, of all of the requirements set forth in Sections 2 and 3 of this Agreement.

5. PERFORMANCE OF WORK.

- (a) <u>Diligent Construction</u>. Lessee shall cause Contractor to diligently commence and complete the actual construction of the Required Improvements (i) in a good and workmanlike manner by well-trained, adequately supervised workers; (ii) in strict compliance with the Final Plans and approved Working Drawings (except for insubstantial deviations which do not interfere with the utility or use of the Required Improvements); (iii) in strict compliance with all governmental and quasi-governmental rules, regulations, laws and building codes (including safety requirements), and all requirements of the insurers of Lessee, County and Contractor and lenders; and (iv) in a manner free from all design, material and workmanship defects.
- (b) <u>Change Orders</u>. County's Lease Administrator shall have the right to approve all material change orders made by Lessee to the Final Plans or Working Drawings, but approval shall not be unreasonably withheld or delayed. "Material changes" shall include, but not limited to, any change in the (i) site layout; (ii) building configuration, (iii) size or square footage; (iv) the parking configuration; (v) the exterior appearance of any building, (vi) the improvements contemplated in Lessee's response to the Request for Proposals attached as EXHIBIT "F" <u>LESSEE'S RESPONSE TO REQUEST FOR PROPOSALS</u>.
- (c) <u>County's Rules, Requirements</u>. Lessee shall comply with any reasonable rules and regulations County may establish regarding Lessee's construction work in order to avoid interference or delays with other work, to protect the property of County and other tenants, and to enhance the safety of the site.
- (d) <u>County's Right to Enter</u>. County shall have the right during construction of the Required Improvements to enter the Premises for the purpose of inspecting construction progress. County will use its best efforts to minimize interference with Lessee's construction of the Improvements and will give prior reasonable notice to Lessee and Contractor of County's desire to enter the Premises.
- (f) <u>Mechanic's Liens</u>. Lessee shall cause the Required Improvements to be constructed free of any vendor's, mechanics' or workers' or other liens, as further provided in

ARTICLE 8 MECHANICS LIENS' of this Lease.

- (g) <u>As-Built Drawings</u>. Within sixty (60) days following completion of the Required Improvements, Lessee shall furnish County with one (1) complete set of reproducible plans and two (2) sets of prints of "As-Built" plans showing the construction of the Required Improvements in place. Lessee shall also furnish County with a magnetic tape, disk or other storage device containing the "As-Built" plans in a form usable by County, to County's satisfaction, on County's computer aided mapping and design ("CAD") equipment. CAD files are also to be converted to Acrobat Reader (*.pdf format), which shall be included on the disk, CD ROM or external storage device.
- (h) Reports. Lessee shall deliver to County, within ten (10) business days after Lessee's receipt, copies of all studies, reports and similar information, including all supplements, addenda and updates of the information, regarding the physical condition of the Premises (e.g., soils, geotechnical, hydrological, and environmental reports, studies, assessments and tests) obtained by Lessee.
- 6. <u>COMPLETION OF REQUIRED IMPROVEMENTS</u>. As used in this Lease, the completion of the Required Improvements shall mean Lessee's submission to County's Lease Administrator of all of the following documents:
- (a) The original Certificate of Occupancy for the Required Improvements, as issued by the City of San Diego;
 - (b) A certified copy of a Notice of Completion, recorded by Lessee;
- (c) A complete list of the names, addresses, telephone numbers and contract amount for the Contractor, subcontractors, vendors and/or suppliers providing materials and/or labor for the Required Improvements;
- (d) Copies of all invoices from the Contractor, its subcontractors, vendors and/or suppliers of labor and/or materials for the Required Improvements, which Lessee has paid;
- (e) Copies of all mechanics' lien releases or other lien releases on account of the Required Improvements, which are notarized, unconditional and in a form approved by County;
- (f) Copies of all building permits, indicating inspection and approval by the issuer of the permits; and
- (g) An architect's or engineer's certification that the Required Improvements have been constructed in accordance with the Final Plans and are one hundred percent (100.0%) complete in accordance with this Lease.

EXHIBIT "F" LESSEE'S RESPONSE TO REQUEST FOR PROPOSALS

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EXHIBIT "G" FORM OF NON-DISTURBANCE AND ATTORNMENT AGREEMENT FOR SUBLEASES

This nondisturbance and attornment agreement ("Agreement") is made and entered into
as ofby and between
("Lesser"), ("Lessee"), and the County of San Diego, a political subdivision of the State of California ("County"), with reference to the
Diego, a political subdivision of the State of California ("County"), with reference to the
following facts:
č
RECITALS
A. Lessor leases from the County land located San Diego, California known as ("Master Leasehold") pursuant to a long term ground lease known as
County of San Diego Contract Number ("Master Lease").
B. The Master Lease requires Lessor to develop and construct upon the Master Leasehold certain improvements ("Improvements"). Portions of the Improvements may be
subleased by non-residential tenants of Lessor. The Improvements are depicted on the site plan attached to this Agreement as EXHIBIT "A" <u>DESCRIPTION OF IMPROVEMENTS</u> .
C. Lessee desires to lease from Lessor a portion of the Improvements ("Premises") pursuant to the lease agreement attached to this Agreement as EXHIBIT "B" <u>LEASE AGREEMENT</u> .
D. County, Lessor and Lessee desire to enter into this Agreement in order to clarify their respective rights and obligations in the event the Master Lease should ever be terminated and the County regains direct control of the Master Leasehold.
In consideration of the above recitals and the mutual promises contained in this Agreement, County, Lessor and Lessee agree as follows:
1. <u>Non-Disturbance</u> . County consents to the Lease and agrees that in the event that the Master Lease is terminated or expires for any reason, as long as Lessee is not in default of its

- obligations under the Lease beyond all available cure periods after required notice given, Lessee shall peaceably and quietly have, hold and enjoy the Premises leased pursuant to the Lease and the rights under the Lease shall not be terminated or disturbed for the full term of the Lease (provided the term of the Lease does not extend beyond the term of the Master Lease if the Master Lease would not have been terminated) in accordance with the terms, covenants,
- conditions, and provisions of the Lease subject to any limitations imposed by Section 2 below on the scope of the County's attornment.
 - 2. <u>Attornment</u>. Lessee agrees that in the event the Master Lease is terminated,

Lessee shall attorn to County as its lessor, and that the attornment shall be effective and self-operative without the execution of any other instruments on the part of either Lessee or County upon the receipt by Lessee of notice of County's termination of the Master Lease, and the Lease shall thereafter continue in accordance with its terms between Lessee as lessee and County as lessor, and County agrees to recognize Lessee's rights under the Lease and not disturb the possession and rights of Lessee, provided however that:

- (a) County shall not be liable for any act or omission of Lessor.
- (b) County shall not be subject to any offsets or defenses that Lessee may have against Lessor.
- (c) County shall not be bound by any prepayment of rent, operating expenses, common area maintenance fees, deposits or rental security, or any other sums deposited with Lessor under the Lease, unless the sum is actually received by County. Notwithstanding the foregoing, Lessee shall have no obligation to pay to County any prepaid rent received by Lessor prior to the termination of the Master Lease.
- (d) County shall not be liable for any representations or warranties given or made by Lessor.
- (e) The Lease shall not be amended or modified without the prior written consent of County, and County shall not be bound by any modification or amendment of the Lease made without the written consent of County.
- (f) County shall not be obligated to cure any default of Lessor under the Lease or Master Lease or to complete the construction of the Improvements. Lessee shall not be obligated to cure any default of Lessor under either the Lease or Master Lease, nor shall Lessee be responsible for any liability attributable to Lessor arising prior to or after Lessee's attornment to the County as its lessor.
- (g) Lessee agrees to execute any additional agreements reasonably requested by the County to document the attornment.
 - (h) Lessee shall not be liable for any act or omission of Lessor.
- (i) Lessee shall not be liable for any representations or warranties given or made by Lessor.
- $\mbox{(j)}$ $\mbox{ Lessee}$ shall not be subject to any offsets or defenses that County may have against Lessor.
 - (k) Notwithstanding anything to the contrary, Lessee shall not be under any

obligation to pay rent to the County until Lessee receives written notice from the County that it has succeeded to the interest of Lessor under the Lease. From and after receipt of the written notice, the payment by Lessee to County of rentals and other payments then due or thereafter becoming due to the Lessor under the Lease shall constitute full performance of all obligations with respect to rent payments.

- (l) County hereby covenants and agrees to provide Lessee written notice of any termination of the Master Lease.
- (m) County hereby covenants and agrees to provide Lessee written notice of any notices of defaults that County sends to Lessor under the Master Lease.
- (n) County hereby covenants and agrees to provide Lessee written notice of any assignment of the Master Lease.
- (o) County hereby covenants and agrees to provide Lessee at least forty-eight (48) hours prior notice before County enters the Premises and the purpose for County's entry onto the Premises, except in the event of an emergency.
- 3. <u>Termination of Lease</u>. If the Lease is terminated or expires for any reason, all rights and obligations of the parties pursuant to this Agreement, except with regard to any obligations or liabilities owed to County or Lessee before the termination, shall terminate without further recourse.
- 4. Quiet Enjoyment. County warrants and covenants to Lessor and Lessee that it is vested with good and marketable fee title to the Premises and that, in the event the Master Lease is terminated, it has the right and lawful authority to enter into the Lease for the term set forth in the Lease (provided the term does not exceed that set forth in the Master Lease). In consideration of the foregoing agreements of Lessee, County agrees that as long as Lessee is not in default of the terms of the Lease beyond all available cure periods with required notice given, County (i) will not join or name Lessee as a party in any proceedings to terminate the Master Lease, (ii) will not disturb Lessee's possession of the Premises under the Lease upon the termination of the Master Lease, (iii) will accept the attornment of Lessee, subject to the limitations contained in this Agreement, and (iv) will assume and perform (but only while in possession or control of the Master Leasehold) all of Lessor's obligations under the Lease, except as otherwise provided in this Agreement.
- 5. <u>Notices</u>. All notices or other communication required or permitted to be given under this Agreement shall be in writing, and (i) delivered in person to an officer or an authorized representative of the other party, (ii) sent by United States Postal Service registered or certified mail, postage prepaid, or (iii) sent by courier delivery service to the following addresses:

If to County:	County of San Diego Attention: Director, Department of General Services 5560 Overland Avenue Suite 410 San Diego, California 92123
If to Lessor:	
If to Lessee:	

All notices or other communications shall be deemed given, delivered and received upon actual receipt or refusal. The parties to this Agreement may, by written notice delivered pursuant to this section, at any time designate a different address to which notices shall be sent.

- 6. <u>Mineral Rights.</u> County's exercise of its right for the activities described in Section 2.2 of the Master Lease shall not result in any material impact on Lessee's development or use of, or operation on, the Master Leasehold and the Premises for the purposes permitted under the Master Lease (including, but not limited to, ingress and egress, access, signage and parking).
- 7. <u>Easements/Reservations</u>. No right reserved by County in Section 2.3 of the Master Lease shall be exercised as to interfere unreasonably with Lessee's development or use of the Master Leasehold and the Premises, or operations (including access and free flow of customer traffic) or result in the loss of improvements previously constructed by Lessee, or parking and other common areas serving the improvements.
- 8. <u>County Entry onto Premises</u>. In exercising any County's rights of entry on to the Premises under the Master Lease, County shall not unreasonably interfere with the operation of Lessee on the Master Leasehold and the Premises and any entry shall be conducted in a manner that minimizes disruption to Lessee. Lessee waives any claim of injury to Lessee's business or inconvenience to Lessee's business, interference with Lessee's business, loss of occupancy or quiet enjoyment of the Master Leasehold and the Premises, or any other loss occasioned by entry onto the Premises.

Miscellaneous. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of California as applied to contracts entered into between California residents to be performed wholly within California. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. All periods of time referred to in this Agreement shall include Saturdays, Sundays and County holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice or approval shall fall on a Saturday, Sunday or County holiday, the act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or County holiday. This Agreement shall be binding upon and shall inure to the benefit of all the parties to this Agreement, their respective beneficiaries, successors and assigns. Each party signing this Agreement on behalf of an entity represents and warrants that he or she has full authority to do so and the signature of no other party is necessary for this Agreement to be effective. Headings at the beginning of each numbered section of the Agreement are solely for the convenience of the parties and are not a part of this Agreement. This Agreement contains all of the agreements of the parties to this Agreement with respect to the matters contained in this Agreement, and no prior agreement or understanding pertaining to any matter shall be effective for any purpose. No provision of this Agreement may be amended or added to this Agreement except by an agreement in writing signed by the parties to this Agreement or their respective successors in interest. If any of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the provision(s) shall be reformed by the court to the minimum extent possible to render it valid, legal and enforceable (if possible), and the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired. Time is of the essence under this Agreement and any amendment, modification or revision of this Agreement.

THE REMAINDER OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK.
THE SIGNATURES ARE ON THE FOLLOWING PAGE.

SIGNATURES

The parties have entered into this Agreement effective as of the date and year first written above.

Lessor:
,
Ву:
Its:
Lessee:
,
,
Ву:
Its:
County:
County of San Diego, a political subdivision of the State of California
By:, Director
Department of General Services
Approved as to form and legality:
Ву:
Deputy County Counsel

FORM OF NON-DISTURBANCE AND ATTORNMENT AGREEMENT FOR SUBLEASES

EXHIBIT "A" <u>DESCRIPTION OF IMPROVEMENTS</u>

FORM OF NON-DISTURBANCE AND ATTORNMENT AGREEMENT FOR SUBLEASES

EXHIBIT "B" LEASE AGREEMENT

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EXHIBIT "H" <u>MEMORANDUM OF LEASE</u>

Begins on next page

WHEN RECORDED, PLEASE RETURN THIS INSTRUMENT TO:	
Attention:	
	SPACE ABOVE FOR RECORDER'S USE
MEMORANDUM	ONLY 1 OF LEASE

APN:	
	The County of San Diego, a political subdivision of the State of California ("County")
and	, a, ("Lessee"), entered into a lease ("Lease")
dated	,, for the premises ("Premises") described in SCHEDULE
"1" <u>DI</u>	ESCRIPTION OF PREMISES attached to this Memorandum of Lease.

- 1. <u>Grant</u>. County grants to Lessee a leasehold estate in the Premises in accordance with the terms, covenants and conditions of the Lease.
- 2. <u>Term.</u> The term of the Lease is (__) years, with a Commencement Date and expiration date as provided in the Lease.
 - 3. <u>Filing</u>. A copy of the Lease is on file with County at the address set forth above.
- 4. <u>Subordination</u>. County shall be obligated to subordinate the Lease only as provided in the Lease.
- 5. <u>Summary</u>. This Memorandum of Lease does not include all the terms, covenants and conditions of the Lease. The provisions of this Memorandum of Lease shall not be used in interpreting the terms, covenants and conditions of the Lease and shall not be deemed to modify or otherwise change any of the terms, covenants or conditions of the Lease. In the event of a

conflict between the Lease and this Memorandum of Lease, the terms, covenants and conditions of the Lease shall control.

- 6. <u>Termination of Lease</u>. Upon the expiration or earlier termination of the Lease, this Memorandum of Lease shall terminate and be of no further force or effect. Lessee shall execute and deliver for recordation, a quitclaim deed in favor of County confirming that Lessee quitclaims all right, title and interest in and to the Premises under the Lease. Lessee shall pay all recording costs.
- 7. <u>Counterparts</u>. This Memorandum of Lease may be executed in multiple counterparts, each of which shall be deemed an original but all of which, together, shall constitute one and the same instrument.

constitute one and the same instrument.	d an original but all of which, together, shall
County and Lessee have executed the	his Memorandum of Lease as of the day of
,·	"COUNTY" County of San Diego, a political subdivision of the State of California
	By: Marko Medved P.E., CEM, Director, Department of General Services
	"LESSEE"
	Ву:
	Title:

[Add appropriate notary form] 4

SCHEDULE "1" <u>DESCRIPTION OF PREMISES</u> Legal Description

WHEN RECORDED PLEASE MAIL TO:

County of San Diego Housing and Community Development Services 3989 Ruffin Road San Diego, CA 92123-1890 Attn: Community Development Division

(Space above this line for Recorder's use)

EXHIBIT "I"

COUNTY OF SAN DIEGO MEMORANDUM OF RESTRICTIVE COVENANTS AND REGULATORY AGREEMENT

This Regulatory Agreement is made and entered into by and between the County of San Diego (the "Lessor"), and XXXXX, LP (the "Lessee"), a California limited partnership, and is secured by a ground lease ("Lease") between the Lessee and Lessor, to which this document ("Regulatory Agreement") is attached..

RECITALS

- A. Lessee is about to become the owner of a leasehold in real property located at xxxxxx, CA, (hereinafter the "Property") described in Exhibit X to the Lease. Lessee has entered into the Lease for the purpose of constructing a building (or buildings) on the property described in Exhibit X (hereinafter the "Project") with the purpose of constructing housing, __% of which shall be for low- or moderate-income housing as defined in regulations of the United States Department of Housing & Urban Development ("HUD"). Lessee agrees to be bound by this Regulatory Agreement and all applicable statutes, rules, and regulations.
- B. Lessee agrees that the Project will be used exclusively by Lessee for secular purposes and will be available to all persons regardless of religious affiliation. There will be no religious or membership criteria for tenants of the Project. Lessee shall assume responsibility for ensuring compliance with all constitutional provisions, laws, and regulations regarding religious uses at the Property.
- C. As an inducement to the Lessor to enter into the Lease, the Lessee has agreed to enter into this Regulatory Agreement and has consented to be regulated and restricted as provided herein. The "Loan Documents" shall consist of this Lease and the Development Agreement, among the parties hereto and executed simultaneously herewith. All attachments and exhibits to this Regulatory Agreement which are referred to herein, are incorporated herein by reference. Lessee shall assume responsibility for ensuring that all sources of funding for it are aware of this Regulatory Agreement and shall ensure that they are bound by it.
- D. All references to the Project in this Regulatory Agreement that apply to rents, reporting, and operating procedures shall apply to _____ [insert number] (##) or fifty-one percent (51%) of the Units, whichever is greater, at the Project under this Regulatory Agreement

NOW, THEREFORE, the parties hereto agree as follows:

A. The Lessee, and such successors and assignees as the Lessor through its authorized representative may approve in writing, shall utilize no less than _____ [insert number] (##) or 51% of the units (whichever is greater) located on the Property solely for the purpose of providing affordable housing for low-income and very low- or moderate-income persons as defined in HUD regulations pursuant to the provisions of this Regulatory Agreement (the "Affordable Units"). The target population for the Affordable Units will be seniors as defined in the County of San Diego Consortium 2015–2019 Consolidated Plan. In order to maintain conformity with the requirements of this paragraph during the Period of Affordability so that the total number of housing units meeting the requirements of this paragraph remain the same, and each substituted unit is comparable in terms of size, features, and number of bedrooms to the originally designated Affordable Units, all Affordable Units shall be designated as "Floating Units." The following income restrictions apply to occupants of the Affordable Units:

____ percent (##%) of the ____ (##) Affordable Units shall be designated as "Low Income Rent" limit units and shall be occupied by low-income households whose gross annual incomes, at the time of initial occupancy, do not exceed sixty percent (60%) of the Area Median Income ("AMI") for San Diego County, California. Not less than ____ percent (_%) of the total Affordable Units shall be designated as "Very Low Income Rent" limit units and shall be, during the Period of Affordability, occupied by very low-income households whose gross annual incomes do not exceed fifty percent (50%) of the AMI for San Diego County, California. At least ___ percent (##%) of the Affordable Units shall be designated as "Moderate Income Units," and shall be occupied by moderate-income households whose gross annual income is, at the time of initial occupancy, do not exceed eighty percent of the AMI for San Diego, California.

For purposes of this covenant, the AMI for San Diego County, California shall be determined in accordance with 24 CFR § 92.216(a)(1) as made available by HUD. Gross Annual income shall be determined in accordance with 24 CFR Part 5 as defined at 24 CFR § 5.609.

Said covenant shall continue in effect for the term of this Lease (the "Period of Affordability").

B. Unless otherwise approved by the Department in writing, during the Project Period of Affordability, the rents charged for all Affordable Units shall be as follows:

Rents charged for the Affordable Units, including the monthly allowance for the utilities and services (excluding telephone) to be paid by the tenant, shall not be more than the lesser of (1) the Section 8 Fair Market Rent for a comparable unit as established by HUD under 24 CFR § 888.111, or (2) the moderate, low, or very low income rents established by HUD under 24 CFR § 92.252 for the units occupied by moderate-, low-, and very low-income households referenced in paragraph A above.

- C. There shall be no discrimination against, or segregation of, any person, or group of persons, on account of any basis where such discrimination is prohibited by California law, including but not limited to Government Code section 12900 et seq., in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, and the Lessee (itself or any person claiming under or through Lessee) shall not establish or permit any such practice or practices of discrimination, or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub lessees, or vendees thereof or any portion thereof.
- D. Lessee further covenants that it will carry out all of the provisions of the said Regulatory Agreement and that all of said covenants set forth above and in the Regulatory Agreement shall run with the Property. Any

subsequent owner(s) shall assume all rights and responsibilities under this Regulatory Agreement and be bound by the same.

- E. At the time of initial occupancy of the units and continuing throughout the term of this Regulatory Agreement, Lessee shall charge only those rents permitted hereunder or approved in writing by Lessor's authorized representative and which are consistent with established law and consistent with the Parties' goal of providing affordable housing to low- and moderate-income persons as defined by HUD regulations. Failure to observe this requirement shall be considered a material breach of this Regulatory Agreement.
- F. ELIGIBILITY FOR ADMISSION:

An applicant is eligible for admission to the Project if he or she meets the income restrictions set forth above and the requirements described in paragraphs 6 and 7 of this Regulatory Agreement and the regquirements of Section 42 of the IRC and the rules and regulations of the California Tax Credit Allocation Committee.

G. Maximum unit occupancy shall be according to the chart below, but shall be subject to compliance with fair housing laws in all respects.

		Studio	One Bedroom	Two Bedroom	Three Bedroom
Ma	aximum	2	4	6	8

- H. Lessee shall rent Affordable Units to very low-, low-, or moderate-income eligible special needs populations as defined in the County of San Diego Consortium 2015–2019 Consolidated Plan and the Management Plan approved by and on file with Lessor. Lessor shall have the right to approve or disapprove any such Management Plan or amendment thereto. In the event that any or all of the Affordable Units are covered under a Project Based Voucher Housing Assistance Payments (HAP) Contract, resident selection process shall be conducted in accordance with the HAP Contract. In all cases, preference shall be given to [describe special needs population if appropriate] as defined in the County of San Diego Consortium 2015–2019 Consolidated Plan.
- I. Selection of income eligible households shall be from Lessee's established waitlist (as further described in the Management Plan) and will be based on: (1) [special population] status and (2) date and time of application.
- J. At initial lease up and during the Period of Affordability, Lessee shall make and document best efforts, consistent with the approved Management Plan, to ensure that all Affordable Units are occupied by eligible persons.
- K. [Insert requirements for any special needs populations as appropriate.]
- L. Each eligible applicant selected to occupy a unit shall enter into a written occupancy agreement (hereinafter referred to as a "Tenant Lease") with the Lessee, the form of which shall have been approved by the Lessor and which shall contain those provisions as are required by the Management Plan and this Regulatory Agreement. The Tenant Lease shall provide for, among other things, good cause eviction and appeal and grievance procedures, all of which shall be in accordance with Regulations under HUD's HOME program, and the provisions of the Transitional Housing Misconduct Act, California Health & Safety Code §50580, et seq.
- M. Lessee shall establish reasonable rules of conduct and occupancy that shall be consistent with local, state and federal laws. The rules shall be in writing and shall be given to each resident. Except as required by law, any amendment shall be effective no less than 30 days after giving written notice thereof to each resident.

