



GROUND LEASE

THIS GROUND LEASE (“**Lease**”) is made and effective as of the ___ day of _____, 2017~~2018~~ (“**Effective Date**”) by and between the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic (hereinafter called “**District**”), and _____, a _____ (hereinafter called “**Tenant**”) (also referred to hereinafter each as “**Party**” or collectively as the “**Parties**”).

RECITALS

A. District is the fee owner of the Premises (as hereinafter defined).

B. The Parties have executed an Option Agreement, dated April 26, 2016, (“**Option Agreement**”), pursuant to which the District had agreed to lease the Premises to the Tenant upon the fulfillment of certain conditions precedent as set forth therein.

C. The Parties acknowledge that the conditions precedent required by the Option Agreement have been fulfilled and the therefore the Tenant and District desire that Tenant shall ground lease the Premises from District on the terms set forth herein.

D. District and Tenant have jointly agreed to enter into this Lease as of the date set forth above.

NOW, THEREFORE, in consideration of the above recitals, which are hereby incorporated into this Lease by reference, and mutual covenants and agreements hereinafter contained, District and Tenant mutually agree to the following:

ARTICLE I DEFINITIONS

1.1 **Definitions:** The following defined terms used in this Lease shall have the meanings set forth below. Other terms are defined in other provisions of this Lease, and shall have the definitions given to such terms in such other provisions.

1.1.1. “**Affiliate**” shall mean, with respect to any person (which as used herein includes an individual, trust or entity), any other person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such person.

1.1.2. “**Aggregate Transfer**” shall refer to the total “Ownership Interest(s)” in Tenant transferred or assigned in one transaction or a series of related transactions (other than an Excluded Transfer) occurring since the latest of (a) the Effective Date, (b) the execution by Tenant of this Lease, or (c) the most recent Tenant Ownership Change; provided, however, that there shall be no double counting of successive transfers of the same interest in the case of a transaction or series of related transactions involving successive transfers of the same interest. Isolated and unrelated transfers shall not be treated as a series of related transactions for purposes of the definition of “Aggregate Transfer.”

1.1.3. “**Annual Operating Expenses**” means all regular and customary annual expenses incurred in relation to the operation of the Premises, including the Improvements, as reflected on the annual budget that Tenant shall prepare and abide by each year during the Term of the loan made by the County for the Improvements and for so long as Base Rent remains unpaid and outstanding, as approved in writing by the County. Said Annual Operating Expenses shall include a reasonable property management and administrative fee, fees related to the tax credit syndication of the

Premises, utility charges, operating and maintenance expenses, project property taxes and project insurance premiums, and such other costs as approved by the Chief Real Estate Officer, in his/her reasonable discretion. Chief Real Estate Officer reserves the right to at any time review the annual budget during the Term hereof. Notwithstanding the foregoing, in no event shall Annual Operating Expenses include any costs, fees, fines, charges, penalties, awards, judgments or expenses (including, but not limited to legal and accounting fees and expenses) which are due to or arising out of the Tenant's (A) breach or default of any mortgage loan, (B) fraudulent acts or willful misconduct or (C) breach or default under any other contract, lease or agreement pertaining to the project. Annual Operating Expenses shall also not include other expenses not related to the project's operations such as depreciation, amortization, accrued principal and interest expense on deferred payment debt and capital improvement expenditures.

1.1.4. **"Annual Project Revenue"** means all annual revenue generated by the project from any source, including, but not limited to, rent payments, governmental assistance housing payments, laundry and other vending machine and pay telephone income, and shall include any net refinancing proceeds and net syndication proceeds.

1.1.5. **"Auditor-Controller"** shall mean the Auditor-Controller, County of Orange, or designee, or upon written notice to Tenant, such other person as may be designated by the Board of Supervisors.