- N. Tenant Leases and the landlord-tenant relationship shall be subject to California law (including without limitation the Transitional Housing Misconduct Act), Program Regulations and Federal statutes, and the provisions of this Regulatory Agreement.
- Lessee shall establish and enforce smoke-free policies which must prohibit the use of cigarettes, electronic cigarettes, and recreational marijuana.
- P. The charges to residents covering damages to the Project property attributable to the resident shall be made in accordance with a schedule of replacement costs which shall be adopted by Lessee. The schedule of replacement costs shall be posted in the management office of each Project, and shown to each applicant at the time the Tenant Lease is signed.
- Q. In order for Lessee to begin termination of a Tenant Lease, Lessee must give the resident a written notice stating the reason(s) for termination and notifying the resident of the right to request a hearing as allowed under the grievance procedure.
- R. Borrower shall provide administrative, fiscal, and management services, employ staff (or retain a management company) and purchase, rent, and use supplies and materials as needed to operate, maintain and protect the Project in accordance with this Regulatory Agreement and all applicable laws.
- S. The fiscal year for the Project shall be the same as the calendar year and commence on <u>January 1</u> of each year after the initial period of occupancy, and conclude on <u>December 31</u> of each year.
- T. Lessee shall submit to Lessor copies of any budgets, documentation showing project reserves, and any other reports or documents that any federal or state funding source requires Lessee to produce.
- U. Lessee shall pay any fees enacted by the Board of Supervisors to cover the cost of administering affordable housing as may be enacted or amended from time to time by the San Diego County Board of Supervisors.
- V. Lessee is specifically responsible for all maintenance, repair, and management functions including, without limitation, the following: selection of residents, occupancy standards, complaint and grievance proceedings, evictions, collection of rents and security deposits, routine and extraordinary repairs, and replacement of capital items. Lessee shall maintain units and common areas in a safe and sanitary manner in accordance with local health, building, and housing codes, the Management Plan provided for in this Regulatory Agreement, and in accordance with Housing Quality Standards described in 24 CFR § 982.401.
- W. The Management Plan shall include, within the scope of this Regulatory Agreement, at least the following:
 - (i) Detailed actions to be taken by Lessee to affirmatively market and rent all Affordable Units in a manner which ensures equal access to all persons in any category protected by federal, state, or local laws governing discrimination, and without regard to any arbitrary factor;
 - Specify reasonable criteria for determination of resident eligibility consistent with this Regulatory Agreement;
 - (iii) Require that eligible residents be selected based on the order of application, special preferences, or other reasonable method approved by Lessor and outlined in this Regulatory Agreement.
 - (iv) Require eligible applicants to be notified of eligibility and, based on turnover history, be notified of when a unit may be available;

- (v) Require ineligible applicants to be notified in writing of the reason for their ineligibility;
- (vi) Specify procedures through which applicants deemed to be ineligible may appeal this determination;
- (vii) Require maintenance of a waiting list of eligible applicants;
- X. [Insert information re: supportive services if appropriate]
- Y. Lessee, with the prior written approval of Lessor, may contract with a management agent for the performance of the services or duties required in this Regulatory Agreement. However, such an arrangement does not relieve Lessee of responsibility for proper performance of these duties. Such a contract shall be subject to prior written approval by Lessor and shall contain a provision allowing Lessee to terminate the contract without penalty upon 30 days' written notice. Upon a determination by Lessor and written notice to Lessee that the management agent has failed to operate the Project in accordance with this Regulatory Agreement or the approved Management Plan, Lessee shall exercise such right to termination forthwith and shall make immediate arrangements, which shall be subject to Lessor's approval, for continuing performance of the functions required by this Regulatory Agreement. Lessor has approved the property management agreement with XXXXXX Management, Inc. and the sub-property management agreement with XXXXXX Management Corporation.
- Z. Upon a determination Lessor and a thirty (30) day written notice to Lessee that Lessee has failed to operate the Project in accordance with this Regulatory Agreement, Lessor may require Lessee to contract with a qualified management agent to operate the Project or to make such other arrangements as Lessor deems necessary to ensure performance of the functions required by this Regulatory Agreement.
- AA. Lessee shall promptly provide Lessor all information that Lessor requests concerning the Project and residents therein, at Lessee's expense. Lessee shall promptly provide Lessor a copy of any audit that it submits to any other funding source for the Project. Lessee shall promptly correct any errors reported in such audits.
- BB. Lessor may perform or cause to be performed audits of any and all phases of Lessee's activities related to the Project. At Lessor's request, Lessee shall provide, at its own expense, an audit of the Project certified by an independent certified public accountant.
- CC. Prior to the initial Tenant Lease on any of the Affordable Units, Lessee will submit to Lessor certified copies of: (i) its Equal Opportunity and Fair Housing marketing plan; and (ii) records demonstrating that the units meet or will meet all applicable property standards. If required by Lessor, Lessee shall file with Lessor an operating report including such information as Lessor may reasonably require and submitted at intervals as directed by Lessor, but in no case more often than on a monthly basis.
- DD. Lessee shall maintain all records in the same manner and for the same duration as if it had received funding under HUD's HOME program for each of the Affordable Units and their tenants and the Project's finances and compliance with fair housing laws, or if such program no longer exists, Lessee shall keep records in the same manner as if it had received money under the most analogous federal or state program to the HOME program.
- EE. Except as otherwise provided in the Loan Documents, Lessee shall not make any sale, encumbrance, assignment or conveyance, or transfer in any other form, the Property or Project or any part thereof or of any of its interest therein other than to admit one or more entities as limited partners of Lessee or in accordance with the terms of this Regulatory Agreement and the loan documents and shall not, without the prior written approval of Lessor: assign or transfer any right to operate or manage the Project other than the employment

of a property manager; or require, as a condition of the occupancy or leasing of any Affordable Unit in the Project, any consideration or deposit in excess of that permitted by the Regulatory Agreement to guarantee the performance of the covenants of the Tenant Lease. Permit the use of the units in the Project for any purpose except that which was approved by the Department;

FF. In the event of the material violation of any of the provisions of this Regulatory Agreement by Lessee, Lessor shall give written notice thereof to Lessee of violation by specifying (a) the nature of the event or deficiency giving rise to the violation (b) the action required to cure the deficiency, if any action to cure is possible and (c) a date, which shall not be less than thirty (30) days from the mailing of the notice by which such action to cure must be accomplished or if such breach is not reasonably susceptible of cure within such (30) day period, then within such additional time as is reasonably necessary to cure such failure, provided Lessee has commenced cure within the initial thirty (30) day period and diligently pursues such cure to completion.

After the expiration of all applicable notice and cure periods as specified here, Lessor may, without further notice, declare in writing a default under this Regulatory Agreement effective on the date of such declaration of default and, upon any such declaration of default, Lessor may apply to any court, state or federal, for specific performance of this Regulatory Agreement; for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Regulatory Agreement, or for such other relief as may be appropriate, it being agreed by Lessee that the injury to Lessor arising from a default under any of the terms of this Regulatory Agreement would be irreparable and that it would be extremely difficult to ascertain the amount of compensation of the Department which afford adequate relief in light of the purposes and policies of the Program.

- GG. If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
- HH. This Regulatory Agreement shall bind, and the benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in the office or interest, and assigns; provided, however, that Lessee may not assign this Regulatory Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior approval of Lessor
- II. This Regulatory Agreement and any amendments thereof, shall, at the expense of Lessee, be acknowledged by each of the parties and recorded or referenced in the official records of the county in which the Project is situated.
- JJ. The remedies of Lessor hereunder are cumulative, and the exercise of one or more of such remedies shall not be deemed an election of remedies and shall not preclude the exercise by Lessor of any one or more of its other remedies.
- KK. No waiver by Lessor of any breach of or default under this Regulatory Agreement shall be deemed to be a waiver of any other or subsequent breach or default hereunder.



5. Lease

CIC has read, reviewed and understands the content of the proposed lease form, and all exhibits to the lease form. Our proposed edits are documented in the following redline and the rationale for each proposed change is below.

Explanation of Ground Lease Changes Chelsea Investment Corporation

- Article 1.6/3.1.a/12.1: A Feasibility Period has been added in order to have an opportunity to
 investigate the property prior to being obligated to move forward with permits and approvals.
 Accordingly, the Pre-Construction Period in 3.1.b has been revised to commence only upon the
 approval of feasibility and end concurrently with the closing of the construction financing.
- 2. **Sections 1.8/4.2/4.3**: Rent Adjustments and Rent Redeterminations are not included in the proposal as they are incompatible with the operations of a low-income housing tax credit project. Since tenant rents are limited and permanent loans are tightly underwritten, the Rent throughout the term must be determined prior to the commencement of the Construction Period.
- 3. **Article 1.10**: The matters that are intended to be covered by the Deposit will be paid by the Project reserves required by the lenders and investor as set forth in the revised **Article 5**. Adding an additional deposit to the budget that serves the same purpose as the reserves does not promote the financial feasibility of the Project.
- 4. **Article 2.2**: Surface entry rights will adversely impact the use and operation of the Project and are not permitted by lenders and investors.
- 5. **Article 2.3**: The Project must be able to operate free of any third-party interference. The Lessee must have the ability to consent to use of the property for any purpose that is not related to the housing and must be made whole for any losses caused by third parties.
- 6. **Article 3.1**: A 99-year lease term ensures that the lease will meet the underwriting requirements of the tax credit investor.
- 7. **Article 3.1.c**: The Construction Period has been revised to end upon the conversion or repayment of the Project's construction debt in order to conform with the terms of the Project financing.
- 8. **Sections 3.4.2/3.4.3/10.7**: Upon the termination of the lease, there will be no Project funds available to restore or demolish the Premises and it would be a financial burden on the developer to provide funds to restore or demolish a Project in which it no longer has an interest.
- 9. **Article 4.1.1/4.1.2/4.1.3**: During the pre-construction phase any rent payable should be nominal since funds will be expended for entitlement and other pre-development tasking. However, during the Construction Period, Project funds are available, and the proposal calls for a lump sum payment. After the Operation Period begins, payments will be made from cash flow in accordance with the proposal.
- 10. **Article 4.1.4**: A section was added to provide for the sharing of net commercial rental proceeds as set forth in the proposal.
- 11. Article 4.8/4.9: Changed to use correct defined terms.



- 12. Article 4.10: Revised for clarity.
- 13. Article 6.1: Revised to address the commercial space.
- 14. **Article 6.6**: Revised for accuracy.
- 15. **Article 7.1**: We need to better understand way such connections are necessary in order to determine whether they present any issues for the Project.
- 16. **Article 8.2/8.3**: The financial burden on the operations of an affordable housing must be minimized and providing security for the contest of liens is not a usual or expected expense. This language was substituted for typical language found in municipal ground leases for low-income projects.
- 17. **Article 10.1**: Revised for specificity.
- 18. **Article 10.2:** Optional Improvements are very broadly defined, and the provisions of this Article should not apply unless such work is material.
- 19. **Article 10.5**: It is an unnecessary financial burden to require the bonding of Optional Improvements.
- 20. **Article 11.3**: The Project will receive a welfare tax exemption, so language was added to provide for this.
- 21. **Article 13.2.1**: It is not commercially reasonably to exculpate the County Parties for their own bad acts.
- 22. **Article 13.3.4**: The Project owner should not be forced to indemnify any County Party for the acts of any other County Party. The County should be liable for the acts of all parties under its control, just as the Lessee is.
- 23. **Article 14.2**: Language added to provide for the acceptable use of products commonly used in the construction and operation of the Project that are not intended to be covered by this Section.
- 24. **Article 15.1**: The Lessee will be a tax credit limited partnership that includes an entity affiliated with the applicant as administrative general partner, a nonprofit managing general partner, and a tax credit investor that holds a 99.99% limited partnership interest. The limited partners must have certain transfer and removal rights. Changes have been made to this Article accordingly.
- 25. **Article 15.3.1**: Language added to clarify that the referenced subleases are not intended to refer to tenant leases.
- 26. **Article 15.4/20.1/20.4/21.4**: The senior mortgage documents will not say what is in 15.4. In order to obtain financing, the lender must be able to determine the use of casualty proceeds, including the use of such proceeds to repay the loan under certain circumstances. These changes reflect the rights of the senior lender.
- 27. **Article 15.6**: This is an unnecessary financial burden on the Lessee.
- 28. **Article 16.6**: The Project's senior lender must have the senior lien on personal property and fixtures.
- 29. Article 17.1: Net Income is not sufficient to satisfy all potential liabilities of the County.
- 30. **Article 22/23.1**: This provision could make the Project unfinanceable. Any conventional lender requires a first lien on the leasehold interest and clear title on the fee interest since the liens on the fee interest are essentially senior to the liens on the leasehold. The lease is the basis of the Lessee's interest in the land and must be superior to all liens.



- 31. **Deleted Article 28**: This project will be financed with low-income housing tax credits and other state and federal subsidies that will require compliance with the Uniform Relocation Assistance and Real Property Acquisition Policy Act. The Lessee cannot waive these rights on behalf of its tenants.
- 32. **Article 28**: These are the standard lender and investor protective provisions that the Project funders will require.
- 33. **Exhibit B**: Insurance obligations should commence only after an Approval Notice has been given.
- 34. Exhibit C, 1.F: Deleted language is duplicative of the language in 1.E
- 35. **Exhibit C, 2.A/D/E**: These exceed the coverage limits that will be required by any lender or investor. Requirements should be commercially reasonable.
- 36. **Exhibit I, F:** The proposal calls for the financing of the project with low-income housing tax credits. As such, occupancy must be in compliance with Section 42 and the state tax credit regulations.
- 37. **Exhibit I, G:** The imposition of occupancy minimums can give rise to fair housing claims in some circumstances. Language added to ensure that the Project can comply with fair housing laws.

ARIVA AT T	HE SPE	CTRUM				2018/	Mar	LOW RISE				
Location: 4855 ARIV ACITY: KEARNY MTBMap: APN: 369-220-63	Zip C	ode: ₉₂₁₂₃		DateSurve DevCo MapN	ode: 2B-SU	018 JN0001		Date Opened: 4/15/2014 Vacancy Profile				
Owner: SU	INROADS JNROAD /ENUE 5 RESIDE	NTIAL PROPE	RTIES			Phone: Phone: Phone: Phone:	(858)715-344 (858)715-34 (206)582-333 (858)496-040	144 3	Total Units Total Leased Total Vacant Vacancy Rate	253 239 14 5.53%		
Plan Name:	S1	A1	A2	A3-1	A3	A4	A 5	B1	B2	B3		
RentalRate Range	\$1,910 \$2,395	\$2,020 \$2,420	\$2,110 \$2,525	\$2,075 \$2,765	\$2,190 \$2,520	\$2,210 \$2,710	\$2,245 \$2,645	\$2,555 \$3,245	\$2,631 \$3,038	\$2,745 \$2,835		
Square Footage:	595	708	747	790	790	820	826	1,124	1,241	1,228		
\$ / Square Foot:	\$3.21 \$4.03	\$2.85 \$3.42	\$2.82 \$3.38	\$2.63 \$3.50	\$2.77 \$3.19	\$2.70 \$3.30	\$2.72 \$3.20	\$2.27 \$2.89	\$2.12 \$2.45	\$2.24 \$2.31		
# of Levels:	1	1	1	1	1	1	1	1	1	1		
# of Bedrooms:	0	1	1	1	1	1	1	2	2	2		
# of Bathrooms:	1	1	1	1	1	1	1	2	2	2		
# of Parking Spaces:	1 SUB	1 SUB	1 SUB	1 SUB	1 SUB	1 SUB	1 SUB	2 SUB	2 SUB	2 SUB		
Units Available	16	12	14	12	14	64	2	75	12	32		
Units Leased	15	12	14	8	14	62	2	70	12	30		
Units Vacant	1	0	0	4	0	2	0	5	0	2		
Vacancy Rate	6.3%	0.0%	0.0%	33.3%	0.0%	3.1%	0.0%	6.7%	0.0%	6.3%		
Audit Date					Rental Rate	e History						
2014/Sep 2015/Mar 2015/Sep 2016/Mar 2016/Sep 2017/Mar 2017/Sep 2018/Mar	\$1,595. \$1,615. \$1,615. \$1,615. \$1,915. \$1,915. \$1,880. \$1,910.	\$1,755. \$1,805. \$1,805. \$1,805. \$2,020. \$2,020. \$2,020. \$2,020.	\$1,860. \$1,880. \$1,880. \$2,110. \$2,110. \$2,110. \$2,110.	\$1,835. \$1,845. \$1,845. \$1,845. \$1,845. \$1,845. \$2,095. \$2,075.	\$1,930. \$1,930. \$1,930. \$1,930. \$2,190. \$2,190. \$2,190. \$2,190.	\$1,915. \$1,915. \$1,985. \$1,985. \$2,105. \$2,105. \$2,135. \$2,210.	\$2,060. \$2,075. \$2,075. \$2,075. \$2,245. \$2,245. \$2,245. \$2,245.	\$2,380. \$2,430. \$2,430. \$2,430. \$2,395. \$2,395. \$2,395. \$2,555.	\$2,745. \$2,745. \$2,745. \$2,745. \$2,865. \$2,865. \$2,631. \$2,631.	\$2,560. \$2,590. \$2,685. \$2,685. \$2,575. \$2,575. \$2,595. \$2,745.		
RENTAL POLICIES					PROPERTY	/ DESCRIPT	TION	AVERA	GE RENT & UNIT	SIZE		
Security Deposit Leaes Requirements LeaseIncentive PetsAllowed PetPolicy Occupancy Regs	STUDIO \$300; 1 YES - 3 THRU1 NONE YES - DEPOST \$25/ MO (CAT): NO	2 MONTH LEATS \$300;	ASE DOGS \$500	ST FLOOR 30	Age of Un # of Bld # of Stori	gs 2		A	Avg Rent \$2,35 wg Sq Ft: 95 \$ / Sq Ft: \$2.4	55		

ADDITIONAL PARKING \$75/MO. BIKE STORAGE, ADJACENT TO 2 ACRE PARK. PAW WASH STATION.

Formerly Known As:

Formerly Known A	As:										
F	EATURES	KITCHE	N & BATHS	REC FACILI	TIES	ABSORP'	TION	& VAC	ANCY	TREN	DS
Air Cond Cable TV Fireplace Floor Entry Guest Parking Heat Source Heat Type Laundry Common Laundry Private Patio Roof Storage Utilities Waster Trash Wet Bar Window Cover	ELECTRIC REFRIG CABLE READY NOT INCLUDED CARET/HARDWOO YES FORCED AIR GAS FULL SIZE W/D PATIO OR FLAT RENTED NONE NOT INCLUDED WOODS MINI	CookEnergy DishwashMFG GreenWindow KitCab KitCounter KitSink LumCeiling Microwave Oven RangMFG Refrig TrashMFG Bathtubs PullmanTop ShowerSurnd	ELECTRIC INCLUDED NOT INCLUDED ASH QUARTZ DOUBLE STEEL NOT INCLUDED INCLUDED SINGLE SELF-CLNG GENERAL INCLUDED NOT INCLUDED FIBERGLASS QUARTZ FIBERGLASS	Barbecue Cabana Clubhouse Exercise Play ground Pool Putting Grn Racquetball Sauna Shuffle Socials Spa Tennis Volly ball Weights	YES YES YES YES YES NO NO NO NO YS YES NO NO YS YES	2014/Sep 2015/Mar 2015/Sep 2016/Mar 2016/Sep 2017/Mar 2017/Sep 2018/Mar	69 11 25 141 -2 1 -10 4	0.55	69 80 105 246 244 245 235 239	16.97 12.83 17.5 41 40.67 40.83 37.3	45.24% 45.24% 36.51% 16.67% 2.77% 3.56% 3.16% 7.11% 5.53%

Date Opened: 1/25/2015 DateSurveyed: 2/15/2018 City: KEARNY MESA DevCode: 2B-0000007 Vacancy Profile ТВМар: **Zip Code**: 92123 MapNum: 487 APN: 421-205-07-00 **Total Units** 360 Owner: ALLIANCE RESIDENTIAL COMPANY Phone: (619)843-4178 Total Leased 330 ALLIANCE RESIDENTIAL COMPANY Phone Developer: (619)794-2330 **Total Vacant** 30 Property Manager: ALLIANCE RESIDENTIAL MANAGEMENT COMPANY Phone: (760)579-0025 Vacancy Rate 8.33% Resident Manager: DANA SOHOVICH Phone: (877)573-1291 Plan Name: **FALCON DUKE** AVANTI COMET **PIPER** A6 CARDINAL HAWKEYE MUSTANG **CESSNA** RentalRate Range \$2,170 \$2,170 \$2,070 \$2,181 \$2,096 \$1,950 \$2,555 \$2,544 \$2,707 \$3,727 \$2,320 \$2,305 \$2,370 \$2,586 \$2,140 \$1,950 \$2,867 \$2,924 \$2,757 \$3,727 Square Footage: 648 734 788 754 818 1,015 1,055 716 1,128 1,251 \$ / Square Foot: \$3.35 \$2.96 \$2.89 \$2.77 \$2.78 \$2.38 \$2.52 \$2.41 \$2.40 \$2.98 \$3.58 \$3.14 \$3.31 \$3.28 \$2.84 \$2.38 \$2.82 \$2.77 \$2.44 \$2.98 1 1 1 1 1 1 1 1 1 1 # of Levels: 2 2 2 2 1 1 1 1 1 1 # of Bedrooms: 1 1 1 1 1 1 2 2 2 2 # of Bathrooms: 2 SUB 2 SUB 2 SUB 2 SUB 1 SUB 1 SUB 1 SUB 1 SUB 1 SUB 1 SUB # of Parking Spaces: 37 37 48 15 1 53 21 Units Available 44 63 41 41 0 49 59 34 35 36 46 14 16 Units Leased 2 3 2 1 4 7 5 1 1 4 Units Vacant 5.4% 2.7% 6.8% 4.2% 6.7% 100.0% 7.5% 6.3% 17.1% 23.8% Vacancy Rate **Audit Date Rental Rate History** 2015/Mar \$1,875. \$1,875. \$1,860. \$1,945. \$1,920. \$1,950. \$2,268. \$2,317. \$2,515. \$2,952. 2015/Sep \$1,965. \$1,990. \$1,985. \$2,025. \$2,020. \$1,950. \$2,358. \$2,467. \$2,545. \$2,777. \$1,950. 2016/Mar \$1,938. \$1,955. \$1,773. \$2,260. \$2,020. \$2,428. \$2,211. \$2,353. \$2,977. 2016/Sep \$1,938. \$2,110. \$1,773. \$2,110. \$2,140. \$1,950. \$2,443. \$2,211. \$2,615. \$3,577. 2017/Mar \$1,960. \$2,000. \$2,140. \$1,890. \$1,773. \$1,950. \$2,443. \$2,211. \$2,615. \$3,577. 2017/Sep \$1,890. \$2,205. \$2,265. \$2,215. \$2,125. \$1,950. \$2,750. \$2,475. \$2,615. \$2,940. 2018/Mar \$2,170. \$2,170. \$2,070. \$2,181. \$2,096. \$1,950. \$2,555. \$2,544. \$2,707. \$3,727. RENTAL POLICIES PROPERTY DESCRIPTION **AVERAGE RENT & UNIT SIZE** Security Deposit

LOW RISE

Avg Rent

Avg Sq Ft:

Avg \$ / Sq Ft:

\$2,430

904

\$2.69

2018/Mar

BROADSTONE CORSAIR Formerly Known As:

YES - 13 MONTH

50 LB. MAXIMUM

6 WEEKS FREE RENT

YES - UPON APPROVAL

Leaes Requirements

LeaseIncentive

Occupancy Regs **REMARKS**

PetsAllowed

PetPolicy

OLYMPUS CORSAIR

8583 AERO DRIVE

Location:

FEATURES	KITCHEN	& BATHS	REC FACILIT	TES	ABSORP [*]	TION	& VAC	ANCY	TREN	DS
AirCond ELECTRIC REFRIG CableTV Fireplace FloorEntry GuestParking HeatSource HeatType LaundryCommon LaundryPrivate Patio Roof Storage Utilities WasterTrash WetBar WindowCover	CookEnergy DishwashMFG GreenWindow KitCab KitCounter KitSink LumCeiling Microwave Oven RangMFG Refrig	GAS FRIGIDAIRE NOT INCLUDED GRANITE/QUARTZ FRIGIDAIRE NOT INCLUDED	Barbecue Cabana Clubhouse Exercise Play ground Pool PuttingGrn Racquetball Sauna Shuffle Socials Spa Tennis Vollyball Weights	YES YES YES YES YES YES YES YES	2015/Mar 2015/Sep 2016/Mar 2016/Sep 2017/Mar 2017/Sep 2018/Mar	Cur	Audit d /Mo	Sustai	53.82 49.5 53.67 58.67 57.67 58.99	82.06% 12.65% 10.56% 2.22% 3.89% 2.22% 8.33%
willdowcover			Oher							

Age of Units

of Bldgs

of Stories

3.1

1

4

Location: 3455 KEAF City: SERRA ME	SA		DateSurveyed			Date Opened: 5/30/2009
TBMap: 1249-B,4 APN:	Z	ip Code: 92123	DevCode MapNum		M/4/4	Vacancy Profile
Developer: SI	MPSON PROPERTY GROU MPSON HOUSING MPSON PROPERTY GROU REW SCIORTINO		.	Phone: Phone Phone: Phone:	(303)283-4100 (303)283-4100 (888)330-5946 (858)560-5720	Total Units 289 Total Leased 271 Total Vacant 18 Vacancy Rate 6.23%
Plan Name:	ALBA	PRATO	TRAMONTO	LAGO	GIARDIN	IO MONTAGNA
RentalRate Range	\$2,000	\$2,355	\$2,440	\$2,620	\$2,950	\$3,885
	\$3,225	\$3,355	\$3,900	\$2,620	\$4,225	\$3,885
Square Footage:	780	1,059	1,198	1,261	1,453	1,662
\$ / Square Foot:	\$2.56	\$2.22	\$2.04	\$2.08	\$2.03	\$2.34
	\$4.13	\$3.17	\$3.26	\$2.08	\$2.91	\$2.34
# of Levels:	1	1	1	2	1	2
# of Bedrooms:	1	2	2+DEN	2+LOFT	3	3+LOFT
# of Bathrooms:	1	2	2	2	2	2
# of Parking Spaces:	1 SP	2 UG				
Units Available	56	102	63	6	60	2
Units Leased	53	98	55	6	57	2
Units Vacant	3	4	8	0	3	0
Vacancy Rate	5.4%	3.9%	12.7%	0.0%	5.0%	0.0%
Audit Date			Rental Rate I	listory		
2013/Sep 2014/Mar 2014/Sep 2015/Mar 2015/Sep 2016/Mar 2016/Sep 2017/Mar 2017/Sep 2018/Mar	\$1,541. \$1,572. \$1,660. \$1,600. \$1,980. \$1,980. \$2,045. \$2,045. \$1,915. \$2,000.	\$1,641. \$1,674. \$2,125. \$1,880. \$2,325. \$2,140. \$2,270. \$2,270. \$2,310. \$2,355.	\$2,131. \$2,174. \$2,110. \$2,280. \$2,280. \$2,280. \$2,835. \$2,835. \$2,445. \$2,440.	\$2,471. \$2,520. \$2,440. \$2,440. \$2,440. \$2,440. \$2,440. \$2,440. \$2,615. \$2,620.	\$2,066. \$2,107. \$2,490. \$2,490. \$2,740. \$2,740. \$2,810. \$2,810. \$2,965. \$2,950.	\$1,851. \$1,888. \$2,795. \$2,795. \$2,795. \$2,795. \$2,795. \$2,795. \$3,115. \$3,885.
RENTAL POLICIES			PROPERTY D	ESCRIPT	ION AVE	RAGE RENT & UNIT SIZE
Security Deposit Leaes Requirements Lease Incentive Pets Allowed Pet Policy Occupancy Regs	\$99 FLEXIBLE 1 MONTH FREE/RATES CI YES - UPON APPROVA \$400 DEPOSIT + \$50 PER	-	Age of Units # of Bldgs # of Stories	8.7 6 4	Å	Avg Rent \$2,444 Avg Sq Ft: 1,125 Avg \$ / Sq Ft: \$2.17

LOW RISE

2018/Mar

THIS TUSCANY STYLE VILLAGE FEATURES SECURED UNDERGROUND PARKING, ELEVATOR, 9 FOOT CEILINGS W/LOFT UNITS 16 FEET, ON-SITE STORAGE IS \$35-\$200/MO.,SALT-WATER POOL, PENDANT LIGHTING, COMPUTER NICHES AND WI-FI CAFE. 29 AFFORDABLE UNITS.

Formerly Known A	s:											
FE	ATURES	KITCHE	KITCHEN & BATHS			ABSORPTION & VACANCY TRENDS						
Air Cond Cable TV Fireplace Floor Entry Guest Parking Heat Source Heat Type Laundry Common Laundry Priv ate Patio Roof Storage Utilities Waster Trash	ELECTRIC REFRIG CABLE READY NOT INCLUDED CARPET/TILE FORCED AIR GAS NOT INCLUDED STACKED W/D PATIO OR CONCRETE TILE ON PATIO OR NONE NOT INCLUDED	CookEnergy DishwashMFG GreenWindow KitCab KitCounter KitSink LumCeiling Microwave Oven RangMFG Refrig TrashMFG Bathtubs PullmanTop	ELECTRIC GENERAL ELECTRIC NOT INCLUDED CHERRY GRANITE DOUBLE STEEL NOT INCLUDED INCLUDED SINGLE SELF-CLNG GENERAL STAINLESS NOT INCLUDED FIBERGLASS GRANITE W/DOUBLE	REC FACILI Barbecue Cabana Clubhouse Exercise Playground Pool PuttingGrn Racquetball Sauna Shuffle Socials Spa Tennis Vollyball	YES NO YES YES NO YES NO NO NO YES NO NO	2013/Sep 2014/Mar 2014/Sep 2015/Mar 2015/Sep 2016/Mar 2016/Sep 2017/Mar 2017/Sep	Cur	O -0.04 0.07 0.02 0 0.01	Sustai	44.5 42.33 45.83 42 46.83	7.61% 12.11% 4.84% 3.11% 2.77% 2.08% 4.50% 1.38% 5.88%	
WetBar WindowCover	VERTICAL BLINDS	ShowerSurnd	FIBERGLASS	Weights Oher	YES	2018/Mar	-1	0	271		6.23%	
		(D. 1.4. D. 14.			00.000							

Location: 8798 SPECTRUM CENTER BLV D. City: KEARNY MESA						Da	teSurveyed:	2/15/2018			Date Opened: 6/1/2012				
TBMap:		Zip	Code: 9212	3			DevCode: MapNum:	2B-W0 485	OP0019			Vacancy Prof	file		
Owner: W(ERS / TRUST INC						Phone: Phone Phone:	(770)951-8989 (949)260-99 (619)688-9307 (858)292-1000	60 7		Total Units Total Leased Total Vacant Vacancy Rate	379 359 20 5.28%		
Plan Name:	S-1	A-1	A-2A/B	A-3	A -4	•	B-1A	B-1B	B-1C	B-	1D	B-2	B-3		
RentalRate Range	\$1,756 \$1,756	\$1,923 \$2,045	\$1,906 \$2,001	\$1,881 \$1,975		190 266	\$2,231 \$2,307	\$2,67 \$2,67			,308	\$2,634 \$2,673	\$2,814 \$2,998		
Square Footage:	598	650	740	786	905		1,106	1,094			110	1,267	1,309		
\$ / Square Foot:	\$2.94 \$2.94	\$2.96 \$3.15	\$2.58 \$2.70	\$2.39 \$2.51	\$2. \$2.		\$2.02 \$2.09	\$2.44 \$2.44	\$2.18 \$4.90		2.08 2.84	\$2.08 \$2.11	\$2.15 \$2.29		
# of Levels:	1	1	1	1	1		1	1	1	1		1	1		
# of Bedrooms:	0	1	1	1	1		2	2	2	2		2	2+DEN		
# of Bathrooms:	1	1	1	1	1		2	2	2	2		2	2		
# of Parking Spaces:	1 UG	1 UG	1 UG	1 UG	1 UG		2 UG	2 UG	2 UG	2 l	IJG	2 UG	2 UG		
Units Available	23	16	76	80	25		16	71	32	16)	12	12		
Units Leased	23	15	71	75	23	23 11 71 32		71 32)	11	11			
Units Vacant	0	1	5	5	2		5	0	0			1	1		
Vacancy Rate	0.0%	6.3%	6.6%	6.3%	8.0	%	31.3%	0.0%	0.0%	0.0	0%	8.3%	8.3%		
Audit Date						Renta	I Rate H	istory							
2013/Sep 2014/Mar 2014/Sep 2015/Mar 2015/Sep 2016/Mar 2016/Sep 2017/Mar 2017/Sep 2018/Mar	\$1,559. \$1,731. \$1,556. \$1,798. \$1,798. \$1,798. \$1,809. \$1,727. \$1,727.	\$1,662. \$1,854. \$1,809. \$1,863. \$1,863. \$1,863. \$1,660. \$1,660. \$1,660.	\$1,848. \$1,840. \$1,770. \$1,940. \$2,071. \$1,684. \$1,981. \$1,709. \$1,835. \$1,906.	\$1,888. \$1,775. \$1,770. \$1,577. \$1,969. \$1,671. \$2,032. \$1,734. \$1,809. \$1,881.	\$2, \$2, \$2, \$1, \$1, \$2, \$2,	125. 055. 118. 118. 963.	\$2,336. \$1,984. \$2,350. \$2,322. \$2,322. \$2,008. \$2,366. \$2,285. \$2,300. \$2,231.	\$2,212 \$1,98 \$2,30 \$2,30 \$2,30 \$2,673 \$2,67 \$2,67 \$2,67	4. \$1,984. 8. \$2,580. 8. \$2,580. 8. \$2,580. 8. \$2,580. 9. \$2,580. 9. \$2,391. 3. \$2,391. 3. \$2,391.	\$1 \$2 \$2, \$2 \$2 \$2, \$2 \$2	,259. ,984. ,308. ,308. ,308. ,308. ,308. ,308. ,308.	\$2,650. \$2,409. \$3,000. \$2,739. \$2,739. \$2,324. \$2,673. \$2,673. \$2,583. \$2,634.	\$2,855. \$2,585. \$2,886. \$2,787. \$2,787. \$2,787. \$2,787. \$2,787. \$2,787. \$2,787.		
RENTAL POLICIES						PRO	PERTY DE	SCRIPT	ION	AVE	RAG	E RENT & UNI	T SIZE		
Security Deposit Leaes Requirements Lease Incentive Pets Allowed PetPolicy Occupancy Regs	400 FLEXIBLE \$1000 OFF 1ST YES - UPON A \$400 DEPOSIT * 35 UNITS ARE	APPROVAL + \$50 PER N	лоnтн (Doc	G) \$25 PER			ge of Units # of Bldgs of Stories	5.7 3 4		A	Avg	g Rent \$2,17 Sq Ft: 9' Sq Ft: \$2.3	10		

LOW RISE

2018/Mar

DOMAIN BY ALTA

CONTROLLED ACCESS ENTRY FEATURING ELEVATOR, 9 FT. CEILINGS, WALK-IN CLOSETS, FULL-SIZE WASHER/DRYERS,MIRRORED CLOSET DOORS. OASIS STYLED COURTYARD, OUTDOOR FIREPLACE, GOURMET KITCHEN, COFFEE BAR, WI-FI, 2-STORY CLUBROOM AND WATERFALL.

Formerly Known A	s:										
R=	ATURES	KITCHE	N & BATHS	REC FACILI	TIES .	ABSORP'	TION	& VAC	ANCY	TREN	DS
AirCond CableTV Fireplace FloorEntry GuestParking HeatSource HeatType LaundryCommon LaundryPrivate Patio Roof Storage Utilities WasterTrash WetBar WindowCover	ELECTRIC REFRIG CABLE READY NOT INCLUDED WOOD/STONE FORCED AIR GAS NOT INCLUDED STANDARD W/D NOT INCLUDED MISSION TILE SEPARATE AREA NONE NOT INCLUDED NOT INCLUDED NOT INCLUDED MINI & VERTICAL	CookEnergy DishwashMFG GreenWindow KitCab KitCounter KitSink LumCeiling Microwave Oven RangMFG Refig TrashMFG Bathtubs PullmanTop ShowerSurnd	ELECTRIC WHIRLPOOL NOT INCLUDED MAPLE GRANITE SINGLE STEEL NOT INCLUDED INCLUDED SINGLE SELF-CLNG WHIRLPOOL STAINLESS NOT INCLUDED PORCELAIN GRANITE W/DOUBLE CERAMIC TILE	Barbecue Cabana Clubhouse Exercise Playground Pool PuttingGrn Racquetball Sauna Shuffle Socials Spa Tennis Vollyball Weights	YES NO YES YES NO YES NO NO YES YES NO NO YES	2013/Sep 2014/Mar 2014/Sep 2015/Mar 2015/Sep 2016/Mar 2016/Sep 2017/Mar 2017/Sep 2018/Mar			287 292 328 363 357 357 366 360 370 359	47.83 48.67 54.67 60.5 59.5 59.5 61 60 58.73	24.27% 22.96% 13.46% 4.22% 5.80% 5.80% 5.01% 2.37% 5.28%
Con	vright 2016 Marke	tPointo Poalty	Advisors Pontal	France (619) 2	22 2704	WWW r	nark	otnoir	ato co	nm.	



6. Financial Capability (Messina Seniors)

The entity responsible for financing the project is Chelsea Investment Corporation.

Project Sources:

Tax Credit Equity	\$ 36,329,134
Permanent Loan	\$ 12,968,485
Land Contribution / Note	\$ 6,850,000
Deferred Fee	\$ 360,282
Developer Fee Contribution	\$ 2,907,580
VHHP	<u>\$ 5,375,000</u>

\$ 64,790,480

Financing Plan

The financing plan for the Messina Senior Development is to utilize the bifurcated financing offered by the California Tax Credit Allocation Committee (CTCAC) in order to combine 4% and 9% low income housing tax credit (LIHTC) equity. Additional projected financing sources include deferred/contributed Developer Fee, Land Value, Veterans Housing and Homelessness Prevention Program, a Permanent Loan, and a small amount of VASH Vouchers.

Tax Credit Equity

By bifurcating the project into two components for financing purposes, the project will leverage a greater amount of tax credit equity than if it was solely financed by only one type of LIHTC. The 9% tiebreaker includes all soft funding sources committed to the project. The tiebreaker projected to this project is estimated is 56.8%, which will be highly competitive. CIC has partnered with many LIHTC investors on previous deals and will seek to achieve the highest tax credit pricing at the time of LIHTC reservation.

Permanent Loan

The Permanent Loan is \$12,968,485, a portion of which may be a tax-exempt bond issuance. This loan is underwritten using the income mix as shown in the pro forma as well as the income from the VASH vouchers. Loan proceeds were determined using a 5.85% interest rate (fixed), 35 year amortization with a 15 year term. The rate is subject to change due to market conditions until the interest rate is locked.

Land Contribution/Note

We are proposing to make a fixed ground lease payment with residual cash flow payments which is reflected in our pro forma as well as our proposal response. CTCAC will allow the valuation of the land as entitled to be "contributed" to the lease holder. This will be substantiated by an appraisal with the application. We have used an estimate based on comparable land sales.



<u>Deferred Developer Fee & Contribution</u>

Please note that any shortfalls in the project's financing identified as a result of underwriting, will be financed by deferral of the applicant's developer fee to the maximum allowable amount.

VHHP (Veterans Housing and Homelessness Prevention Program)

A VHHP loan in the amount of \$5,375,000 will be applied for in the summer of 2019 from the California State Department of Housing and Community Development. This represents 43 units set-aside for senior Veterans with incomes ranging between 30% and 60% AMI.

HUD-VASH Vouchers

A request to the San Diego Housing Commission for 43 PBVs will be made once initial site control is obtained. Currently, the SDHC has made 300 vouchers available this year with additional 300 to be made available in the next fiscal year.

Market Assesment

With market rate rents averaging over \$3.00 psf in the Clairemont market and vacancy rates for stabilized apartment buildings approaching 5%, Messina and Modica will have no issues on lease-up or maintaining stabilized occupancy. Included in the following section we have provided rental information for the competing market rate apartment inventory on the Clairemont area.



6. Financial Capability (Modica Family)

The entity responsible for financing the project is Chelsea Investment Corporation.

Project Sources:

Tax Credit Equity	\$ 40,576,013
Permanent Loan	\$ 19,175,187
Deferred Fee	\$ 229,374
Developer Fee Contribution	\$ 8,763,608
CPP	\$ 5,200,000
AHP	\$ 2,000,000
State	\$ 11,340,000
AHSC	\$20,000,000
Accrual of Soft Loan Interest	<u>\$ 540,000</u>

\$107,824,182

Financing Plan

The financing plan for Messina is to utilize 4% LIHTC equity (non-competitive) in addition to the funding from Affordable Housing and Sustainable Communities program, the Federal Home Loan Bank's AHP program, deferred/contributed developer fee, Community Placement Plan funds (CPP) from CA Department of Developmental Services, future subsidy available from the State, and a Permanent Loan.

Tax Credit Equity

CIC has partnered with many LIHTC investors on previous deals and will seek to achieve the highest tax credit pricing for the projected credit equity in the amount of \$40,576,013 at the time of LIHTC reservation.

AHP Loan

An AHP loan in the amount of \$ 2,000,000 will be applied for in March of 2019 (or upon project entitlement).

Permanent Loan

The Permanent Loan is \$ 19,175,187, a portion of which may be a tax-exempt bond issuance. This loan is underwritten using the income mix as shown in the pro forma. Loan proceeds were determined using a 5.85% interest rate (fixed), 35 year amortization with a 15 year term. The rate is subject to change due to market conditions until the interest rate is locked.



<u>Deferred Developer Fee & Contribution</u>

Please note that any shortfalls in the project's financing identified as a result of underwriting, will be financed by deferral of the applicant's developer fee to the maximum allowable amount.

Affordable Housing and Sustainable Communities (AHSC)

Financing from the AHSC (also known as "Cap and Trade") program is available once per year, with applications typically due in the first quarter. An application for \$20MM, which includes \$3MM for sustainable transit improvements, will be made after the project is entitled.

Other State Funds

The project shows approximately \$11,340,000 in other State funds. Significant funding is projected to be available in the future from local and state funding sources. Rather than identify the exact program, we plan to utilize the best fit of funding sources for this project as it advances. These funds may include a mix of SB2, National Housing Trust Fund, No Place Like Home, or MHP (SB3 funding) funding sources.

Community Placement Plan (CPP)

Chelsea Investment and Southern California Housing Collaborative have a close relationship with the San Diego Regional Center which provides a variety of services to persons with for persons with intellectual and developmental disabilities and their families that are based on individual needs and supports their independence. The State of California through the Department of Developmental Services provides all funding to support the consumers of the Regional Center in order to allow them to lead full and fulfilling lives. One of the primary funding sources for housing is the Community Placement Plan funds, which total \$68MM for the State. The San Diego region's proportional share is approximately \$5MM. We intend to partner with the San Diego Regional Center to request these funds for the Modica Family development as the project advances. This will allow persons currently in Developmental Center to reintegrate into the community or persons eligible for placement in Developmental Centers to be deflected from a center and remain in the community.

Soft Loan Interest

The accrual of interest on the soft loan funded during the construction period has been assumed as financing source, as this interest expense is eligible for 4% tax credit equity.

Market Assesment

With market rate rents averaging over \$3.00 psf in the Clairemont market and vacancy rates for stabilized apartment buildings approaching 5%, Messina and Modica will have no issues on lease-up or maintaining stabilized occupancy. Included in the following section we have provided rental information for the competing market rate apartment inventory on the Clairemont area.