1.1.6. **"Base Rent"** shall mean a total of Three Million Two Hundred Twenty-Five Thousand Dollars (\$3,~~000~~225,000) due and owing and payable in full on the Effective Date, but if not paid in full on the Effective Date, then the Base Rent amount paid in accordance with this Lease, including pursuant to Sections 3.1 and 3.2, below, shall be an amount necessary to equal \$3,~~000~~225,000 as of the Effective Date discounted on a net present value basis using a three percent (3%) discount rate.

1.1.7. **"Board of Supervisors"** shall mean the Board of Supervisors of the County of Orange, a political subdivision of the State of California, the governing body of the District.

1.1.8. **"Certificate of Occupancy"** shall mean a temporary or final certificate of occupancy (or other equivalent entitlement, however designated) which entitles Tenant to commence normal operation and occupancy of the Improvements.

1.1.9. **"Channel"** shall mean the District's Atwood Channel Facility No. E04, which is directly south of the Premises as depicted on **Exhibit A-1**.

1.1.10. **"Chief Real Estate Officer"** shall mean the Chief Real Estate Officer, County Executive Office, County of Orange, or designee, or upon written notice to Tenant, such other person as may be designated by the Board of Supervisors.

1.1.11. **"City"** shall mean the City of Placentia, State of California.

1.1.12. **"Claims"** shall mean liens, claims, demands, suits, judgments, liabilities, damages, fines, losses, penalties, costs and expenses (including without limitation reasonable attorneys' fees and expert witness costs, and costs of suit), and sums reasonably paid in settlement of any of the foregoing.

1.1.13. **"Commencement Date"** shall mean the same as the Effective Date.-

~~1.1.14.~~

1.1.14. **"Compliance Period"** shall mean the fifteen (15) year tax credit compliance period as described in Section 42(i)(I) of the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of prior or succeeding law.

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1.1.15. **“Contractor”** shall mean Tenant’s general contractor for the construction of the Improvements.

1.1.16. **“County”** shall mean the County of Orange, a political subdivision of the State of California.

1.1.17. **“District”** shall mean the Orange County Flood Control District, a body corporate and politic. Any reference to the District herein, unless expressly stated to the contrary, shall refer to the District solely in its capacity as owner of the Premises and not the District in its capacity as a land use or other governmental approval authority.

1.1.18. **“District’s Fee Interest”** shall mean all of District’s interest in the real property, the Premises, this Lease and District’s existing and reversionary interest in the Premises, as well as the Improvements upon the expiration of the Term or earlier termination thereof.

1.1.19. **“District Parties”** shall mean, collectively and individually, the District and County, and their respective Affiliates, agents, employees, members, officers, directors and attorneys.

1.1.20. **“Effective Date”** is defined in the introductory paragraph to this Lease. ~~19. **“Documented Transaction Costs”** shall mean commissions, title and escrow costs, documentary transfer taxes, sales and use taxes, prepayment fees, penalties, or other similar charges (such as yield maintenance premiums or defeasance costs) and other bona fide closing costs actually paid to third parties and documented to the reasonable satisfaction of District, which costs were directly attributable to the consummation of the particular transaction giving rise to the obligation to pay District the Value Appreciation Rent.~~

~~1.1.20. **“Effective Date”** is defined in the introductory paragraph to this Lease.~~

~~1.1.21.~~

1.1.22. **“Event of Default”** is defined in Section 11.1.

~~1.1.22. **“Excluded Financing”** shall mean:~~

~~(a) Any Financing Event that occurs in connection with a simultaneous Tenant Ownership~~
Change; or

~~(b) With respect to a Financing Event secured by Ownership Interests, any Financing Event or the foreclosure of the security interests, which would not result in an Aggregate Transfer of more than twenty five percent (25%) of the “Ownership Interests” in Tenant.~~

1.1.23. **“Excluded Transfer”** shall mean any of the following:

(a) A transfer by any direct or indirect partner, shareholder, or member of Tenant (or of a limited partnership, corporation, or limited liability company that is a direct or indirect owner in Tenant’s ownership structure) as of the Effective Date or the date on which a Tenant Ownership Change occurred as to the interest transferred, to any other direct or indirect partner, shareholder, or member of Tenant (or of a limited partnership, corporation, or limited liability company that is a direct or indirect owner in Tenant’s ownership structure) as of the Effective Date, including in each case to or from a trust for the benefit of the immediate family of any direct or indirect partner or member of Tenant who is an individual;

(b) A transfer to a spouse in connection with a property settlement agreement or decree of dissolution of marriage or legal separation;

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(c) A transfer of an Ownership Interest in Tenant or in constituent entities of Tenant (i) to a member of the immediate family of the transferor (which for purposes of this Lease shall be limited to the transferor's spouse, children, parents, siblings, and grandchildren); (ii) to a trust for the benefit of a member of the immediate family of the transferor; (iii) from such a trust or any trust that is an owner in a constituent entity of Tenant as of the Effective Date, to the settlor or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer described in this subsection is the result of gift, devise, intestate succession, or operation of law; or (iv) in connection with a pledge by any partners or members of a constituent entity of Tenant to an affiliate of such partner or member;

(d) A transfer of a ~~beneficial~~ direct or indirect interest resulting from public trading in the stock or securities of an entity, when such entity is a corporation or other entity whose stock and/or securities is/are traded publicly on a national stock exchange or traded in the over-the-counter market and the price for which is regularly quoted in recognized national quotation services;

(e) A mere change in the form, method, or status of ownership (including, without limitation, the creation of single-purpose entities) as long as the ultimate beneficial ownership remains the same as of the Effective Date, or is otherwise excluded in accordance with subsections (a) – (d) above;

(f) A transfer to an Affiliated nonprofit public benefit corporation, or to a limited partnership whose general partner is a nonprofit corporation or limited liability company Affiliated with the Tenant or the Tenant's general partner, subject to the District's right to reasonably approve the agreement to effect such assignment or transfer;

(g) The lease, assignment of lease or sublease of any individual residential unit in the Improvements;

(h) A transfer of the Tenant's interest in the Premises by foreclosure or deed in lieu of foreclosure (i) to any bona fide third party lender holding a lien encumbering the Premises (or its nominee), and (ii) by a Lender Foreclosure Transferee to a third-party made in accordance with Section 17.6.5;

(i) Transfers of any limited partnership or membership interest in the Tenant to an investor solely in connection with the tax credit syndication of the Premises in accordance with Section 42 of the Internal Revenue Code of 1986, as amended (the "**Tax Credit Laws**"), provided the syndication does not extend or exceed the Term of this Lease; (including a transfer of the Limited Partner's interest to an Affiliate of the Limited Partner);

(j) The grant or exercise of an option agreement solely in connection with the tax credit syndication of the Premises in accordance with the Tax Credit Laws, provided the syndication does not extend or exceed the Term of this Lease;

(k) The removal and replacement of Tenant's general partner pursuant to the Partnership Agreement, unless said removal or replacement results in an Aggregate Transfer of any stock or interest in the Partnership exceeding twenty five percent (25%); or

(l) Any assignment of the Lease by Tenant to an Affiliate of Tenant or to a Mortgagee as security in which there is no change to the direct and indirect beneficial ownership of the leasehold interest.

1.1.24. "**Extension Term(s)**" is defined in Section 2.2.2.

1.1.25. ~~"Financing Event" shall mean any financing or refinancing consummated by Tenant or by the holders of Ownership Interests that is not an "Excluded Financing," whether with private or institutional investors or lenders, when such financing or refinancing results in any grant, pledge, assignment, transfer, mortgage, hypothecation,~~

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~~grant of security interest, or other encumbrance, of or in all or any portion of (A) Tenant's Leasehold Estate, or (B) Ownership Interests.~~ **Force Majeure Event** is defined in Article XIV.