Mt. Etna- 152 units 4%/9% 6/14/18

Preliminary Analysis Subject to Further Revisions



SOURCES AND USES SUMMARY

FINANCING ASSUMPTIONS

PRELIM DEVELOPMENT PROGRAMMING SUMMARY

Development Costs		Equity									
Development dosts		Equity				City:		San Diego			
Acquisition		Closing	Completion	Conversion	8,609	MSA:		San Diego			
	\$4,934/unit 750,000		0%	89%	1%	WIGA.		San Diego			
Ground lease payment		1. 9 .9	0%			O'' ()		400 (4 4 1)			
Remainder of Land Value	\$45,066/unit 6,850,000	Federal Tax Credit Price			\$ 0.9800	Site (acres):		4.09 (total)			
Subtotal Acquisition	\$50,000/unit 7,600,000					Construction T	ype:	Type III (5 storie	es)		
						No. of Stories:		5			
Hard Costs		9% Credit Rate			9.00%	Parking Type:		Structured			
Total Sitework and Vertical	\$225,000/unit 34,200,000	4% Credit Rate	TCAC A	pp Rate	3.25%	No. of Stalls:		465 (total)			
		LP Interest		•	99.99%			` '			
GC Contingency	\$11,250/unit 1,710,000	10 Yr Federal Tax Credits			25,000,000	Impact Fees pe	er Unit:	9,779			
General Requirements/OH/Profit	\$33,075/unit 5,027,400	3 Yr State Credits			0	Financing Sou		4%+NPLH+VHI	4P 9%±land: 4	R VASH vouche	are
Ceneral requirements/OFF/Frenk	\$55,075/drift 5,527,400	Solar Credits			0	i manoing cou	1003.	4701141 E111 VIII	ii , 570 Haria, 4	y v/torr voucine	210
Owner Centingeney	\$13,466/unit 2,046,870	Solai Credits			O						
Owner Contingency											
Subtotal Hard Costs	\$282,791/unit 42,984,270										
							<u> </u>	ROJECT UNIT	& INCOME	MIX	
							_				
		II									
1		Debt				AMI	Studio	1BR	2BR	3BR	Totals
		Opr. Exp./Unit/Year			5,402	Sq. Ft.	350	572	738	0	92,090
		Opr. Exp./Orniv real			5,402	Sq. Ft.	330	372	130	U	92,090
0.00											
Soft Costs		15			500		A	^		••	
A&E	\$6,399/unit 972,705	Replacement Reserves/Unit/Yea	ar		500	UA	\$47	\$57	\$75	\$0	
Financing Fees and Interest	\$26,242/unit 3,988,821	Vacancy Rate			5.00%	80%	0	26	6	0	32
Legal Fees	\$2,072/unit 315,000	DCR			1.15	70%	0	0	0	0	0
Reserves	\$2,950/unit 448,339	Perm Loan Amort			35	60%	0	36	9	0	45
Development Impact and Permit Fees	\$10,750/unit 1,633,985	Interest Rate - Permanent Loan			5.85%	50%	0	1	1	0	2
Developer Fee	\$38,997/unit 5,927,580	Interest Rate - Construction Loan	n		4.00%	40%	0	0	0	0	0
Misc (Acctg, Marketing, Reports, Studies, Etc)	\$4,779/unit 726,364	Tax- Exempt Bonds - Construction	on/Perm		12,968,485	30%	0	0	0	0	0
Contingency	\$1,272/unit 193,417	Tax- Exempt Bonds - Construction			36,611,821	30%	Ô	58	13	Ô	71
Subtotal Soft Costs	\$93,462/unit 14,206,210	Tax Exempt Bende Continuent	0		00,011,021	Mgr.	0	0	2	0	2
Subtotal Soft Costs	\$93,462/dillt 14,200,210	Total Bonds			49,580,306	Totals	0	121	31	0	152
T-t-I DI	\$426,253/unit 64,790,480	Total Bolius			49,560,306	Totals	<u>U</u>	121	31	<u>U</u>	152
Total Development Costs	\$426,253/unit 64,790,480	II				_					
		Tax Credit Considerations				Common		Net SF		Cost psf	
						ave	erage affordal	bility	49.93%		
Sources						Eff Loss		Gross SF		Cost psf	
		DDA/QCT Boost			130%	<u> </u>		0.000 0.		GGGC PG.	
Federal LIHTC Equity	56% 36,329,134	50% Test A			80.15%						
rederal Elitto Equity	30% 30,329,134	30 /6 Test A			00.1378						
		Hanny File			E0 =						
Permanent Loan (Tranche A)	20% 12,968,485	CA 9% Tiebreaker			56.76%						
	0%	Prevailing Wage (State, Federal	, Both):		Yes						
Land Contribution / Note	11% 6,850,000	II									
Deferred Developer Fee	1% 360,282	II .									
Developer Fee Contribution	4% 2,907,580	II									
		II .									
		II									
		II .									
VHHP	8% 5,375,000	II									
	5.5 0,010,000	II									
Total Development Sources	100% 64,790,480	II									
Total Development doubles	100 /6 04,7 90,480	II									
		040115101									
		CASH FLOV	<u>rv</u>								
End of Year Year 1 Year 2	Year 3 Year 4 Year 5	Year 6 Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16
Net Income 2 078 187 2 130 142	2 183 395 2 237 980 2 293 930	2 351 278 2 410 060	2 470 311	2 532 069	2 595 371	2 660 255	2 726 762	2 794 931	2 864 804	2 936 424	3 009 835

							OAGITTEO	<u></u>									
End of Year	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	<u>Year 10</u>	<u>Year 11</u>	<u>Year 12</u>	Year 13	Year 14	Year 15	Year 16	
Net Income	2,078,187	2,130,142	2,183,395	2,237,980	2,293,930	2,351,278	2,410,060	2,470,311	2,532,069	2,595,371	2,660,255	2,726,762	2,794,931	2,864,804	2,936,424	3,009,835	
Operating Exp	<u>821,169</u>	<u>849,910</u>	<u>879,656</u>	910,444	942,310	975,291	1,009,426	1,044,756	1,081,322	<u>1,119,169</u>	1,158,340	1,198,881	1,240,842	1,284,272	1,329,221	1,375,744	
NOI	1,257,018	1,280,232	1,303,739	1,327,536	1,351,620	1,375,987	1,400,634	1,425,555	1,450,747	1,476,202	1,501,916	1,527,880	1,554,088	1,580,532	1,607,203	1,634,091	
Debt Service	871,719	871,719	871,719	871,719	871,719	871,719	871,719	871,719	871,719	871,719	871,719	871,719	871,719	871,719	871,719	871,719	
Services	131,500	134,788	138,157	141,611	145,151	148,780	152,500	156,312	160,220	164,225	168,331	172,539	176,853	181,274	185,806	190,451	
Reserves	76,000	78,280	80,628	83,047	85,539	88,105	90,748	93,470	96,275	99,163	102,138	105,202	108,358	111,609	114,957	118,406	
Issuer Fees & Admin Fee	24,467	24,467	24,467	24,467	24,467	24,467	24,467	24,467	24,467	24,467	24,467	24,467	24,467	24,467	24,467	24,467	
Mandatory Pymts	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575	
MGP&AGP&LP Fees	50,000	51,300	52,839	54,424	56,057	57,739	59,471	61,255	63,093	64,985	66,935	68,943	71,011	73,142	75,336	57,932	
Residual CF	80,758	97,104	113,354	129,693	146,112	162,603	179,155	195,757	212,399	229,068	245,751	262,435	279,106	295,747	312,343	348,541	
DCR	1.15	1.17	1.19	1.21	1.23	1.25	1.27	1.29	1.32	1.34	1.36	1.38	1.40	1.42	1.44	1.47	
Developer Land Note	0	Ō	0	Ō	0	0	0	0	0	0	0	0	0	0	0	0	

							Constructi					Construction	Stabilization	Conversion	8609	Total
			Close	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Quarter 5	Quarter 6	Quarter 7	Quarter 8	Subtotal	6 mos			
l le	SOURCES OF FUNDS			<u>10%</u>	<u>10%</u>	<u>10%</u>	<u>20%</u>	<u>20%</u>	<u>10%</u>	<u>10%</u>	<u>10%</u>		ı			
	Federal LIHTC Equity		3,632,913	_	_		 					3,632,913	_	32,332,929	363,291	36,329,134
	Construction Loan		2,042,351	4,386,022	4,426,186	4,471,933	9,333,111	8,927,850	4,706,888	4,807,213	5,464,388	48,565,941	1,014,365	(49,580,306)	- 303,291	30,323,134
	Permanent Loan (Tranche A)		-	-			-	-	1,1 00,000	1,001,210		-	-	12,968,485		12,968,485
	/HHP (43 units)		-	-	-	_	-	-			- 1	-	-	5,375,000	- 1	5,375,000
8 D	Deferred Developer Fee		-	-	-	-	-	-			-	-	-	360,282	-	360,282
	Developer Fee Contribution		-	-	-	-	-	-	i		-	-	-	2,907,580	-	2,907,580
	and Contribution / Note		6,850,000	-	-			-		 '	-	6,850,000	-	-	-	6,850,000
	Total Sources of Funds		12,525,264	4,386,022	4,426,186	4,471,933	9,333,111	8,927,850	4,706,888	4,807,213	5,464,388	59,048,855	1,014,365	4,363,969	363,291	64,790,480
17						├				├					\longrightarrow	
18 19 U	JSES OF FUNDS					\vdash	\vdash		\longrightarrow	\vdash				-		
	ACQUISITION								$\overline{}$		 					
	Prepaid Ground Lease		750,000	-	-		- 1	-				750,000	-	-		750,000
22	Remainder of Land Value		6,850,000	-	-	_	- 1	- 1				6,850,000	-	-	- 1	6,850,000
28	Total Land / Acquitisiton		7,600,000	-	-		- 1	- 1			- 1	7,600,000	-	-		7,600,000
29	•															
47 N	NEW CONSTRUCTION								i							
	Sitwork, Garage, Vertical		-	3,420,000	3,420,000	3,420,000	6,840,000	6,840,000	3,420,000	3,420,000	3,420,000	34,200,000	-	-	-	34,200,000
	GC Contingency and Escalation	5.00%	-	171,000	171,000	171,000	342,000	342,000	171,000	171,000	171,000	1,710,000	-	-	-	1,710,000
	General Requirements/OH/Profit	14.00%	-	502,740	502,740	502,740	1,005,480	1,005,480	502,740	502,740	502,740	5,027,400	-	-		5,027,400
	Total New Construction		-	4,093,740	4,093,740	4,093,740	8,187,480	8,187,480	4,093,740	4,093,740	4,093,740	40,937,400	-	-		40,937,400
61	ADCHITECTUDAL					\vdash	\vdash		\vdash	\vdash						
	ARCHITECTURAL		000 005			├				├		000 005			\longrightarrow	000 005
	Building Landscape		666,805 15,200	-	-	<u>-</u> _	┢══			<u>-</u> _	 	666,805 15,200	-	-		666,805 15,200
65	Energy Consultant		15,200	-	-		 		-		- 1	15,200		+	-	15,200
	Total Architectural		697,205	-			 					697,205	_	_		697,205
70	Total Alchitectural		037,203	_		\vdash			\vdash	\vdash	 	037,203	_			031,203
	SURVEY & ENGINEERING															
	All Civil		104,500	-	-		- 1	-			-	104,500	-	-		104,500
73	Environmental		53,200	-	-		-	-			- 1	53,200	-	-		53,200
74	Soils		34,200	-	-		-	-			- 1	34,200	-	-		34,200
75	Dry Utilities		28,500	-	-	- 1	-	-	1	,	-	28,500	-	-	- 1	28,500
	Traffic		7,600	-	-	-	-	-			-	7,600	-	-	-	7,600
77	Sewer Lift		47,500	-	-			-		<u>'</u>	-	47,500	-	-	-	47,500
80	Total Survey & Engineering		275,500	-	-			-		'		275,500	-	-		275,500
81																
	CONTINGENCY COSTS					<u> </u>	L			<u> </u>						
	Hard Cost Contingency	5%	- 440.450	204,687	204,687	204,687	409,374	409,374	204,687	204,687	204,687	2,046,870	-	-		2,046,870
84 85	Soft Cost Contingency Total Contingency	3%	119,456 119,456	2,551 207,238	3,721 208,408	5,054 209,741	6,881 416,255	9,641 419,015	11,897 216,584	14,819 219,506	19,397 224,084	193,417 2,240,287	-	-		193,417 2,240,287
86	Total Contingency		119,430	207,236	200,400	209,741	410,233	419,013	210,304	219,500	224,064	2,240,207		-		2,240,261
	CONSTRUCTION PERIOD EXPENSES								$\overline{}$		 					
	Construction Loan Interest		-	35,044	79,038	123,452	184,375	276,356	351,564	398,967	351,564	1,800,360	934,390	-		2,734,749
91	Origination Fee	1.00%	495,803	-		-	-		-	-		495,803	-	-	-	495,803
	Lender Inspection Fees		-	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	60,000	-	-	-	60,000
	Taxes During Construction		7,500	-			-	-	-		-	7,500	-	-	- 1	7,500
97	Insurance During Construction		100,000	-	-	-	-	-	-	-	-	100,000	-	-		100,000
98	Title and Recording Fees		50,000	-	-			-				50,000	-	-	-	50,000
99	Construction Mgmt. and Monitoring		20,000	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	80,000	-	-	-	80,000
101	Other: PW Monitoring		-	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	200,000	-	-	-	200,000
102	Other:		-	-	-	455.55		-		465 55		-	-	-		
103	Total Construction Period Expense		673,303	75,044	119,038	163,452	224,375	316,356	391,564	438,967	391,564	2,793,663	934,390	-		3,728,052
104	PERMANENT FINANCING EXPENSES					\vdash	\vdash			\vdash						
105 P	Loan Origination Fees	0.50%					\vdash				 			64,842		64,842
	Title and Recording Fees	0.50%		-	-		 				 		-	10,000	- :	10,000
111	Other: Issuer Fee	0.250%	123,951		-				\vdash		 	123,951	61,975	10,000		185,926
113	Total Permanent Financing	0.20076	123,951	-	<u> </u>		 	 1	 			123,951	61,975	74,842		260,769
114	'		,			$\overline{}$				$\overline{}$,	,	,		
	EGAL FEES								i							
	Construction Lender Legal		60,000	-	-			- 1	- 1		- 1	60,000	-	-	- 1	60,000
	Permanent Lender Legal		45,000	-			1					45,000	-	15,000		60,000
118	Sponsor Legal		60,000		-							60,000				60,000
	Organizational Legal		50,000	-	-	-	-	-	-	-	-	50,000	-	-	-	50,000
	Other Legal (Issuer Legal, Bond Counsel)		60,000	-	-							60,000	-	-	-	60,000
	Other: GP Legal	1	25,000	-	-	1	ı -T	-	ı -T	1	-7	25,000	-	-	- 1	25,000
123	Total Legal Fees		300,000	-	-	-	-	-	-	-	-	300,000	-	15,000		315,000
123 124	Total Legal Fees		300,000	-	-	-	-	-	-	-	-	300,000	-	15,000		315,000

Mt. Etna- 152 units 4%/9%

							Constructi	on Period		Construction	Stabilization	Conversion	8609	Total		
		_	Close	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Quarter 5	Quarter 6	Quarter 7	Quarter 8	Subtotal	6 mos			
				<u>10%</u>	<u>10%</u>	<u>10%</u>	<u>20%</u>	<u>20%</u>	<u>10%</u>	<u>10%</u>	<u>10%</u>					
126	Operating Reserve	3 months	-	-	-	-	-	-	-	-	-	-	-	448,339	-	448,339
132	Total Reserves		-	-	-	-	-	-	-	-	-	-	-	448,339	-	448,339
133																
134	REPORTS & STUDIES															
135	Market Study		10,000	-	-	-	-	-	-	-	-	10,000	-	-	-	10,000
137	Appraisal		10,000	-	-	-	-		-	-	-	10,000	-	-	-	10,000
138	Environmental		6,000	-	-	-	-	-	-	-	-	6,000	-	-	-	6,000
143	Total Reports & Studies		26,000	-	-	-	-			-	-	26,000	-	-	-	26,000
144																
	OTHER															
146	TCAC App./Alloc/Monitoring Fees		216,074	-	-	-	-	-	-	-	-	216,074	-	(38,500)	-	177,574
147	CDLAC/CDIAC Fees	0.05%	24,790	-	-	-	-			-	-	24,790	-	-	-	24,790
148	Local Permit Fees	\$971/unit	147,554	-	-	-	-		-	-	-	147,554	-	-	-	147,554
149	Local Development Impact Fees	\$9,779/unit	1,486,431	-	-	-	-		-	-	-	1,486,431	-	-	-	1,486,431
152	Furnishings		-	-	-	-	-		-	-	100,000	100,000	-	-	-	100,000
153	Final Cost Audit Expense		-	-	-	-	-	-	-	-	-	-	10,000	-	-	10,000
154	Marketing		-	5,000	-	-	-			50,000	50,000	105,000	8,000	-	-	113,000
155	MGP Services Fee		50,000	-	-	-	-				100,000	150,000	-	-	-	150,000
156	SDHC Ap, Orig, Servicing, Legal, Const Review		40,000	-	-	-	-			-	-	40,000	-	-	-	40,000
157	Accounting/Finance/Admin		45,000	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	85,000	-	-	-	85,000
160	Total Other Costs		2,009,850	10,000	5,000	5,000	5,000	5,000	5,000	55,000	255,000	2,354,850	18,000	(38,500)	-	2,334,350
161																
162	DEVELOPER COSTS															
163	Developer Fee		700,000	-	-	-	500,000			-	500,000	1,700,000	-	3,864,288	363,291	5,927,580
170	Total Developer Costs		700,000	-	-	-	500,000	-	-	-	500,000	1,700,000	-	3,864,288	363,291	5,927,580
171						•										
173	Total Uses of Funds		12,525,264	4,386,022	4,426,186	4,471,933	9,333,111	8,927,850	4,706,888	4,807,213	5,464,388	59,048,855	1,014,365	4,363,969	363,291	64,790,480
	Net Source & Use		-	-	-	-		-			-	-	- '	-	-	-
175	Distributions		-													- [
176	Balance of Funds	L	-	-	-	-	-	-			-		-	-	-	-

Mt. Etna Senior 4%

						Construction	on Period				Construction	Stabilization	Conversion	8609	Total
		Close	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Quarter 5	Quarter 6	Quarter 7	Quarter 8	Subtotal	6 mos			
T			<u>10%</u>	<u>10%</u>	<u>10%</u>	<u>20%</u>	<u>20%</u>	<u>10%</u>	<u>10%</u>	<u>10%</u>					
SOURCES OF FUNDS		4 400 450									4 400 450		10 500 100	110.010	44.004.504
1 Federal LIHTC Equity 2 State LIHTC Equity		1,183,158	-	-	-	-	-	-	-	-	1,183,158	-	10,530,109	118,316	11,831,584
3 Solar Equity		-	-	-	-	-	-	-	-	-	-	-	-		-
5 Construction Loan		1,637,294	2,250,722	2,271,332	2,294,808	4,789,359	4,581,397	2,415,377	2,466,860	2,804,094	25,511,242	521,267	(26,032,508)	-	-
6 Permanent Loan (Tranche A)		-	-	-	-		-	-	-	-	-	-	10,213,233	-	10,213,233
7 VHHP (43 units)		-	-	-	-	-	-	-	-	-	-	-	5,375,000	-	5,375,000
8 Deferred Developer Fee 9 Land Contribution / Note	\$0/unit	-	-	-	-	-	-	-	-	-	-	-	131,790		131,790
10 Other	\$0/unit	-	-	-	-	-	-	-	-	-	-	-	-		
11 Developer Fee Contribution		-	-	-	-	-	-	-	-	-	-	-	\$2,907,580	-	2,907,580
12 Civic San Diego Ioan		-	-	-	-	-	-	-	-	-	-	-	-	-	-
13 Remainder of Land Value		3,515,132	-	-	-	-	-	-	-	-	3,515,132	-	-	-	3,515,132
14 Soft Loan Interest 15 Other		-	-	-	-	-	-	-	-	-	-	-	-	-	-
15 Other 16 Total Sources of Funds		6,335,584	2,250,722	2,271,332	2,294,808	4,789,359	4,581,397	2,415,377	2,466,860	2,804,094	30,209,531	521,267	3,125,203	118,316	33,974,318
17 Total Sources of Fullus		0,555,504	2,230,722	2,271,332	2,234,000	4,709,559	4,501,531	2,413,377	2,400,000	2,004,034	30,203,331	321,207	3,123,203	110,310	33,374,310
18															
19 USES OF FUNDS															
20 ACQUISITION															
21 Land Cost 22 Remainder of Land Value		384,868.42	-	-	-	-	-	-	-	-	384,868	-	-	-	384,868
22 Remainder of Land Value 23 AHSC STI Project		3,515,132	-	-	-	-	-	-	-		3,515,132	-		- 1	3,515,132
24 Demolition		-	-	-	-	-	-	-	-		-	-	-	-	
25 Verifiable Carrying Costs		-	-	-	-	-	-	-	-		-	-	-	-	
26 Basis Eligible Acquisition Cost	0	-	-	-	-	-	-	-	-	-	-	-	-	-	-
27 Other: City parcel		-	-	-	-	-	-	-	-	-	-	-	-	-	-
28 Total Land / Acquitisiton		3,900,000	-	-	-	-	-	-	-	-	3,900,000	-	-		3,900,000
29 47 NEW CONSTRUCTION				-											
48 Commercial	s -	-	_	-	-	-	-	-	-	_	-	-	-	-	-
49 Off-site Improvements	\$ -	-	-	-	-	-	-	-	-	-	-	-	-	-	-
51 Site Work	\$0.00/sq ft	-	-	-	-	-	-	-	-	-	-	-	-	-	-
52 Parking Garage	\$8.65/gsf	-	-	-	-		-	-	-	-	-	-	-	-	-
53 Vertical	\$242.45/sq ft	-	1,755,000	1,755,000	1,755,000	3,510,000	3,510,000	1,755,000	1,755,000	1,755,000	17,550,000	-	-		17,550,000
54 GC Contingency 55 Construction Management Fee	5.00% 14.00%	-	87,750 257,985	87,750 257,985	87,750 257,985	175,500 515,970	175,500 515,970	87,750 257,985	87,750 257,985	87,750 257,985	877,500 2,579,850	-	-		877,500 2,579,850
56 General Conditions, Overhead & Profit	0.00%	-	231,303	237,903	257,905	313,970	313,970	257,905	257,905	251,905	2,373,030	-	-	-	2,379,000
60 Total New Construction	3.00,7	-	2,100,735	2,100,735	2,100,735	4,201,470	4,201,470	2,100,735	2,100,735	2,100,735	21,007,350	-	-	-	21,007,350
61															
62 ARCHITECTURAL															
63 Building		342,176 7,800	-	-	-	-	-	-	-	-	342,176 7,800	-	-	-	342,176 7,800
64 Landscape 65 Energy Consultant		7,800	-	-	-	-	-	-	-	-	7,800				7,800
69 Total Architectural		357,776	-	-1	-	-				-	357,776	-	-	-	357,776
70															
71 SURVEY & ENGINEERING															
72 Civil		53,625	-	-	-	-	-	-	-	-	53,625	-	-		53,625
73 ALTA 74 Staking		27,300.00 17,550	-	-	-	-	-	-	-	-	27,300 17,550	-	-		27,300 17,550
75 Structural Testing		14,625	-		-	-	-	-	-	-	14,625			- :	14,625
76 Soils		3,900	-	-	-	-	-	-	-	-	3,900	-	-	-	3,900
77 Other:		24,375	-	-	-	-	-	-	-	-	24,375	-	-		24,375
78 Other:		-	-	-	-	-	-	-	-	-	-	-	-		
79 Other:		144 275	-	-	-	-	-	-	-	-	144 275	-	-	•	141,375
80 Total Survey & Engineering		141,375		-	-	-	-	-	-	-	141,375	-	-	-	141,3/5
82 CONTINGENCY COSTS															
83 Hard Cost Contingency	5%	-	105,037	105,037	105,037	210,074	210,074	105,037	105,037	105,037	1,050,368	-			1,050,368
84 Soft Cost Contingency	3%	58,581	1,309	1,910	2,593	3,531	4,947	6,105	7,604	9,954	96,535	-	-	-	96,535
85 Total Contingency		58,581	106,346	106,946	107,630	213,605	215,021	111,142	112,641	114,990	1,146,902	-	-		1,146,902
86 87 CONSTRUCTION PERIOD EXPENSES															
88 Construction Loan Interest		_	17,982.89	40,558.81	63,350.38	94,613.63	141 814 02	180,407.92	204,733.29	180,407,92	923,869	479,489.40	_		1,403,358
90 Soft Loan Interest			- 17,302.09		-		141,014.02	100,701.02		- 100,701.82	- 020,009	-10,400.40	-	- 1	1,400,336
91 Origination Fee	1.00%	260,325	-	-	-	-	-	-	-	-	260,325	-	-		260,325
94 Lender Inspection Fees		-	3,849	3,849	3,849	3,849	3,849	3,849	3,849	3,849	30,789	-	-		30,789
95 Taxes During Construction		3,849	-		-	-	-	-	-	-	3,849	-	-		3,849
97 Insurance During Construction		51,316	-	-	-	-	-	-	-	-	51,316	-	-	-	51,316
98 Title and Recording Fees 99 Construction Mamt. and Monitoring	0.00%	25,658 10,263	3,849	3,849	3,849	3,849	3,849	3,849	3,849	3,849	25,658 41,053	-	-		25,658 41,053
Toonstruction wights and Worldoning	0.00%	10,203	3,049	3,049	3,049	3,049	3,049	3,049	3,049	3,048	41,000	- 1	-	- 1	41,003

Mt. Etna Senior 4%

						Construction	on Period				Construction	Stabilization	Conversion	8609	Total
		Close	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Quarter 5	Quarter 6	Quarter 7	Quarter 8	Subtotal	6 mos			
			<u>10%</u>	<u>10%</u>	<u>10%</u>	20%	<u>20%</u>	<u>10%</u>	<u>10%</u>	<u>10%</u>					
100	Predevelopment Loan Interest	-	-	-	-		-	-	-	-	-	-	-	-	
101	Other: PW Monitoring	-	12,829	12,829	12,829	12,829	12,829	12,829	12,829	12,829	102,632	-	-	-	102,632
103	Total Construction Period Expense	351,411	38,509	61,085	83,877	115,140	162,340	200,934	225,260	200,934	1,439,490	479,489	-		1,918,979
104	PERMANENT FINANCING EXPENSES	+													
106	Loan Origination Fees 0.50				_			_	_	_	-	_	51,066		51,066
108	Title and Recording Fees	-	-	-	-		-	-	-	-	-	-	5.132	-	5,132
111	Other: Issuer Fee 0.250	65,081	-	-	_	-	_	_	_	_	65,081	32,541			97,622
113	Total Permanent Financing	65,081	-	-	-	-	-	-	-	-	65,081	32,541	56,198	-	153,820
114	The state of the s										·	,	·		
_	LEGAL FEES														
116	Construction Lender Legal	30,789	-	-	-	-	-	-	-	-	30,789	-	-	-	30,789
117	Permanent Lender Legal	23,092	-	-	-	-	-	-	-	-	23,092	-	7,697	-	30,789
118	Sponsor Legal	30,789	-	-	-	-	-	-	-	-	30,789	-	-	-	30,789
119	Organizational Legal	25,658		-	-		-	-	-	-	25,658	-	-	-	25,658
120 121	Other Legal (Issuer Legal, Bond Counsel) Other:	30,789	-	-	-		-	-	-	_	30,789	-	-		30,789
122	Other: GP Legal	12,829	-	-	-		-	-	-	-	12,829	-	-	-	12,829
123	Total Legal Fees	153,947	-					-	-	-	153,947	-	7,697	- :	161,645
124	Total Legal Fees	155,547	_	_	_		_		_		155,541	_	7,037		101,043
	CAPITALIZED RESERVES														
126	Operating Reserve 3 month	s -	-	-	-	-	-	-	-	-	-	-	292,843	-	292,843
129	Rent / WC Reserve	-	-	-	-	-	-	-	-	-	-	-	-	-	
132	Total Reserves	-		-	-	-	-	-	-	-	-	-	292,843	-	292,843
133															
	REPORTS & STUDIES														
135	Market Study	5,132	-	-	-	-	-	-	-	-	5,132	-	-	-	5,132
137	Appraisal	5,132	-	-	-	-	-	-	-	-	5,132	-	-	-	5,132
138	Environmental	3,079	-	-	-	-	-	-	-	-	3,079	-	-		3,079
139	Other: Lender Deposit	-	-	-	-		-	-	-	-	-	-	-		•
140	Other: Investor Deposit Other: Soils Report	-	-	-	-		-	-	-	-	-	-	-		•
142	Other: Phase I	-	-	-	-		-	-	-	-	-	-	-	-	
143	Total Reports & Studies	13,342							-		13.342	-		-	13,342
144	Total Nopolio di Otalioo	10,012									10,012				.0,0.2
	OTHER														
146	TCAC App./Alloc/Monitoring Fees	14,074	-	-	-	-	-	-	-	-	14,074	-	31,570	-	45,644
147	CDLAC/CDIAC Fees 0.05	6 13,016	-	-	-	-	-	-	-	-	13,016	-	-	-	13,016
148	Local Permit Fees \$498/ur		-	-	-	-	-	-	-	-	75,719	-	-	-	75,719
149	Local Development Impact Fees \$5,018/ur	it 762,774	-	-	-	-	-	-	-	-	762,774	-	-	-	762,774
152	Furnishings	-	-	-	-	-	-	-	-	51,316	51,316	-	-	-	51,316
153	Final Cost Audit Expense	-		-	-		-	-	-			5,132	-	-	5,132
154	Marketing	-	2,565.79	-	-	-	-	-	25,657.89	25,657.89	53,882	4,105	-	-	57,987
155 156	MGP Services Fee SDHC Ap, Orig, Servicing, Legal, Const Review	25,658 20,526.32	-	-	-		-	-	-	51,316	76,974 20,526	-	-		76,974 20,526
156	Accounting/Finance/Admin	23,092.11	2,565.79	2,565.79	2,565.79	2,565.79	2,565.79	2,565.79	2,565.79	2,565.79	43,618	-	-		43,618
160	Total Other Costs	934,859	5,132	2,566	2,566	2,565.79	2,566	2,565.79	28,224	130,855	1,111,899	9.237	31,570		1,152,706
161	Total Guidi Gudio	334,039	3,132	2,500	2,300	2,300	2,500	2,300	20,224	130,000	1,111,039	3,231	31,370		1,132,700
	DEVELOPER COSTS														
163	Developer Fee	359,211	-	-	-	256,579	-	-	-	256,579	872,368	-	\$2,736,895	118,316	3,727,580
164	Consultant/Processing Agent	-	-	-	-	-	-	-	-	-	-	-	-	- 1	
165	Project Administration	-	-	- 1	-		-	-	-	-	-	-	-	- 1	
170	Total Developer Costs	359,211	-	-	-	256,579	-	-	-	256,579	872,368	-	2,736,895	118,316	3,727,580
171															
	Total Uses of Funds	6,335,584	2,250,722	2,271,332	2,294,808	4,789,359	4,581,397	2,415,377	2,466,860	2,804,094	30,209,531	521,267	3,125,203	118,316	33,974,318
	Net Source & Use	-	-	-	-	-	-			-	-	-	-	-	-
	Distributions	-													-
176	Balance of Funds			-	-		-			-		-	-	-	-

Mt. Etna Senior 9%

	_						Construct	ion Period				Construction	Stabilization	Conversion	8609	Total
		_	Close	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Quarter 5	Quarter 6	Quarter 7	Quarter 8	Subtotal	6 mos			
				<u>10%</u>	<u>10%</u>	<u>10%</u>	20%	<u>20%</u>	<u>10%</u>	<u>10%</u>	<u>10%</u>					
	SOURCES OF FUNDS															
1	Federal LIHTC Equity		2,449,755	-	-	-	-	-	-	-	-	2,449,755	-	21,802,820	244,976	24,497,550
3	State LIHTC Equity Solar Equity		-	-	-	-	-	-	-	-	-	-	-	-		
5	Construction Loan		405,057	2,135,300	2,154,854	2,177,125	4,543,751	4,346,453	2,291,511	2,340,354	2,660,294	23,054,700	493,098	(23,547,798)	-	-
6	Permanent Loan (Tranche A)		-	-		-	-	-	-	-	-	-	-	2,755,252	-	2,755,252
7	VHHP		-	-	-	-	-	-	-	-	-	-	-	-	-	-
8	Deferred Developer Fee		-	-	-	-	-	-	-	-	-	-	-	228,492	-	228,492
10	Land Contribution / Note Other	\$0/unit	-	-	-	-	-	-	-	-	-	-	-	-	-	-
11	Developer Fee Contribution		-	-	-	-	-	-	-	-	-	-		\$0		
	Civic San Diego Ioan		-	-	-	-	-	-	-	-	-	-	-	ψ0 -	-	
13	Land Contribution / Note		3,334,868	-	-	-	-	-	-	-	-	3,334,868	-	-	-	3,334,868
14	Soft Loan Interest		-	-	-	-	-	-	-	-	-	-	-	-	-	-
15	AHP		-	-	-	-	-	-	-	-	-	-	-	-	-	-
16	Total Sources of Funds		6,189,680	2,135,300	2,154,854	2,177,125	4,543,751	4,346,453	2,291,511	2,340,354	2,660,294	28,839,323	493,098	1,238,766	244,976	30,816,163
17 18																
	USES OF FUNDS															
20	ACQUISITION	+								1			+			
21	Land Cost	İ	365,132	-	-	-	-	-		İ	-	365,132	-	- 1	-	365,132
22	Remainder of Land Value		3,334,868.42	-	-	-	-					3,334,868				3,334,868
23	AHSC STI Project		-	-	•	-	-	-			-	-	-	-	-	-
24	Demolition		-	-	-	-	-	-				-	-	-	-	-
25	Verifiable Carrying Costs		-	-	-	-	-	-				-	-	-	-	-
26 27	Basis Eligible Acquisition Cost	0	-	-		-		-			-	-	-	-		-
28	Other: City parcel Total Land / Acquitisiton		3,700,000	-	-	-		-			-	3,700,000	-	-		3,700,000
29	Total Eura / Addition		0,700,000									5,7 60,000				5,7 60,000
	NEW CONSTRUCTION															
48	Commercial \$	-	-	-		-	-	-	-	-	-	-	-	-	-	-
49	Off-site Improvements \$	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
51	Site Work	\$0.00/sq ft	-	-	-	-	-	-	-	-	-	-	-	-	-	-
52 53	Parking Garage Vertical	\$8.65/gsf \$242.45/sq ft	-	-	4.005.000	4 005 000			4 005 000	4 005 000	4 005 000	40.050.000	-	-	-	40.050.000
54	GC Contingency	\$242.45/sq ft 5.00%	-	1,665,000 83,250	1,665,000 83,250	1,665,000 83,250	3,330,000 166,500	3,330,000 166,500	1,665,000 83,250	1,665,000 83,250	1,665,000 83,250	16,650,000 832,500	-	-		16,650,000 832,500
55	Construction Management Fee	14.00%	-	244,755	244,755	244,755	489,510	489,510	244,755	244,755	244,755	2,447,550	-	-		2,447,550
56	General Conditions, Overhead & Profit	0.00%	-	-	244,700	-	-400,010	-	244,700	244,700	-		-	-	-	2,447,000
60	Total New Construction		-	1,993,005	1,993,005	1,993,005	3,986,010	3,986,010	1,993,005	1,993,005	1,993,005	19,930,050	-	-	-	19,930,050
61																
	ARCHITECTURAL															
63	Building		324,629	-	-	-	-	-	-	-	-	324,629	-	-	-	324,629
64 65	Landscape		7,400.00 7,400	-	-	-	-	-	-	-	-	7,400 7,400				7,400 7,400
69	Energy Consultant Total Architectural		339,429		-							339,429	-	_		339,429
70	Total Architectural		333,423									333,423		-		333,423
	SURVEY & ENGINEERING															
72	Civil		50,875	-	-	-	-	-	-	-	-	50,875	-	-	-	50,875
73	ALTA		25,900.00	-	-		-	-	-	-	-	25,900	-	-	-	25,900
74	Staking		16,650	-	-	-	-	-	-	-	-	16,650	-	-	-	16,650
75	Structural Testing		13,875	-	-	-	-	-	-		-	13,875 3.700	-		-	13,875
76 77	Soils Other:	+	3,700 23,125	-	-	-	-	-	-	-	-	23,125	-			3,700 23,125
78	Other:		20,120	-	-	-	-	-		-	-	-	-	-		20,120
79	Other:	İ	-	-	-	-	-	-	-	-	-	-	-	- 1	-	-
80	Total Survey & Engineering		134,125	-	-	-	-	-	-	-	-	134,125	-	-	-	134,125
81																
	CONTINGENCY COSTS	_		00.055	00.05-	00.055	400.00:	400.00:	00.05-	60.05-	00.055	000 505				200 5
83	Hard Cost Contingency	5%	60,874	99,650 1,242	99,650 1,812	99,650 2,460	199,301 3,350	199,301 4,693	99,650	99,650	99,650 9,443	996,503	-	-	-	996,503
84 85	Soft Cost Contingency Total Contingency	3%	60,874	1,242					5,792 105,442	7,215 106,865		96,882 1,093,384	-	-		96,882 1,093,384
86	. San Sommyoney	+	00,074	100,002	101,402	102,111	202,001	200,004	100,772	130,003	103,033	1,030,004		-	-	1,033,364
	CONSTRUCTION PERIOD EXPENSES	İ								İ			İ			
88	Construction Loan Interest			17,060.69	38,478.87	60,101.64	89,761.65	134,541.50	171,156.23	194,234.15	171,156.23	876,491	454,900			1,331,391
	Soft Loan Interest		-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Origination Fee	1.00%	235,478	-	-	-	-	-	-	-	-	235,478	-	-	-	235,478
	Lender Inspection Fees			3,651	3,651	3,651	3,651	3,651	3,651	3,651	3,651	29,211	-	-	-	29,211
	Taxes During Construction		3,651 48,684	-		-	-	-	-		-	3,651 48,684	-		-	3,651 48,684
98	Insurance During Construction Title and Recording Fees	1	24,342	-	-	-	-	-	-	-	-	24,342	-	-		24,342
99	Construction Mgmt. and Monitoring	0.00%	9,737	3,651	3,651	3,651	3,651	3,651	3,651	3,651	3,651	38,947			-	38,947
	J		-,,	-,	-,'	-,	-,	-,	-,	,	-,	,/	Į.	l.		,- !!

Mt. Etna Senior 9%

						Construct	ion Period				Construction	Stabilization	Conversion	8609	Total
		Close	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Quarter 5	Quarter 6	Quarter 7	Quarter 8	Subtotal	6 mos			
			<u>10%</u>	<u>10%</u>	<u>10%</u>	<u>20%</u>	<u>20%</u>	<u>10%</u>	<u>10%</u>	<u>10%</u>					
100	Predevelopment Loan Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-
101	Other: PW Monitoring	-	12,171	12,171	12,171	12,171	12,171	12,171	12,171	12,171	97,368	-	-	-	97,368
103	Total Construction Period Expense	321,892	36,534	57,953	79,575	109,235	154,015	190,630	213,708	190,630	1,354,173	454,900	-	-	1,809,073
104	·														
105 P	ERMANENT FINANCING EXPENSES														
106	Loan Origination Fees 0.	0%	-	-				-	-	-	-	-	13,776	-	13,776
108	Title and Recording Fees	-	-	-		-	-	-	-	-	-	-	4,868	-	4,868
111	Other: Issuer Fee 0.2	0% 58,869	-	-		-		-	-	-	58,869	29,435	-	-	88,304
113	Total Permanent Financing	58,869	-	-	-	-	-	-	-	-	58,869	29,435	18,645	-	106,949
114															
115 L	EGAL FEES														
116	Construction Lender Legal	29,211	-	-		-		-	-	-	29,211		-	-	29,211
117	Permanent Lender Legal	21,908	-	-			-	-	-	-	21,908	-	7,303	-	29,211
	Sponsor Legal	29,211	-	-	-	-	-	-	-	-	29,211	-	-	-	29,211
119	Organizational Legal	24,342	-	-			-	-	-	-	24,342	-	-	-	24,342
	Other Legal (Issuer Legal, Bond Counsel)	29,211	-	-	-	-	-	-	-	-	29,211	-	-	-	29,211
	Other:	-	-	-	-	-	-	-	-	-	-	-		- 1	-
122	Other: GP Legal	12,171	-	-	-	-	-	-	-	-	12,171	1	-	-	12,171
	Total Legal Fees	146,053	-	-	-	-	-	-	- 1	-	146,053	-	7,303	- 1	153,355
124															
125 C	APITALIZED RESERVES														
	Operating Reserve 3 mo	ths -	-	-				-	-	-	-		155,496	-	155,496
129	Rent / WC Reserve	-	-	-	-	-	-	-	-	-	-	-	-	-	-
132	Total Reserves	-	-	-				-	-	-		-	155,496	-	155,496
133															
	EPORTS & STUDIES														
135	Market Study	4,868	-	-		-		-	-	-	4,868	-	-	-	4,868
137	Appraisal	4,868	-	-		-		-	-	-	4,868	-	-	-	4,868
138	Environmental	2,921	-	-		-		-	-	-	2,921	-	-	-	2,921
139	Other: Lender Deposit	-	-	-		-		-	-	-	-	-	-	-	-
140	Other: Investor Deposit	-	-	-		-		-	-	-	-	-	-	-	-
141	Other: Soils Report	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Other: Phase I	-	-	-		-		-	-	-	-	-	-	-	-
143	Total Reports & Studies	12,658	-	-	-	-	-	-	-	-	12,658	-	-	-	12,658
144															
145 O	THER														
146	TCAC App./Alloc/Monitoring Fees	202,000	-	-	-	-	-	-	-	-	202,000	-	(70,070)	-	131,930
147	CDLAC/CDIAC Fees 0.	5% 11,774	-	-				-	-	-	11,774	-	-	-	11,774
148	Local Permit Fees \$473	mit 71,836	-	-	-	-	-	-	-	-	71,836	-	-	-	71,836
149	Local Development Impact Fees \$4,761	nit 723,657	-	-		-		-	-	-	723,657		-	-	723,657
	Furnishings	-	-	-	-	-	-	-	-	48,684	48,684	-	-	-	48,684
	Final Cost Audit Expense	-	-	-	-	-	-	-	-	-	-	4,868	-	-	4,868
	Marketing	-	2,434.21	-	-	-	-	-	24,342.11	24,342.11	51,118	3,895	-	- 1	55,013
	MGP Services Fee	24,342	-	-	-	-	-	-	-	48,684	73,026	-	-	-	73,026
156	SDHC Ap, Orig, Servicing, Legal, Const Review	19,473.68	-	-	-	-	-	-	-	-	19,474	-		- 1	19,474
	Accounting/Finance/Admin	21,907.89	2,434.21		2,434.21	2,434.21	2,434.21	2,434.21	2,434.21	2,434.21	41,382				41,382
	Total Other Costs	1,074,990	4,868	2,434	2,434	2,434	2,434	2,434	26,776	124,145	1,242,951	8,763	(70,070)	-1	1,181,644
161															
	EVELOPER COSTS														
163	Developer Fee	340,789	-	-	-	243,421	-	-	-	243,421	827,632	-	\$1,127,393	244,976	2,200,000
164	Consultant/Processing Agent	-	-		-	-	-	-	-	-	-	-	-	- 1	
165	Project Administration	-	-	-	-	-	-	-	- 1	-	-	-	-	- 1	-
	Total Developer Costs	340,789	-	- 1	-	243,421	-	-	-	243,421	827,632	-	1,127,393	244,976	2,200,000
171															
	otal Uses of Funds	6,189,680	2,135,300	2,154,854	2,177,125	4,543,751	4,346,453	2,291,511	2,340,354	2,660,294	28,839,323	493,098	1,238,766	244,976	30,816,163
174 N	et Source & Use	-	-	-	-	-	-			-	-	-	-	-	-
175 D	stributions	-													-
176 B	alance of Funds		-	-	-	-	-			-			<u> </u>	-	-

OPERATING BUDGET & INCOME ANALYSIS

Mt. Etna Senior 4%

SDHC

All Electric

				Square	Total	Gross	Utility	Monthly	Annual	RA Contract	Annual
Rent:	Restriction	%AMI	Units	Feet/Unit	Sq. Ft.	Rents	Allowance	Net Rent	Rent	Rent	Overhang
1BR/1BA	LIHTC	80%	26	572	14,872	\$ 1,460	\$ 57	\$ 1,403	\$ 437,580	\$ 1,540	\$ -
1BR/1BA	LIHTC	50%	1	572	572	\$ 912	\$ 57	\$ 855	\$ 10,262	\$ 1,540	\$ -
1BR/1BA	VHHP	30%	38	572	21,736	\$ 547	\$ 57	\$ 490	\$ 223,583	\$ 1,540	\$ 478,658
2BR/1BA	LIHTC	80%	6	738	4,428	\$ 1,751	\$ 75	\$ 1,676	\$ 120,701	\$ 1,997	\$ -
2BR/1BA	LIHTC	50%	1	738	738	\$ 1,095	\$ 75	\$ 1,020	\$ 12,236	\$ 1,997	\$ -
2BR/1BA	VHHP	30%	5	738	3,690	\$ 657	\$ 75	\$ 582	\$ 34,907	\$ 1,997	\$ 84,914
2BR/1BA	LIHTC	MGR	1	572	572	\$ -	\$ 75	\$ -	\$ -	\$ -	\$ -
					0	\$ -					
Total Rents / Residential			78						839,268		563,571

RA Overhang		563,571
Income from Operations	PUPM	·
Laundry	\$ 10.00	9,360
Other Income (App. Fees, Late, etc.)	\$ 6.00	5,616
Sub-Total	\$ 16.00	1,417,815
Less: Vacancies @	5%	70,891
Total Income		1,346,924
Operating Expenses		
Total Expenses	\$ 5,402	421,389
Net Operating Income		925,535
Reserves	\$500.00/unit	39,000
Service budget	\$641/unit	50,000
Issuer's and Admin Fee	0.125%	24,467
Mandatory Debt Service	0.420%	22,575
Net Income Available for Debt Service		789,493

OPERATING BUDGET & INCOME ANALYSIS

Mt. Etna Senior 9%

SDHC All Electric

				Square	Total	Gross	Rent	Utility	Monthly	Annual
Rent:	Restriction	%AMI	Units	Feet/Unit	Sq. Ft.	Rents	Adjustment	Allowance	Net Rent	Rent
1BR/1BA	LIHTC	60%	36	572	20,592	\$ 1,095	\$ -	\$ 57	\$ 1,038	\$ 448,254
1BR/1BA	LIHTC	30%	20	572	11,440	\$ 547	\$ -	\$ 57	\$ 490	\$ 117,675
2BR/1BA	LIHTC	60%	9	738	6,642	\$ 1,314	\$ -	\$ 75	\$ 1,239	\$ 133,763
2BR/1BA	LIHTC	30%	8	738	5,904	\$ 657	\$ -	\$ 75	\$ 582	\$ 55,850
2BR/1BA	LIHTC	MGR	1	572	572	\$ -	\$ -	\$ 75	\$ -	\$ -
					0	\$ -				
Total Rents / Reside	ential		74							755,543

Income from Operations PUPM 10.00 8,880 Laundry Other Income (App. Fees, Late, etc.) <u>5,</u>328 \$ 6.00 Sub-Total \$ 16.00 769,751 Less: Vacancies @ 5% 38,488 **Total Income** 731,263 Operating Expenses Total Expenses 5,402 399,780 Net Operating Income 331,484

 Reserves
 \$500.00/unit
 37,000

 Services
 \$1,101/unit
 81,500

 Net Income Available for Debt Service
 212,984

Mt. Etna- 152 units 4%/9%

			1	2	3	4	5	6	7	8	9	10	11	12
Gross Revenue	Inflation @	2.50%	2,187,565	2,242,254	2,298,311	2,355,769	2,414,663	2,475,029	2,536,905	2,600,328	2,665,336	2,731,969	2,800,269	2,870,275
Vacancy		5.00%	(109,378)	(112,113)	(114,916)	(117,788)	(120,733)	(123,751)	(126,845)	(130,016)	(133,267)	(136,598)	(140,013)	(143,514)
Net Revenue			2,078,187	2,130,142	2,183,395	2,237,980	2,293,930	2,351,278	2,410,060	2,470,311	2,532,069	2,595,371	2,660,255	2,726,762
Operating Expenses (including non residential)	Inflation @	3.50%	821,169	849,910	879,656	910,444	942,310	975,291	1,009,426	1,044,756	1,081,322	1,119,169	1,158,340	1,198,881
Net Operating Income			1,257,018	1,280,232	1,303,739	1,327,536	1,351,620	1,375,987	1,400,634	1,425,555	1,450,747	1,476,202	1,501,916	1,527,880
Replacement Reserves		3.00%	76,000	78,280	80,628	83,047	85,539	88,105	90,748	93,470	96,275	99,163	102,138	105,202
Resident Services	Inflation @	2.50%	131,500	134,788	138,157	141,611	145,151	148,780	152,500	156,312	160,220	164,225	168,331	172,539
Cash Available to Debt Service			<u>1,049,518</u>	<u>1,067,165</u>	<u>1,084,953</u>	<u>1,102,877</u>	1,120,930	<u>1,139,102</u>	<u>1,157,386</u>	1,175,773	<u>1,194,252</u>	<u>1,212,814</u>	<u>1,231,447</u>	<u>1,250,139</u>
Principal and Interest Issuer's and Admin Fee		5.85% 0.00%	871,719 24,467	871,719 24,467	871,719 24,467	871,719 24,467	871,719 24,467	871,719 24,467	871,719 24,467	871,719 24,467	871,719 24,467	871,719 24,467	871,719 24,467	871,719 24,467
Mandatory Soft Loan Payments		0.42%	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575
Managing GP Fee		2.50%	20,000	20,500	21,013	21,538	22,076	22,628	23,194	23,774	24,368	24,977	25,602	26,242
Administrative GP Fee		2.50%	20,000	20,500	21,013	21,538	22,076	22,628	23,194	23,774	24,368	24,977	25,602	26,242
Net Project Cash Flow		2.5076	90,758	107,404	124,168	141,041	158,017	175,085	192,238	209,465	226,756	244,099	261,483	278,895
		DSCR	1.15	1.17	1.19	1.21	1.23	1.25	1.27	1.29	1.32	1.34	1.36	1.38
Distributuions:														
LP Fee	10,000	3.00%	10,000	10,300	10,609	10,927	11,255	11,593	11,941	12,299	12,668	13,048	13,439	13,842
Deferred Developer fee	100% of Avail Cashflow	1.00%	80,758	97,104	113,559	86,580	0	0	0	0	0	0	0	0
Cash Available After Deferred Fee Payment			0	0	0	43,534	146,762	163,492	180,297	197,166	214,088	231,051	248,044	265,053
Residential Cash Flow Lease Payment	25.0%		<u>0</u>	<u>0</u>	<u>0</u>	10,884	36,690	40,873	45,074	49,292	53,522	57,763	62,011	66,263
NPV of res. cash flow lease payments	\$1,035,491.92		0	O	O	10,004	30,090	40,073	45,074	43,232	33,322	37,703	02,011	00,203
Cash Available After Deferred Fee Pmt (proportional share o			<u>0</u>	<u>0</u>	<u>0</u>	32,651	110,071	122,619	135,223	147,875	160,566	173,288	186,033	198,789
VHHP	50.00%	3.00%	0	0	0	16,325	55,036	61,310	67,612	73,937	80,283	86,644	93,016	99,395
Cash Flow Available After Soft Loan Loans	55.5575	0.0070	<u>o</u>	<u>0</u>	<u>0</u>	16,325	<u>55,036</u>	61,310	67,612	73,937	80,283	86,644	93,016	99,395
Gash Flow Available After Goff Edul Edulis			<u>v</u>	<u>~</u>	<u>~</u>	10,020	00,000	01,010	<u>07,012</u>	10,001	00,200	00,044	30,010	55,550
Partnership Admin Fee (90% of Cash Flow)		90.00%	0	0	0	14,693	49,532	55,179	60,850	66,544	72,255	77,980	83,715	89,455
Cash Flow Available after Partnership Admin Fee			<u>o</u>	<u>0</u>	<u>0</u>	1,633	<u>5,504</u>	<u>6,131</u>	6,761	7,394	8,028	8,664	9,302	9,939
LP Distribution		99.99%	0	0	0	1,632	5,503	6,130	6,760	7,393	8,027	8,664	9,301	9,938
GP Distribution		0.01%	0	0	0	0	1	1	1	1	1	1	1	1
Remaining Cash Flow After Partnership Distribution			<u>0</u>											

Mt. Etna- 152 units 4%/9%

			13	14	15	16	17	18	19	20	21	22	23	24	25
Gross Revenue	Inflation @	2.50%	2,942,032	3,015,583	3,090,973	3,168,247	3,247,453	3,328,639	3,411,855	3,497,152	3,584,581	3,674,195	3,766,050	3,860,201	3,956,706
Vacancy		5.00%	(147,102)	(150,779)	(154,549)	(158,412)	(162,373)	(166,432)	(170,593)	(174,858)	(179,229)	(183,710)	(188,302)	(193,010)	(197,835)
Net Revenue			2,794,931	2,864,804	2,936,424	3,009,835	3,085,080	3,162,207	3,241,263	3,322,294	3,405,352	3,490,485	3,577,747	3,667,191	3,758,871
Operating Expenses (including non residential)	Inflation @	3.50%	1,240,842	1,284,272	1,329,221	1,375,744	1,423,895	1,473,731	1,525,312	1,578,698	1,633,952	1,691,141	1,750,331	1,811,592	1,874,998
Net Operating Income			1,554,088	1,580,532	1,607,203	1,634,091	1,661,185	1,688,476	1,715,951	1,743,596	1,771,399	1,799,345	1,827,417	1,855,599	1,883,873
Replacement Reserves		3.00%	108,358	111,609	114,957	118,406	121,958	125,616	129,385	133,266	137,264	141,382	145,624	149,993	154,492
Resident Services	Inflation @	2.50%	176,853	181,274	185,806	190,451	195,212	200,093	205,095	210,222	215,478	220,865	226,387	232,046	237,847
Cash Available to Debt Service			1,268,878	1,287,649	1,306,440	1,325,234	1,344,015	1,362,767	1,381,471	1,400,107	1,418,657	1,437,097	1,455,406	1,473,560	1,491,533
Principal and Interest		5.85%	871,719	871,719	871,719	871,719	871,719	871,719	871,719	871,719	871,719	871,719	871,719	871,719	871,719
Issuer's and Admin Fee		0.00%	24,467	24,467	24,467	24,467	24,467	24,467	24,467	24,467	24,467	24,467	24,467	24,467	24,467
Mandatory Soft Loan Payments		0.42%	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575	22,575
Managing GP Fee		2.50%	26,898	27,570	28,259	28,966	29,690	30,432	31,193	31,973	32,772	33,592	34,431	35,292	36,175
Administrative GP Fee		2.50%	26,898	27,570	28,259	28,966	29,690	30,432	31,193	31,973	32,772	33,592	34,431	35,292	36,175
Net Project Cash Flow			<u>296,321</u>	<u>313,748</u>	<u>331,160</u>	<u>348,541</u>	<u>365,874</u>	<u>383,142</u>	400,324	<u>417,401</u>	<u>434,351</u>	<u>451,153</u>	<u>467,783</u>	<u>484,215</u>	<u>500,424</u>
		DSCR	1.40	1.42	1.44	1.47	1.49	1.51	1.53	1.55	1.57	1.59	1.62	1.64	1.66
Distributuions:															
LP Fee	10.000	3.00%	14,258	14,685	15,126	0									
Deferred Developer fee	100%of Avail Cashflow	1.00%	0	0	0	0	0	0	0	0	0	0	0	0	0
·															
Cash Available After Deferred Fee Payment			282,064	299,063	316,034	348,541	365,874	383,142	400,324	417,401	434,351	451,153	467,783	484,215	500,424
Residential Cash Flow Lease Payment	25.0%		70,516	74,766	79,009	87,135	91,469	95,785	100,081	104,350	108,588	112,788	116,946	121,054	125,106
NPV of res. cash flow lease payments	\$1,035,491.92														
Cash Available After Deferred Fee Pmt (proportional share	of 50% of CF)		211,548	224,297	237,026	261,406	274,406	287,356	300,243	313,051	325,764	338,365	350,837	363,161	375,318
VHHP	50.00%	3.00%	105,774	112,149	118,513	130,703	137,203	143,678	150,121	156,525	162,882	169,183	175,419	181,581	187,659
Cash Flow Available After Soft Loan Loans			105,774	112,149	118,513	130,703	137,203	143,678	150,121	156,525	162,882	169,183	175,419	181,581	187,659
Partnership Admin Fee (90% of Cash Flow)		90.00%	95,197	100,934	106,662	117,633	123,483	129,310	135,109	140,873	146,594	152,264	157,877	163,423	168,893
Cash Flow Available after Partnership Admin Fee			10,577	11,215	11,851	13,070	13,720	14,368	<u>15,012</u>	15,653	16,288	16,918	17,542	<u>18,158</u>	18,766
LP Distribution		99.99%	10,576	11,214	11,850	13,069	13,719	14,366	15,011	15,651	16,287	16,917	17,540	18,156	18,764
GP Distribution		0.01%	1	1	1	1	1	1	2	2	2	2	2	2	2
Remaining Cash Flow After Partnership Distribution			<u>0</u> <u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>o</u>							

Mt. Etna- 152 units 4%/9%

			26	27	28	29	30
Gross Revenue	Inflation @	2.50%	4,055,624	4,157,014	4,260,940	4,367,463	4,476,650
Vacancy		5.00%	(202,781)	(207,851)	(213,047)	(218,373)	(223,832)
Net Revenue			3,852,843	3,949,164	4,047,893	4,149,090	4,252,817
Operating Expenses (including non residential)	Inflation @	3.50%	1,940,623	2,008,545	2,078,844	2,151,603	2,226,909
Net Operating Income			<u>1,912,220</u>	<u>1,940,619</u>	<u>1,969,049</u>	<u>1,997,487</u>	2,025,908
Replacement Reserves		3.00%	159,127	163,901	168,818	173,883	179,099
Resident Services	Inflation @	2.50%	243,794	249,888	256,136	262,539	269,103
Cash Available to Debt Service			1,509,299	<u>1,526,830</u>	<u>1,544,095</u>	<u>1,561,065</u>	<u>1,577,707</u>
Principal and Interest		5.85%	871,719	871,719	871,719	871,719	871,719
Issuer's and Admin Fee		0.00%	24,467	24,467	24,467	24,467	24,467
Mandatory Soft Loan Payments		0.42%	22,575	22,575	22,575	22,575	22,575
Managing GP Fee		2.50%	37,079	38,006	38,956	39,930	40,928
Administrative GP Fee		2.50%	37,079	38,006	38,956	39,930	40,928
Net Project Cash Flow			<u>516,381</u>	<u>532,057</u>	<u>547,423</u>	<u>562,445</u>	<u>577,090</u>
		DSCR	1.68	1.70	1.72	1.74	1.76
Distributuions:							
LP Fee	10,000	3.00%					
Deferred Developer fee	100% of Avail Cashflow	1.00%	0	0	0	0	0
Cash Available After Deferred Fee Payment			516,381	532,057	547,423	562,445	577,090
Residential Cash Flow Lease Payment	25.0%		129,095	133,014	136,856	140,611	144,272
NPV of res. cash flow lease payments	\$1,035,491.92						
Cash Available After Deferred Fee Pmt (proportional share of 50% of	<u>CF)</u>		387,286	399,043	410,567	421,834	432,817
VHHP	50.00%	3.00%	193,643	199,522	205,284	210,917	216,409
Cash Flow Available After Soft Loan Loans			<u>193,643</u>	199,522	205,284	210,917	216,409
Partnership Admin Fee (90% of Cash Flow)		90.00%	174,279	179,569	184,755	189,825	194,768
Cash Flow Available after Partnership Admin Fee			<u>19,364</u>	<u>19,952</u>	20,528	21,092	<u>21,641</u>
LP Distribution		99.99%	19,362	19,950	20,526	21,090	21,639
GP Distribution		0.01%	2	2	2	2	2
Remaining Cash Flow After Partnership Distribution			<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Mt. Etna- 252 units 4% 6/14/18

Preliminary Analysis Subject to Further Revisions



SOURCES AND USES SUMMARY

FINANCING ASSUMPTIONS

PRELIM DEVELOPMENT PROGRAMMING SUMMARY

Development Costs				Equity											
										City:		San Diego			
Acquisition				Clos	sing Com	npletion	Conversion	8.6	509	MSA:		San Diego			
Land (including City's adjacent site)		\$9,921/unit	2,500,000	Equity Pay In 10		0%	89%		%	1					
Basis Eligible Acquisition Cost		\$0/unit	2,000,000	Federal Tax Credit Price			0070			Site (acres):		4.09 (total)			
Subtotal Acquisition		\$9,921/unit	2,500,000	. Sacial Tax Olbuit Pile				Ψ	3.3300	Construction Ty	vne.	Type III (5 storie	95)		
oublotti Aoquisition		φσ,σ∠ i/unit	2,300,000	l Í						No. of Stories:	, po.	5	55)		
Hard Costs				9% Credit Rate					0.000/	Parking Type:		Structured			
naru Costs						TO 4 O 4	Data								
Total Sitawark, Carago Vartical		#0.40.000°	60 400 000	4% Credit Rate LP Interest		TCAC App	Kate		3.25%	No. of Stalls:		465 (total)			
Total Sitework, Garage, Vertical		\$240,000/unit	60,480,000						99.99%	l		44.040			
				10 Yr Federal Tax Credit	S				0	Impact Fees pe		11,949			
GC Contingency		\$12,000/unit	3,024,000	3 Yr State Credits					0	Financing Sour	ces:	4%+AHSC+CP	P+Future State		
General Requirements/OH/Profit		\$35,280/unit	8,890,560	Solar Credits					0						
Owner Contingency		\$14,364/unit	3,619,728	l Í											
Subtotal Hard Costs		\$313,549/unit	79,014,288	l Í											
		' <u>-</u>		l Í							P	ROJECT UNIT	& INCOME I	<u>XIX</u>	
											_				
I				Debt						AMI	Studio	<u>1BR</u>	2BR	3BR	Totals
				Opr. Exp./Unit/Year					5,202	Sq. Ft.	0	572	738	3BR 963	180,183
				1					-,	-4					,
Soft Costs				l Í											
A&E		\$6,704/unit	1,689,510	Replacement Reserves/L	Jnit/Year				500	UA	\$0	\$57	\$75	\$100	
Financing Fees and Interest		\$25,999/unit	6,551,677	Vacancy Rate					5.00%	80%	0	52	17	20	89
Legal Fees		\$1,250/unit	315,000	DCR					1.15	70%	Ö	0	0	0	0
Reserves		\$2,766/unit	696,926	Perm Loan Amort					35	60%	0	26	15	15	56
Development Impact and Permit Fees		\$12,905/unit	3,251,977	Interest Rate - Permaner	nt I nan				5.85%	50%	0	27	14	14	55
Development impact and Fermit Fees Developer Fee		\$12,905/unit \$50,800/unit	12,801,550	Interest Rate - Constructi					4.00%	40%	0	0	0	0	0
Misc (Acctg, Marketing, Reports, Studies, Etc)		\$2,819/unit	710,475	Tax- Exempt Bonds - Co		m		10.1	175,187	30%	0	0	0	0	0
Contingency		\$2,819/unit \$1,231/unit	310,120	Tax- Exempt Bonds - Co					841,187	30%	0	18	16	16	50
Subtotal Soft Costs			26,327,234	rax- Exempt bonds - Co	Hattuction			01,8	041,107		0	18	2	0	2
Subtotal Soft Costs		\$104,473/unit	20,321,234	Total Banda				04.6	046 275	Mgr.					
Total Davidenment Costs		A 100 0 15 1	407 944 E22	Total Bonds				81,0	016,375	<u>Totals</u>	<u>0</u>	<u>123</u>	<u>64</u>	<u>65</u>	<u>252</u>
Total Development Costs		\$427,943/unit	107,841,522												
				Tax Credit Consideration	<u>ons</u>					Common		Net SF		Cost psf	
				l Í									E0 0		
											erage affordal	-	58.92%		
Sources				l Í						Eff Loss		Gross SF		Cost psf	
I -				DDA/QCT Boost					130%						
Federal LIHTC Equity		38%	40,632,963	50% Test A					78.17%						
1				l Í						-					
				l Í											
Permanent Loan (Tranche A)		18%	19,175,187	l Í											
		1070	.,,	Prevailing Wage (State, I	Federal Both):				Yes						
					. Jaciai, Doili).				100						
Deferred Developer Fee		0%	171,822	l Í											
Developer Fee Contribution		8%	8,781,550	l Í											
CPP		5%	5,200,000	l I											
AHP		2%	2,000,000	l Í											
State		11%													
				l Í											
AHSC Soft Loop Interest		19%	20,000,000	l Í											
Soft Loan Interest		1%_	540,000	l Í											
Total Development Sources		100%	107,841,522	l Í											
				CAS	H FLOW										
End of Year Year 1 Year 1	ear 2 Year 3	Year 4	Year 5	Year 6 Yea	ar7 Ye	ear 8	Year 9	Yea	ar 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16

							CASITIES	<u>''</u>									
End of Year	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	<u>Year 10</u>	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	
Net Income	3,162,669	3,241,736	3,322,780	3,405,849	3,490,995	3,578,270	3,667,727	3,759,420	3,853,406	3,949,741	4,048,484	4,149,696	4,253,439	4,359,775	4,468,769	4,580,488	
Operating Exp	1,311,011	1,356,897	1,404,388	1,453,542	1,504,416	1,557,070	1,611,568	1,667,972	1,726,351	1,786,774	1,849,311	1,914,037	1,981,028	2,050,364	2,122,127	2,196,401	
NOI	1,851,658	1,884,839	1,918,391	1,952,307	1,986,580	2,021,200	2,056,159	2,091,448	2,127,054	2,162,967	2,199,173	2,235,660	2,272,411	2,309,411	2,346,642	2,384,087	
Debt Service	1,288,923	1,288,923	1,288,923	1,288,923	1,288,923	1,288,923	1,288,923	1,288,923	1,288,923	1,288,923	1,288,923	1,288,923	1,288,923	1,288,923	1,288,923	1,288,923	
Services	50,000	51,250	52,531	53,845	55,191	56,570	57,985	59,434	60,920	62,443	64,004	65,604	67,244	68,926	70,649	72,415	
Reserves	126,000	129,780	133,673	137,684	141,814	146,069	150,451	154,964	159,613	164,401	169,333	174,413	179,646	185,035	190,586	196,304	
Issuer Fees & Admin Fee	61,769	61,769	61,769	61,769	61,769	61,769	61,769	61,769	61,769	61,769	61,769	61,769	61,769	61,769	61,769	61,769	
Mandatory Pymts	131,628	131,628	131,628	131,628	131,628	131,628	131,628	131,628	131,628	131,628	131,628	131,628	131,628	131,628	131,628	131,628	
MGP&AGP&LP Fees	50,000	51,300	52,839	54,424	56,057	57,739	59,471	61,255	63,093	64,985	66,935	68,943	71,011	73,142	75,336	57,932	
Residual CF	143,338	170,190	197,028	224,035	251,198	278,503	305,934	333,475	361,109	388,817	416,581	444,379	472,189	499,989	527,752	575,117	
DCR	1.15	1.17	1.19	1.22	1.24	1.26	1.28	1.31	1.33	1.35	1.38	1.40	1.42	1.44	1.47	1.49	
Developer Land Note	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	

PROJECTED SOURCES AND USES OF FUNDS

Mt Etna 4% component

			Close	Quarter 1	Quarter 2	Quarter 3	Construction Quarter 4	on Period Quarter 5	Quarter 6	Quarter 7	Quarter 8	Construction Subtotal	Stabilization 6 mos	Conversion	8609	Total
		Ī	Ciose	10%	10%	10%	20%	20%	10%	10%	10%	Jubiotai	0 11103			
	SOURCES OF FUNDS			1070	1070	1070	2070	2070	1070	1070	1070		ı	l		
1	Federal LIHTC Equity		4,063,296	-	-	-	-	-	-	-	-	4,063,296	-	36,163,337	406,330	40,632,963
2	State LIHTC Equity		-	-	-	-	-	-	-	-	-	-	-	-	-	-
3	Solar Equity		-	-	-	-	-	-	-	-	-	-	-	-	-	-
5	Construction Loan		-	6,484,406	7,742,772	7,822,797	16,032,989	15,696,975	8,231,594	8,368,349	8,989,094	79,368,975	1,647,399	(81,016,375)		
6	Permanent Loan (Tranche A)		-	-	-	-	-	-	-	-	-	-	-	19,175,187	-	19,175,187
7	AHSC		-	-	-	-	-	-	-	-	-	-	-	20,000,000	-	20,000,000
8	Deferred Developer Fee		-	-	-	-	-	-	-	-	-		-	171,822	-	171,822
10	Land Contribution / Note	\$20,635/unit	5,200,000.00	-	-	-			-	-	-	5,200,000	-	11,340,000.00	-	5,200,000
11	Soft Subsidy (NHTF + 23 NPLH) Developer Fee Contribution		-	-	-	-			-	-	-	-	-	\$8,781,550	-	11,340,000 8,781,550
12	Civic San Diego Ioan		-	-	-	-			-	-	-	-	-	\$6,761,550	- :	6,761,550
13	Remainder of Land Value		-	-	-	-	-	-	-	-	-		-	-		
14	Soft Loan Interest		-	54,000.00	54,000.00	54,000.00	54,000.00	54,000.00	54,000.00	54,000.00	54,000.00	432,000	108,000.00	-	-	540,000
15	Other		2,000,000.00	-	-	-	-	-		-	-	2,000,000	-	-	-	2,000,000
16	Total Sources of Funds		11,263,296	6,538,406	7,796,772	7,876,797	16,086,989	15,750,975	8,285,594	8,422,349	9,043,094	91,064,272	1,755,399	14,615,522	406,330	107,841,522
17																
18																
19	USES OF FUNDS															
20	ACQUISITION		2 500 000 00									2 500 000	ļ			0.500.000
21	Land Cost		2,500,000.00	-	-	-			-	-	-	2,500,000	-	-		2,500,000
23	Remainder of Land Value AHSC STI Project		-	-	-	-			_	-		-	-	3,000,000		3,000,000
24	Demolition		-	-	-	-				-	-	-	-	3,000,000		3,000,000
25	Verifiable Carrying Costs									_		-	-		-	
26	Basis Eligible Acquisition Cost	0	-	-	-	-	-	_	_	-	-	-	-	-	-	
27	Other: City parcel		-	-	-	-		-	-	-	-	-	-	-	-	-
28	Total Land / Acquitisiton		2,500,000	-	-	-	-	-	-	-	-	2,500,000	-	3,000,000	-	5,500,000
29																
47	NEW CONSTRUCTION															
48	Commercial	\$ -	-	-	-	-	-	-	-	-	-	-	-	-	-	
49	Off-site Improvements	\$ -	-	-	-	-	-	-	-	-	-	-	-	-	-	
51	Site Work	\$0.00/sq ft	-	-	-	-	-	-	-	-	-	-	-	-	-	
52	Parking Garage	\$8.65/gsf	-	-	-	-	-	-	-	-	-	-	-	-	-	-
53	Vertical	\$242.45/sq ft	-	6,048,000	6,048,000	6,048,000	12,096,000	12,096,000	6,048,000	6,048,000	6,048,000	60,480,000	-	-	-	60,480,000
54	GC Contingency Construction Management Fee	5.00% 14.00%	-	302,400 889,056	302,400 889,056	302,400 889,056	604,800 1,778,112	604,800 1,778,112	302,400 889,056	302,400 889,056	302,400 889,056	3,024,000 8,890,560	-	-	-	3,024,000 8,890,560
56	General Conditions, Overhead & Profit	0.00%	-	009,000	669,030	669,056	1,770,112	1,770,112	009,030	009,000	669,030	0,030,300	-	-	- 1	0,090,000
60	Total New Construction	0.0078	-	7,239,456	7,239,456	7,239,456	14,478,912	14,478,912	7,239,456	7,239,456	7,239,456	72,394,560	-	-		72,394,560
61	Total non concuration			.,200,.00	.,200,.00	1,200,100	,,	,,	1,200,100	1,200,100	1,200,.00	. 2,00 .,000				. 2,00 .,000
62	ARCHITECTURAL															
63	Building		1,185,760	-	-	-	-	-		-	-	1,185,760	-	-	-	1,185,760
64	Landscape		24,800	-	-	-	-	-	-	-	-	24,800				24,800
65	Energy Consultant		24,800	-	-	-	-	-	-	-	-	24,800				24,800
69	Total Architectural		1,235,360	-	-	-	-	-	-	-	-	1,235,360	-	-	-	1,235,360
70	OUDVEY & ENGINEEDING															
71	SURVEY & ENGINEERING Civil		470 500									470 500				470.500
72 73	ALTA		170,500 91,450.00	-	-	-			_	-	-	170,500 91,450	-	-		170,500 91,450
74	Staking		55,800	-	-	-			-			55,800	-	-	- :	55,800
75	Structural Testing		46,500	-	-	-		-	-	-	-	46,500	-			46,500
76	Soils		12,400	-	-	-	-	-	-	-	-	12,400	-	-	-	12,400
77	Other:		77,500	-		-				-	-	77,500				77,500
78	Other:		-	-	-	-	-	-	-	-	-	=	-	-	-	
79	Other:		-	-	-	-	-	-	-	-	-	-	-	-	-	-
80	Total Survey & Engineering		454,150	-	-	-	-	-	-	-	-	454,150	-	-	- 1	454,150
81																
82	CONTINGENCY COSTS			001.07-	201.275	001.075	700 01-	700 01-	001.07-	001.07-	001.075	0.040 705	ļ			2 2 4 2 = -
83 84	Hard Cost Contingency Soft Cost Contingency	5% 3%	194,224	361,973 3,768	361,973 5,690	361,973 8,020	723,946 11,188	723,946 15,965	361,973 19,927	361,973 23,910	361,973 27,427	3,619,728 310,120	-	-		3,619,728 310,120
85	Total Contingency	3%	194,224	365,741	367,662	369,993	735,134	739,910		385,883	389,400	3,929,848	-	-		3.929.848
86			134,224	303,741	307,002	503,333	133,134	135,510	301,300	505,003	303,400	3,323,040	-	-	-	3,323,040
87	CONSTRUCTION PERIOD EXPENSES															
88	Construction Loan Interest		- 1	21,614.69	90,653.30	168,347.77	273,943.04	433,152.88	565,238.03	648,009.82	565,238.03	2,766,198	1,528,128.73	-		4,294,326
90				54,000	54,000	54,000	54,000	54,000	54,000	54,000	54,000	432,000	108,000			540,000
91	Origination Fee	1.00%	810,164	-	-	-	-		-	-	-	810,164	-	-	-	810,164
94			-	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	60,000	-	-	-	60,000
95	Taxes During Construction		7,500	-		-	-	-	-	-	-	7,500	-	-	-	7,500
97	Insurance During Construction		100,000	-	-	-	-	-	-	-	-	100,000	-	-	-	100,000
	Title and Recording Fees		50,000	-	-	-	-		-	-	-	50,000	-	_	-	50,000
98 99		0.00%	20,000	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	80,000				80,000

PROJECTED SOURCES AND USES OF FUNDS

Mt Etna 4% component

						Constructi	on Period				Construction	Stabilization	Conversion	8609	Total
		Close	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Quarter 5	Quarter 6	Quarter 7	Quarter 8	Subtotal	6 mos			
			<u>10%</u>	<u>10%</u>	<u>10%</u>	<u>20%</u>	<u>20%</u>	<u>10%</u>	<u>10%</u>	<u>10%</u>					
100	Predevelopment Loan Interest	-	-	-	-	-	-	-	-	-	-	-	-		-
101	Other: PW Monitoring	-	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	200,000	-	-	-	200,000
103	Total Construction Period Expense	987,664	115,615	184,653	262,348	367,943	527,153	659,238	742,010	659,238	4,505,861	1,636,129	-	-	6,141,990
104	PERMANENT FINANCING EXPENSES													_	
105	Loan Origination Fees 0.	00/	_	_	_		_	_	_	_	_	_	95,876	_	95,876
108	Title and Recording Fees	-	_	-			-		-	-	-	-	10.000	-	10,000
111	Other: Issuer Fee 0.2	0% 202,541	-	-	-	-	-	-	-	-	202,541	101,270	-	-	303,811
113	Total Permanent Financing	202,541	-	-	-	-	-	-	-	-	202,541	101,270	105,876	-	409,687
114															
_	LEGAL FEES														
116	Construction Lender Legal	60,000	-	-	-	-	-	-	-	-	60,000	-	-	-	60,000
117	Permanent Lender Legal	45,000	-	-	-	-	-	-	-	-	45,000	-	15,000	-	60,000
118	Sponsor Legal	60,000 50,000	-	-	-	-	-	-	-	-	60,000 50.000	-	-	-	60,000 50,000
119 120	Organizational Legal Other Legal (Issuer Legal, Bond Counsel)	60.000	-	-			-	-	-		60.000	-	-	-	60,000
121	Other:	60,000	-	-	-		-	-	-	-	60,000		-	-	60,000
122	Other: GP Legal	25,000	-	-			_	-	-	_	25,000	-	-		25,000
123	Total Legal Fees	300.000	_	-	-	-	_	-	-	-	300,000	-	15,000	-	315,000
124											,		,		
125	CAPITALIZED RESERVES														
126	Operating Reserve 3 mo	ths -	-	-	-	-	-	-	-	-	-	-	696,926		696,926
129	Rent / WC Reserve	-	-	-	-	-	-	-	-	-	-	-	-	-	-
132	Total Reserves	-	-	-	-	-	-	-	-	-	-	-	696,926	-	696,926
133	DEPORTS A STUDIES														
134	REPORTS & STUDIES Market Study	10,000									10,000			_	10,000
137	Appraisal	10,000		-				-	_	_	10,000	-		-	10,000
138	Environmental	6,000	-	-	-	-	-	-	-	-	6,000	-	-	-	6,000
139	Other: Lender Deposit	-	-	-	-	-	-	-	-	-	-	-	-	-	
140	Other: Investor Deposit	-	-	-	-	-	-	-	-	-	-	-	-	-	-
141	Other: Soils Report	-	-	-	-	-	-	-	-	-	-	-	-	-	-
142	Other: Phase I		-	-	-	-	-	-	-	-	-	-	-	-	-
143	Total Reports & Studies	26,000	-	-	-	-	-	-	-	-	26,000	-	-	-	26,000
144	OTHER.														
1 45	OTHER	43,466									43.466		102,500		145,966
146	TCAC App./Alloc/Monitoring Fees CDLAC/CDIAC Fees 0		-	-			-	-	-	-	43,466	-	102,500	-	40,508
148	Local Permit Fees \$955		-	-			-	-	-	-	240.746	-		-	240,746
149	Local Development Impact Fees \$11,949		-	-	-	-	-	-	-	-	3.011.231	-	-	-	3.011.231
152	Furnishings	-	-	-	-	-	-	-	-	100,000	100,000	-	-	-	100,000
153	Final Cost Audit Expense	-	-		-		-	-	-	-		10,000	-	-	10,000
154	Marketing	-	5,000.00	-	-	-	-	-	50,000.00	50,000.00	105,000	8,000	-	-	113,000
155	MGP Services Fee	50,000	-	-	-	-	-	-	-	100,000	150,000	-	-	-	150,000
156	SDHC Ap, Orig, Servicing, Legal, Const Review	40,000.00	-	-	-	-	-	-	-	-	40,000	-	-	-	40,000
157	Accounting/Finance/Admin	45,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	85,000	-		-	85,000
160 161	Total Other Costs	3,470,952	10,000	5,000	5,000	5,000	5,000	5,000	55,000	255,000	3,815,952	18,000	102,500	-	3,936,452
	DEVELOPER COSTS														
163	Developer Fee	700,000	-	-	-	500,000	-	-	_	500,000	1,700,000	_	\$10,695,220	406,330	12,801,550
164	Consultant/Processing Agent	700,000	-		-	-	-	-	-	-	- 1,700,000	-	ψ10,000,220 -	-	12,001,000
165	Project Administration	-	-	-	-	-	-	-	-	-	-	-	-	-	-
170	Total Developer Costs	700,000	-	-	-	500,000	-	-	-	500,000	1,700,000	-	10,695,220	406,330	12,801,550
171															
173	Total Uses of Funds	10,070,890	7,730,812	7,796,772	7,876,797	16,086,989	15,750,975	8,285,594	8,422,349	9,043,094	91,064,272	1,755,399	14,615,522	406,330	107,841,522
	Net Source & Use	1,192,406	(1,192,406)	-	-	-	-			-	-	-	-	- [-
	Distributions														-
176	Balance of Funds	1,192,406	-	-	-	-	-					-		-	-

OPERATING BUDGET & INCOME ANALYSIS

Net Income Available for Debt Service

Mt Etna 4% component

SDHC
All Electric

1,482,261

			Square	Total	Gross	Utility	Monthly	Annual
Restriction	%AMI	Units	Feet/Unit	Sq. Ft.	Rents		Net Rent	Rent
LIHTC	80%	52	572	29,744	\$ 1,460	\$ 57	\$ 1,403	\$ 875,160
LIHTC	60%	26	572	14,872	\$ 1,095	\$ 57	\$ 1,038	\$ 323,739
LIHTC	50%	27	572	15,444	\$ 912	\$ 57	\$ 855	\$ 277,081
SN	30%	18	572	10,296	\$ 547	\$ 57	\$ 490	\$ 105,908
LIHTC	80%	17	738	12,546	\$ 1,751	\$ 75	\$ 1,676	\$ 341,986
	60%	15		11,070		\$ 75	\$ 1,239	\$ 222,939
		14		10,332				\$ 171,297
		16		11,808			\$ 582	\$ 111,701
		20	963	19,260			\$ 1,418	\$ 340,320
	60%	15	963	14,445			\$ 1,165	\$ 209,700
	50%	14	963	13,482		\$ 100		\$ 174,384
	30%	16	963		\$ 759	\$ 100	\$ 659	\$ 126,528
LIHTC	MGR	2	572	1,144	\$ -	\$ 75	\$ -	\$ -
				0	\$ -			
		252						3,280,742
ations								
			•					30,240
op. Fees, Late, etc.)			7					18,144
								3,329,126
@			5%					166,456
								3,162,669
es								
			\$ 5,202					1,311,011
ome								1,851,658
			\$500.00/unit					126,000
		<u> </u>	\$198/unit					50,000
Fee			0.125%					61,769
rvice			0.420%					131,628
	LIHTC LIHTC LIHTC SN LIHTC LIHTC LIHTC LIHTC SN LIHTC LIHTC LIHTC LIHTC LIHTC LIHTC LIHTC ON LIHTC LIHTC SN LIH	LIHTC	LIHTC	Restriction	Restriction	Restriction	Restriction	Restriction

Mt. Etna- 252 units 4%

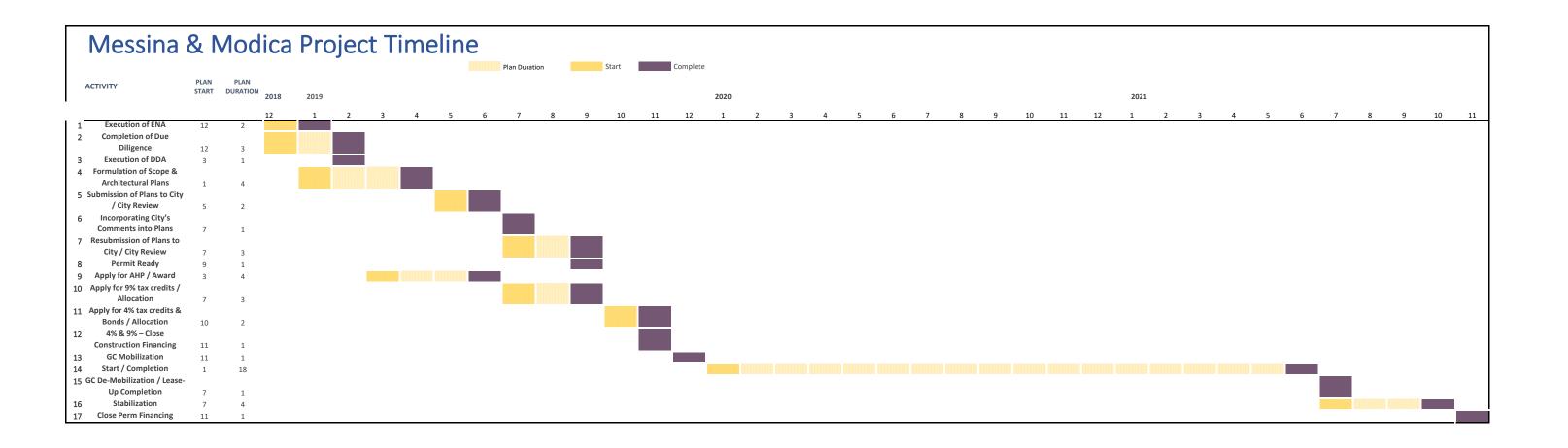
			1	2	3	4	5	6	7	8	9	10	11	12
Corea Davisson	laffation @	0.500/	0.000.400	0.440.054	2 407 002	2 505 404	0.074.700	2 700 000	2 000 705	2.057.004	4.050.040	4.457.000	4.004.500	4.000.404
Gross Revenue Vacancy	Inflation @	2.50% 5.00%	3,329,126 (166,456)	3,412,354 (170,618)	3,497,663 (174,883)	3,585,104 (179,255)	3,674,732 (183,737)	3,766,600 (188,330)	3,860,765 (193,038)	3,957,284 (197,864)	4,056,216 (202,811)	4,157,622 (207,881)	4,261,562 (213,078)	4,368,101 (218,405)
Net Revenue		3.00 /6	3,162,669	3,241,736	3,322,780	3,405,849	3,490,995	3,578,270	3,667,727	3,759,420	3,853,406	3,949,741	4,048,484	4,149,696
Operating Expenses (including non residential)	Inflation @	3.50%	1,311,011	1,356,897	1,404,388	1,453,542	1,504,416	1,557,070	1,611,568	1,667,972	1,726,351	1,786,774	1,849,311	1,914,037
Net Operating Income	auc.i	5.5575	1,851,658	1,884,839	1,918,391	1,952,307	1,986,580	2,021,200	2,056,159	2,091,448	2,127,054	2,162,967	2,199,173	2,235,660
											,,,,,,,,,			
Replacement Reserves		3.00%	126,000	129,780	133,673	137,684	141,814	146,069	150,451	154,964	159,613	164,401	169,333	174,413
Resident Services	Inflation @	2.50%	50,000	51,250	52,531	53,845	55,191	56,570	57,985	59,434	60,920	62,443	64,004	65,604
Cash Available to Debt Service			1,675,658	1,703,809	1,732,187	1,760,779	1,789,575	1,818,561	1,847,724	1,877,049	1,906,521	1,936,122	1,965,836	1,995,642
Planta La Harana		E 050/	4 000 000	4 000 000	4 000 000	4 000 000	4 000 000	4 000 000	4 000 000	4 000 000	4 000 000	4 000 000	4 000 000	1 000 000
Principal and Interest Issuer's and Admin Fee		5.85% 0.00%	1,288,923 61,769	1,288,923 61,769	1,288,923 61,769	1,288,923 61,769	1,288,923 61,769	1,288,923 61,769	1,288,923 61,769	1,288,923 61,769	1,288,923 61,769	1,288,923 61,769	1,288,923 61,769	1,288,923 61,769
Mandatory Soft Loan Payments		0.42%	131,628	131,628	131,628	131,628	131,628	131,628	131,628	131,628	131,628	131,628	131,628	131,628
Managing GP Fee		2.50%	20,000	20,500	21,013	21,538	22,076	22,628	23,194	23,774	24,368	24,977	25,602	26,242
Administrative GP Fee		2.50%	20,000	20,500	21,013	21,538	22,076	22,628	23,194	23,774	24,368	24,977	25,602	26,242
Net Project Cash Flow			153,338	180,490	207,842	235,384	<u>263,103</u>	290,985	319,017	347,182	<u>375,465</u>	403,848	432,313	460,839
		DSCR	1.15	1.17	1.19	1,22	1.24	1.26	1.28	1.31	1.33	1.35	1.38	1.40
Distributuions:		Doon	1.10	••••					1.20	1.01	1.00	1.00	1.00	1.40
LP Fee	10,000	3.00%	10,000	10,300	10,609	10,927	11,255	11,593	11,941	12,299	12,668	13,048	13,439	13,842
Deferred Developer fee	100%of Avail Cashflow	1.00%	143,338	29,154	0	0	0	0	0	0	0	0	0	0
Cash Available After Deferred Fee Payment			<u>0</u>	141,036	197,233	224,457	251,848	279,392	307,076	334,883	362,797	390,800	418,873	446,996
Residential Cash Flow Lease Payment	25.0%	8.00%	0	35,259	49,308	56,114	62,962	69,848	76,769	83,721	90,699	97,700	104,718	111,749
NPV of res. cash flow lease payments	\$1,754,830.80													
Cash Available After Deferred Fee Pmt (proportional share of 5	50% of CF)		<u>0</u>	<u>105,777</u>	<u>147,925</u>	<u>168,342</u>	<u>188,886</u>	<u>209,544</u>	230,307	<u>251,162</u>	272,098	<u>293,100</u>	<u>314,155</u>	335,247
Other State	15.52%	3.00%	0	16,414	22,954	26,122	29,310	32,515	35,737	38,973	42,222	45,481	48,748	52,021
			-	,	,,	,	,	,	,	,	,	,	,.	-,
AHSC	27.37%	3.00%	0	28,948	40,483	46,071	51,693	57,347	63,029	68,736	74,466	80,214	85,976	91,748
CPP	7.12%	3.00%	0	7,527	10,526	11,978	13,440	14,910	16,387	17,871	19,361	20,856	22,354	23,854
Cash Flow Available After Soft Loan Loans			0	52,889	73,962	84,171	94,443	104,772	115,154	125,581	136,049	146,550	157,078	167,624
Cash Flow Available After Soft Loan Loans			<u>u</u>	32,003	10,302	04,171	34,443	104,772	110,104	123,301	130,043	140,550	137,070	107,024
Partnership Admin Fee (90% of Cash Flow)		90.00%	0	47,600	66,566	75,754	84,999	94,295	103,638	113,023	122,444	131,895	141,370	150,861
Cash Flow Available after Partnership Admin Fee			<u>o</u>	5,289	7,396	8,417	9,444	10,477	<u>11,515</u>	12,558	13,605	14,655	15,708	16,762
LP Distribution		99.99%	0	5,288	7,396	8,416	9,443	10,476	11,514	12,557	13,604	14,654	15,706	16,761
GP Distribution		0.01%	0	1	1	1	1	1	1	1	1	1	2	2
Remaining Cash Flow After Partnership Distribution			<u>0</u>											

Mt. Etna- 252 units 4%

Composition				13	14	15	16	17	18	19	20	21	22	23	24	25
Name Name	Corres Devices	Inflation (A)	0.500/	4 477 004	4 500 000	4 700 007	4 004 507	4.040.400	E 00E 0E0	F 400 000	E 200 407	F 455 400	5 504 500	E 704 007	5 074 C44	0.004.470
Not Processing Expenses (including non residential) Inflation (including non resid		inflation @		, ,	,				-,,	-, -,	-,- , -	-,,	-,,			
Department propenses (including non residential) Inflation @			3.00 /6													
Net Operating 1998		Inflation @	3.50%													
Replacement Reserves Replacement Reserves Resident Services Inflation @ 2.50% 67.244 68.326 70.649 72.415 74.225 76.081 77.983 79.933 81.331 83.979 86.079 88.231 90.436 Cash Available to Debt Service 8 76.244 68.326 70.649 72.415 74.225 76.081 77.883 79.933 81.331 83.979 86.079 88.231 90.436 Cash Available to Debt Service 8 76.244 68.326 70.649 72.415 74.225 76.081 77.883 79.933 81.331 83.979 86.079 88.231 90.436 Cash Available to Debt Service 8 76.244 68.326 70.649 72.415 74.225 76.081 77.883 79.933 81.331 83.979 86.079 88.231 90.436 Cash Available After Deferred Fee Payment 9 8 70.245 72.324 78.325 78.325 79.845												, ,				
Resident Services Inflation @ 2.50% 67.244 68.925 70.649 72.415 74.225 76.81 77.925 79.933 79.933 81.931 83.979 88.079 88.031 238.0436 238.0																
Principal and Interest 1,28,528 2,055,458 2,085,468 2,08	Replacement Reserves		3.00%	179,646	185,035	190,586	196,304	202,193	208,259	214,507	220,942	227,570	234,397	241,429	248,672	256,132
Principal and Interest 1,288,923 1,2	Resident Services	Inflation @	2.50%	67,244	68,926	70,649	72,415	74,225	76,081	77,983	79,933	81,931	83,979	86,079	88,231	90,436
Sauer sand Admin Fee 0.00% 61,769	Cash Available to Debt Service			2,025,520	<u>2,055,450</u>	2,085,407	<u>2,115,368</u>	2,145,307	<u>2,175,196</u>	2,205,006	2,234,707	2,264,266	2,293,648	2,322,818	<u>2,351,737</u>	<u>2,380,364</u>
Sauer sand Admin Fee 0.00% 61,769	Bird do Harris		E 050/	4 000 000	4 000 000	4 000 000	4 000 000	4 000 000	4 000 000	4 000 000	4 000 000	4 000 000	4 000 000	4 000 000	4 000 000	4 000 000
Mandatory Soft Loan Payments 0.42% 131,628 131,6	•			,,-				,,-					,,-		,,-	,,-
Administrative GP Fee																
Net Project Cash Flow 489.405 517.990 546.569 575.117 603.607 632.011 660.300 688.441 716.401 744.145 771.635 798.833 825.696	Managing GP Fee		2.50%	26,898	27,570	28,259	28,966	29,690	30,432	31,193	31,973	32,772	33,592	34,431	35,292	36,175
DSCR 1.42 1.44 1.47 1.49 1.51 1.54 1.56 1.58 1.61 1.63 1.65 1.67 1.70 Distributuions: LP Fee	Administrative GP Fee		2.50%	26,898	27,570	28,259	28,966	29,690	30,432	31,193	31,973	32,772	33,592	34,431	35,292	36,175
Distributuions: LP Fee 10,000	Net Project Cash Flow			489,405	<u>517,990</u>	<u>546,569</u>	<u>575,117</u>	603,607	632,011	660,300	688,441	<u>716,401</u>	<u>744,145</u>	<u>771,635</u>	798,833	825,696
Distributuions: LP Fee 10,000			DSCP	1.42	1.44	1.47	1.40	1 51	1.54	1 56	1 58	1.61	1.63	1.65	1.67	1.70
Deferred Developer fee 100%of Avail Cashflow 1.00% 1 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	Distributuions:		Door	1.42		1.41	1.40		1.04	1.00	1.00		1.00	1.00	1.01	
Cash Available After Deferred Fee Payment Residential Cash Flow Lease Payment NPV of res. cash flow lease payments S1,754,830.80 Cash Available After Deferred Fee Pmt (proportional share of 50% of CF) Other State 27.37% 3.00% 25.0% 3.0	LP Fee	10,000	3.00%	14,258	14,685	15,126	0									
Residential Cash Flow Lease Payment	Deferred Developer fee	100%of Avail Cashflow	1.00%	0	0	0	0	0	0	0	0	0	0	0	0	0
Residential Cash Flow Lease Payment																
NPV of res. cash flow lease payments \$1,754,830.80																
Cash Available After Deferred Fee Pmt (proportional share of 50% of CF) 376,361 377,478 38,582 431,337 452,705 474,009 495,225 516,331 537,301 558,109 578,726 599,124 619,272 Other State 15,52% 3.00% 55,297 58,574 61,849 66,932 70,247 73,553 76,845 80,120 83,374 86,603 89,802 92,968 96,094 AHSC 27,37% 3.00% 97,526 103,305 109,081 118,045 123,893 129,723 135,530 141,306 147,045 152,739 158,382 163,964 169,478			8.00%	118,787	125,826	132,861	143,779	150,902	158,003	165,075	172,110	179,100	186,036	192,909	199,708	206,424
Other State 15.52% 3.00% 55,297 58,574 61,849 66,932 70,247 73,553 76,845 80,120 83,374 86,603 89,802 92,968 96,094 AHSC 27.37% 3.00% 97,526 103,305 109,081 118,045 123,893 129,723 135,530 141,306 147,045 152,739 158,382 163,964 169,478	• •															
AHSC 27.37% 3.00% 97,526 103,305 109,081 118,045 123,893 129,723 135,530 141,306 147,045 152,739 158,382 163,964 169,478	Cash Available After Deferred Fee Pmt (proportional share of	50% of CF)		356,361	<u>377,478</u>	398,582	431,337	<u>452,705</u>	474,009	495,225	<u>516,331</u>	537,301	<u>558,109</u>	578,726	599,124	619,272
AHSC 27.37% 3.00% 97,526 103,305 109,081 118,045 123,893 129,723 135,530 141,306 147,045 152,739 158,382 163,964 169,478	Other State	15 52%	3.00%	55 297	58 574	61 849	66 932	70 247	73 553	76 845	80 120	83 374	86 603	89 802	92 968	96 094
	Suid. State	15.52.75	0.007.0	00,201	00,011	0.,0.0	00,002	. 0,2	7 0,000	7 0,0 10	00,120	00,07	00,000	00,002	02,000	00,001
CPP 7.12% 3.00% 25,357 26,859 28,361 30,692 32,212 33,728 35,238 36,739 38,232 39,712 41,179 42,631 44,064	AHSC	27.37%	3.00%	97,526	103,305	109,081	118,045	123,893	129,723	135,530	141,306	147,045	152,739	158,382	163,964	169,478
CPP 7.12% 3.00% 25,357 26,859 28,361 30,692 32,212 33,728 35,238 36,739 38,232 39,712 41,179 42,631 44,064																
	CPP	7.12%	3.00%	25,357	26,859	28,361	30,692	32,212	33,728	35,238	36,739	38,232	39,712	41,179	42,631	44,064
<u>Cash Flow Available After Soft Loan Loans</u> <u>178,180</u> <u>188,739</u> <u>199,291</u> <u>215,669</u> <u>226,353</u> <u>237,004</u> <u>247,613</u> <u>258,165</u> <u>268,650</u> <u>279,054</u> <u>289,363</u> <u>299,562</u> <u>309,636</u>	Cash Flow Available After Soft Loan Loans			<u>178,180</u>	188,739	199,291	215,669	226,353	237,004	247,613	258,165	268,650	279,054	289,363	299,562	309,636
Partnership Admin Fee (90% of Cash Flow) 90.00% 160,362 169,865 179,362 194,102 203,717 213,304 222,851 232,349 241,785 251,149 260,427 269,606 278,672	Partnership Admin Fee (90% of Cash Flow)		90.00%	160.362	169.865	179.362	194.102	203.717	213.304	222.851	232.349	241.785	251.149	260.427	269.606	278.672
Cash Flow Available after Partnership Admin Fee 17,818 18,874 19,929 21,567 22,635 23,700 24,761 25,817 26,865 27,905 28,936 29,956 30,964			0010070	,	,				-,	,	- ,	,	- , -			
LP Distribution 99.99% 17,816 18,872 19,927 21,565 22,633 23,698 24,759 25,814 26,862 27,903 28,933 29,953 30,960	LP Distribution		99.99%	17,816	18,872	19,927	21,565	22,633	23,698	24,759	25,814	26,862	27,903	28,933	29,953	30,960
GP Distribution 0.01% 2 2 2 2 2 2 3 3 3 3 3 3 3 3	GP Distribution		0.01%	2	2	2	2	2	2	2	3	3	3	3	3	3
Remaining Cash Flow After Partnership Distribution 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	Remaining Cash Flow After Partnership Distribution			<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

N/I+	Etna-	252	unite	40/

			26	27	28	29	30
Gross Revenue	Inflation @	2.50%	6,172,013	6,326,313	6,484,471	6,646,583	6,812,747
Vacancy		5.00%	(308,601)	(316,316)	(324,224)	(332,329)	(340,637)
Net Revenue			5,863,412	6,009,998	6,160,247	6,314,254	6,472,110
Operating Expenses (including non residential)	Inflation @	3.50%	3,098,241	3,206,679	3,318,913	3,435,075	3,555,303
Net Operating Income			<u>2,765,171</u>	2,803,318	<u>2,841,334</u>	<u>2,879,179</u>	<u>2,916,807</u>
Replacement Reserves		3.00%	263,816	271,730	279,882	288,279	296,927
Resident Services	Inflation @	2.50%	92,697	95,015	97,390	99,825	102,320
Cash Available to Debt Service			2,408,658	2,436,573	2,464,062	2,491,075	2,517,560
Principal and Interest		5.85%	1,288,923	1,288,923	1,288,923	1,288,923	1,288,923
Issuer's and Admin Fee		0.00%	61,769	61,769	61,769	61,769	61,769
Mandatory Soft Loan Payments		0.42%	131,628	131,628	131,628	131,628	131,628
Managing GP Fee		2.50%	37,079	38,006	38,956	39,930	40,928
Administrative GP Fee		2.50%	37,079	38,006	38,956	39,930	40,928
Net Project Cash Flow			<u>852,181</u>	<u>878,242</u>	903,830	<u>928,896</u>	<u>953,384</u>
		DSCR	1.72	1.74	1.76	1.78	1.80
Distributuions:							
LP Fee	10,000	3.00%					
Deferred Developer fee	100%of Avail Cashflow	1.00%	0	0	0	0	0
	L						
Cash Available After Deferred Fee Payment			852,181	878,242	903,830	928,896	953,384
Residential Cash Flow Lease Payment	25.0%	8.00%	213,045	219,560	225,958	232,224	238,346
NPV of res. cash flow lease payments	\$1,754,830.80		000 100	050 004			745.000
Cash Available After Deferred Fee Pmt (proportional share of 50% o	t CF)		<u>639,136</u>	<u>658,681</u>	<u>677,873</u>	<u>696,672</u>	<u>715,038</u>
Other State	15.52%	3.00%	99,176	102,209	105,187	108,104	110,954
AHSC	27.37%	3.00%	174,914	180,263	185,515	190,660	195,686
CPP	7.12%	3.00%	45,478	46,868	48,234	49,572	50,878
Cash Flow Available After Soft Loan Loans			319,568	329,341	338,936	348,336	357,519
Partnership Admin Fee (90% of Cash Flow)		90.00%	287,611	296,407	305,043	313,502	321,767
Cash Flow Available after Partnership Admin Fee			<u>31,957</u>	<u>32,934</u>	<u>33,894</u>	<u>34,834</u>	35,752
LP Distribution		99.99%	31,954	32,931	33,890	34,830	35,748
GP Distribution		0.01%	3	3	3	3	4
Remaining Cash Flow After Partnership Distribution			<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>



Request for Proposals for the Ground Lease and Development of 5355 Mount Etna Drive San Diego (APN 361-661-12)



7. Project Timeline

We anticipate the Sixth Avenue project to conclude an ENA at the end of December 2018 and be fully leased up by November 2021.

Project Milestones	Schedule		
County Documents			
Execution of ENA	Dec 2018		
Completion of Due Diligence	Dec 2018 – Feb 2019		
Execution of DDA	March 2019		
Permits/Relocation			
Formulation of Scope & Architectural Plans	Jan / April 2019		
Submission of Plans to City / City Review	May / June 2019		
Incorporating City's Comments into Plans	July 2019		
Resubmission of Plans to City / City Review	July / Aug 2019		
Permit Ready	Sept 2019		
Financing			
Apply for AHP / Award	March / June 2019		
Apply for 9% tax credits / Allocation	July / Sept 2019		
Apply for 4% tax credits & Bonds / Allocation	Oct / Nov 2019		
4% & 9% – Close Construction Financing	Nov 2019		
Construction			
GC Mobilization	Dec 2019		
Start / Completion	Jan 2020 - June 2021		
GC De-Mobilization / Lease-Up Completion	July 2021		
Financing – Perm			
Stabilization	July 2021 - Oct 2021		
Close Perm Financing	Nov 2021		

GUARANTY OF COMPLETION AND PERFORMANCE (Mt. Etna, San Diego, California)

By:	Chelsea Investment Corporation, a California corporation	" <u>Guarantor</u> "
In favor of:	County of San Diego, a political subdivision of the State of California	" <u>Landlord</u> "
Dated:	, 2020 Background	
the same may expressly def	Reference is made to the Ground Lease of even date hereof between the sunder, and [Chelsea entity], a ("Tenant"), as Tenant be amended, the "Ground Lease"). Capitalized terms used in this fined herein or by reference to another document or source, share respectively ascribed to those terms in the Ground Lease.	ant thereunder (as Guaranty, but not
B. of	Tenant is governed by an Amended and Restated Partnership A , 2020, among Tenant's partners (the "Partnership As	
certain new in	Tenant has entered or will enter into that certain Construction on truction, Inc., a California corporation (" <u>Contractor</u> ") relating improvements required under the Ground Lease (the " <u>New Improgramended</u> , the " <u>Construction Contract</u> ").	to construction of
	In order to finance construction of the New Improvements, Tenan Loan Agreement of even date herewith between Tenant and	
E.	Guarantor is an affiliate of Tenant.	
F. has agreed to	As a material inducement for Landlord to enter into the Ground execute and deliver this Guaranty.	Lease, Guarantor

Agreement

1. <u>Guaranty</u>. Guarantor hereby absolutely guarantees to Landlord: (a) completion of construction of the New Improvements within the time and in the manner required by the Ground Lease and Construction Contract ("<u>Completion</u>"), but subject to delay for Force Majeure (as such terms are defined in the Ground Lease); (b) the full and timely payment of all costs, expenses, charges and fees necessary for the fulfillment of the requirements of such Completion, including, without limitation, all cost overruns, and all fees for permits and licenses, utility expenses, amounts payable under the Construction Contract and all subcontracts relating to the New Improvements, and amounts payable to all contractors, engineers, architects, subcontractors and material suppliers engaged in connection with any of the foregoing; (c) the fulfillment of all obligations under any

and all extensions, modifications, rearrangements, and restatements of any of the obligations, liabilities, and duties described in (a) or (b) above; and (d) without duplication of any of the amounts set forth in clauses (a) through (c) above or <u>Section 8</u> below, the payment of all costs, losses, liabilities and expenses resulting from the failure of Guarantor to comply with the terms of this Guaranty (all of the payments, obligations, duties, and agreements described in this <u>Section 1</u> are referred to as the "<u>Guaranteed Obligations</u>").

2. <u>Enforcement of Guaranty</u>.

- General Enforcement. Except as otherwise expressly contemplated in this (a) Guaranty, within five (5) business days after the occurrence and continuance of an Event of Default by Tenant under the Ground Lease (as defined in the Ground Lease) past applicable notice and cure periods, Guarantor shall, upon written demand by Landlord, at its sole cost and expense, pay and perform any such Guaranteed Obligations then due, including, without limitation, causing construction of the New Improvements and diligently pursuing such construction to complete the New Improvements within the time and manner required in the Ground Lease. Guarantor shall pay all costs and expenses in connection with the Guaranteed Obligations and shall indemnify and hold Landlord harmless from any and all direct losses, costs, liabilities, or expenses incurred in connection the Guaranteed Obligations. As an additional option to Landlord, if Guarantor fails upon Landlord's request as and when required under this Guaranty to commence and thereafter diligently and continuously pursue Completion, or if Guarantor fails to achieve Completion as required under the Ground Lease and Construction Contract, then Landlord shall have the right ("Landlord's Completion Right") (but not the obligation) in its sole and absolute discretion to complete the New Improvements itself or to cause a third party to complete the construction of the New Improvements. Guarantor shall pay to Landlord, immediately upon written demand, an amount equal to the actual costs incurred by Landlord in so completing the New Improvements and that are directly related to the construction of the New Improvements, including, without limitation, all licensing fees, permitting fees, amounts payable under any general construction contract and all subcontracts, and amounts payable to any architect, engineer or other consultant engaged in connection with the construction of the New Improvements, with a limit on developer and development management fees not in excess of four percent (4%) of such costs, and a limit on general contractor and construction management fees not in excess of six percent (6%) of such costs (the "Actual Costs").
- (b) If any construction or mechanics lien arising from or in connection with the construction of the New Improvements encumbers the Property, then Guarantor agrees, at its sole cost and expense, to immediately cause the removal of such construction liens. If Landlord elects to complete the New Improvements itself or to cause a third party to complete construction of the New Improvements under Section 2(a), and Guarantor complies with all payment obligations under that Section, then Guarantor shall not be responsible for liens arising from Landlord's construction of the New Improvements, but shall remain responsible for any liens arising prior to Landlords election to pursue such self-help under Section 2(a).
- 3. <u>Continuing and Absolute Guaranty</u>. It is expressly understood and agreed that this is an irrevocable, absolute, and continuing guarantee of payment, performance, and completion of the Guaranteed Obligations, and that the obligations of Guarantor hereunder are

and shall be absolute under any and all circumstances, without regard to the validity, regularity, or enforceability of any or all of the Ground Lease, the Construction Contract, or any other instruments executed in connection with any or all of the Ground Lease, Loan Agreement, the Construction Contract, the New Improvements, and neither this Guaranty nor Guarantor's liabilities and obligations hereunder shall terminate until the Guaranteed Obligations have been fully and indefeasibly satisfied.

4. <u>Waivers</u>. Guarantor waives any right to require that (i) any action be brought against Tenant or any other Person, (ii) Landlord enforce its rights against any other guarantor of the Guaranteed Obligations, (iii) Landlord have Tenant joined with Guarantor or any other guarantor of all or part of the Guaranteed Obligations, or (iv) Landlord pursue any other remedy in Landlord's powers whatsoever. Landlord shall not be required to mitigate damages or take any action to reduce, collect or enforce the Guaranteed Obligations. Guarantor waives any defense arising by reason of any disability, lack of corporate, limited liability company, and/or partnership authority or power, or other defense of Tenant, or of any other guarantor of the Guaranteed Obligations, and shall remain liable hereon regardless of whether Tenant or any other guarantor be found not liable thereon for any reason. Should Landlord seek to enforce the obligations of Guarantor by action in any court, Guarantor waives any necessity, substantive or procedural, that a judgment previously be rendered against Tenant or any other Person or that Tenant or any other Person be joined in such cause or that a separate action be brought against Tenant or any other Person.

GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES: (i) presentment, demand, protest, notice or acceptance, notice of dishonor, notice of nonperformance, notice of acceleration, notice of intent to accelerate and any other notice with respect to any of the Guaranteed Obligations and this Guaranty, and promptness in commencing suit against any party thereto or liable thereon, and/or in giving any notice to or making any claim or demand hereunder upon Guarantor, (ii) any right to require Landlord to (A) proceed against Tenant or any other guarantor, (B) proceed against or exhaust any security held by Landlord, or (C) pursue any remedy in Landlord's power whatsoever; (iii) any defense arising by reason of any incapacity, lack of authority, death or disability or other defense of Tenant or any other party or by reason of the cessation from any cause whatsoever of the liability of Tenant or any other party; (iii) all rights and defenses arising out of an election of remedies by Landlord; (iv) any defense based upon any lack of diligence by Landlord in the collection of the Guaranteed Obligations; (v) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; and (vi) any defense based upon any duty on the part of Landlord to disclose to Guarantor any facts Landlord may now or hereafter know about Tenant, regardless of whether Landlord has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor. This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have.

5. <u>No Termination, Modification, or Impairment</u>. Guarantor hereby consents and agrees to each of the following, and agrees that the Guaranteed Obligations shall not be released, diminished, impaired, reduced or adversely affected by any of the following, and waives any rights (including without limitation rights to notice) that Guarantor might otherwise have as a

result of or in connection with any of the following, in each case to the fullest extent permitted by law:

- (a) any amendment of the Ground Lease or related documents, the Construction Contract, the Loan Agreement, or the Partnership Agreement;
- (b) the insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution, death, or lack of power of Tenant;
- (c) the failure of Landlord or any other Person to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of any collateral, property or security; or
- (d) any payment by Tenant to Landlord is held to constitute a preference under the bankruptcy laws, or for any reason Landlord is required to refund such payment or pay such amount to Tenant or someone else.
- 6. Representations and Warranties. Guarantor represents and warrants that: (a) Guarantor has the power and authority to execute, deliver and perform its obligations under this Guaranty, (b) the execution, delivery and performance by Guarantor of this Guaranty do not violate or conflict with any applicable laws, and do not violate or conflict with, breach, or constitute a default under, or require consent under any agreement or document binding or covering Guarantor or any of its property and (c) this Guaranty constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.
- 7. Release. Upon satisfaction of all Guaranteed Obligations, Guarantor will be released from its obligations under this Guaranty and, at Guarantor's request, Landlord shall confirm in writing to Guarantor that all obligations of Guarantor under this Guaranty have been fulfilled, and that this Guaranty is of no further force or effect.
- 8. <u>Litigation Costs</u>. In the event Landlord brings an action to enforce this Guaranty, or in the event of a bankruptcy or insolvency proceeding involving Guarantor, Guarantor will reimburse Landlord for all expenses incurred by Landlord, including, but not limited to, attorneys' fees and costs (for in-house and outside counsel).
- 9. <u>Successors and Assigns</u>. This Guaranty shall be binding upon Guarantor, its administrators, successors and assigns, and shall inure to the benefit of and may be enforced by Landlord and its successors and assigns.
- 10. <u>Events of Default</u>. Guarantor shall be in default under this Guaranty upon the occurrence of any or all of the following events, circumstances or conditions (each of which shall be referred to herein as an "<u>Event of Default</u>"):
- (e) Default in the timely payment or performance of any or all of the obligations imposed under, or any or all of the covenants, warranties and liabilities contained or referred to in, this Guaranty; or

- (f) Any warranty, representation or statement made or furnished to Landlord by or on behalf of Guarantor (i) in connection with, or under the terms of, this Guaranty, or (ii) to induce Landlord to enter into the Ground Lease, proves to have been false in any material respect when made or furnished; or
- (g) Insolvency, business failure, appointment of a receiver of any part of the property of, assignments for the benefit of creditors by, or the commencement of any proceeding under any state or federal bankruptcy or insolvency laws by or against, any Guarantor and, in the case of an involuntary proceeding under any federal or state bankruptcy law, if such proceeding shall not be dismissed within ninety (90) days after commencement thereof. Notwithstanding the foregoing, the events in this clause (c) shall not constitute an Event of Default if a replacement guarantor acceptable to Landlord in its reasonable discretion (meeting the Minimum Financial Requirement and having a direct or indirect ownership interest in Tenant) shall provide a replacement Guaranty of Completion and Performance in substantially the form hereof; or
- (h) Upon the entry of any monetary judgment or the assessment and/or filing of any tax lien against any Guarantor, or upon the issuance of any writ of garnishment or attachment against any property of, debts due to, or rights of any Guarantor, if such event would materially adversely affect Guarantor's ability to perform hereunder, unless in any such event such judgment, assessment, lien, garnishment or attachment is discharged or bonded within sixty (60) days.

11. Remedies; Continuance of Event of Default.

- (i) Guarantor acknowledges that upon the occurrence of an Event of Default, Landlord shall have the right to enforce the Guaranteed Obligations and all terms and conditions of this Guaranty by pursuing any and all rights and remedies available to Landlord against Guarantor, whether such rights and remedies are available at law or in equity.
- (j) Notwithstanding anything to the contrary contained in this Guaranty, if an Event of Default has occurred (i) it shall be deemed to continue unless and until Landlord in its sole and absolute discretion in writing has waived the Event of Default, and (ii) unless Landlord in its sole and absolute discretion has agreed in writing to permit Guarantor to do so, neither Guarantor nor any other Person shall have any right to cure such Event of Default. If Landlord waives an Event of Default in writing or accepts in writing a cure by Guarantor of an Event of Default, following such written waiver or cure, such Event of Default shall cease to exist and shall no longer continue.
- 12. <u>Notices</u>. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth below. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by email, in which case notice shall be deemed delivered upon transmission, or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. Any notice sent by email or personal delivery and delivered after 5:00 p.m. local time where the Property is located shall be deemed received on the next business day. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure

to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to Landlord shall be deemed given by Guarantor, notices given by counsel to Guarantor shall be deemed given by Landlord, and notices given to a party's counsel shall be deemed given to the party.

If to Guarantor: Chelsea Investment Corporatio

6339 Paseo del Lago Carlsbad, CA 92011 Attn: Cheri Hoffman

E-mail: cheri@chelseainvestco.com

With copies to: Odu & Associates, PC

31805 Temecula Parkway #720

Temecula, CA 92592

Attention: Nkechi C. Odu, Esq. Email: nkechi@odulaw.com

If to Landlord: County of San Diego

Attn: Director

Department of General Services 5560 Overland Avenue, Suite 410

San Diego, CA 92123

Email:

- 13. Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflict of law rules of the State of California or any other jurisdiction. Guarantor hereby agrees that all actions or proceedings arising directly, indirectly or otherwise in connection with, out of or related to or from this Guaranty, or for recognition or enforcement of any judgment arising from same, shall be litigated, in Landlord's sole discretion and at Landlord's sole election, only in courts having a situs within or whose jurisdiction includes San Diego County, California. Accordingly, Guarantor hereby irrevocably and unconditionally waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of any such action or proceeding in any court selected by Landlord. Guarantor also hereby irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which Guarantor may now or hereafter have to the venue of any suit, action or proceeding in any court selected by Landlord. Guarantor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
- 14. <u>Amendments</u>. No amendment or waiver of any provisions of this Guaranty nor consent to any departure by Guarantor therefrom shall in any event be effective unless the same shall be in writing and signed by Landlord, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on Guarantor shall in any case entitle it to any other or further notice or demand in similar or other circumstances.

- 15. <u>No Oral Agreements</u>. This Guaranty represents the final agreement between the parties in connection with the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements by the parties. There are no unwritten oral agreements with the parties.
- 16. <u>Financial Representations, Warranties and Covenants</u>. Guarantor hereby represents, warrants and covenants that:
- (a) Prior to execution of this Guaranty, Guarantor will provide financial statements and data sufficient to demonstrate satisfaction of the Minimum Financial Requirement set forth below and sufficient to demonstrate Guarantor's ability to perform under this Guaranty. All financial statements and data that have been given to Landlord by Guarantor and Tenant with respect to Guarantor (A) are complete and correct in all material respects as of the date given; (B) accurately present in all material respects the financial condition of Guarantor on each date as of which the same have been furnished; and (C) have been prepared in accordance with the method of presentation provided by Guarantor's Statement of Net Worth and Liquidity document previously provided to Landlord.
- (b) There has been no adverse change in the financial condition of Guarantor since (A) the date of the most recent financial statements given to Landlord with respect to Guarantor, or (B) the date of the financial statements given to Landlord immediately prior to the date hereof, other than changes in the ordinary course of business, none of which changes has been materially adverse, individually or in the aggregate.
- (c) For so long as this Guaranty remain outstanding, (i) Guarantor, collectively, shall maintain a net worth of not less than Five Million Dollars (\$5,000,000) and (ii) maintain liquidity (unencumbered cash) of not less than Three Million Dollars (\$3,000,000) ((i) and (ii) are collectively called, the "Minimum Financial Requirement")). A qualified officer of Guarantor shall certify compliance with such Minimum Financial Requirement on a quarterly and annual basis.
 - 17. Time. Time is of the essence of this Guaranty and all of its provisions.
- 18. <u>Entire Agreement</u>. This Guaranty is intended as a final expression of this agreement of guarantee and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between Guarantor and Landlord, no usage of the trade, and no parol or extrinsic evidence of any nature, shall be used or be relevant to supplement, explain, contradict or modify the terms and/or provisions of this Guaranty.
- 19. <u>Severability</u>. If any term, provision, covenant or condition hereof or any application thereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, such invalidity, voidness or unenforceability shall not impair, diminish, void, invalidate or affect in any way any other terms, provisions, covenants and conditions hereof or any applications thereof, all of which shall continue in full force and effect.
- 20. <u>Headings</u>. Section headings in this Guaranty are included for convenience of reference only and do not constitute a part of this Guaranty for any other purpose.

- 21. <u>Counterparts</u>. This Guaranty may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of such counterparts taken together shall constitute but one and the same instrument.
- 22. <u>GUARANTOR ACKNOWLEDGEMENT AND WAIVER OF RIGHT TO TRIAL BY JURY</u>. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, GUARANTOR HEREBY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS GUARANTY.

Signatures Appear on Following Page

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Guaranty as of the date first above written.

GUARANTOR:

	estment Corporation, fornia corporation,		
Ву:	Cheri Hoffman, President		