~~1.1.26. "Force Majeure Event" is defined in Article XIV.~~

~~1.1.27. "Gross Transfer Proceeds" shall mean an amount equal to the gross sale or transfer proceeds and other consideration given for the interests transferred (but in the case of a transfer to a party affiliated with or otherwise related to the transferor which constitutes a Tenant Ownership Change that is not an Excluded Transfer, such consideration shall in no event be deemed to be less than the fair value of the interests transferred).~~

~~1.1.28. "Hazardous Material(s)" is defined in Section 4.5.~~

~~1.1.29. "HCD" shall mean the California Department of Housing and Community Development.~~

~~1.1.30. "Improvement Costs" shall mean the final actual construction costs incurred by Tenant in connection with the construction of the Improvements and in accordance with the terms of this Lease, excluding ordinary repair and maintenance costs and any Permitted Capital Expenditures paid for out of the Capital Improvement Fund.~~

~~1.1.31. "Improvements" shall mean and includes all buildings (including above-ground and below ground portions thereof, and all foundations and supports), building systems and equipment (such as HVAC, electrical and plumbing equipment), physical structures, fixtures, hardscape, paving, curbs, gutters, sidewalks, fences, landscaping and all other improvements of any type or nature whatsoever now or hereafter made or constructed on the Premises. The term Improvements shall mean the Initial Improvements and any replacement improvements constructed in accordance with the terms of this Lease.~~

~~1.1.32. "Includes" shall mean "includes but is not limited to" and "including" shall mean "including but is not limited to."~~

~~1.1.33. "Initial Improvements" shall mean the improvements first constructed by Tenant on the Premises at its sole cost and expense as more particularly described in Exhibit B attached hereto and incorporated by reference herein.~~

~~1.1.34. "Interest Rate" shall mean the highest rate of interest permissible under the Laws not to exceed the rate of twelve percent (12%) per annum.~~

~~1.1.35. "Laws" shall mean all laws, codes, ordinances, statutes, orders and regulations now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity that are binding on and applicable to the Premises and Improvements, including obtaining permits from the County Property Permit process on behalf of District in its capacity and implementation of the Orange County Flood Control Act set forth in California Water Code App. Sections 36-1 et seq., also referred to as Chapter 723 of the State of California Statutes of 1927, as amended.~~

~~1.1.36. "Lease" shall mean this Ground Lease (including any and all addenda, amendments and exhibits hereto), as now or hereafter amended.~~

~~1.1.37. "Leasehold Estate" is defined in Section 17.1.1.~~

~~1.1.38. "Leasehold Foreclosure Transferee" is defined in Section 17.1.2.~~

~~1.1.39. "Leasehold Mortgage" is defined in Section 17.1.3.~~

1.1.4038. “Leasehold Mortgagee” is defined in Section 17.1.4.

1.1.4139. “Lender” shall mean: (a) a bank, savings bank, investment bank, savings and loan association, mortgage company, insurance company, trust company, commercial credit corporation, real estate investment trust, pension trust or real estate mortgage investment conduit; or (b) some other type of lender engaged in the business of making commercial loans, provided that such other type of lender has total assets of at least \$2,000,000,000 and capital/statutory surplus or shareholder’s equity of at least \$500,000,000 (or a substantially similar financial capacity if the foregoing tests are not applicable to such type of lender); or (c) a local, state or federal governmental entity, including but not limited to HCD, which provides predevelopment, acquisition, construction and/or permanent financing for Tenant’s acquisition and development of the Property.

1.1.42. ~~“Net Transfer Proceeds—Original Tenant” shall mean, in the case of a transfer of the leasehold by the original Tenant (but not a transfer of the leasehold by a successor or assignee of Tenant) constituting a Tenant Ownership Change for which Value Appreciation Rent is payable, the Gross Transfer Proceeds from the transfer, less the Improvement Costs, Documented Transaction Costs and Subsequent Refinancing Proceeds, with respect to Tenant (but not its successors or assignees), each as defined below: 40. “Limited Partner” shall mean any limited partner or investor member (and its successors and/or assigns) of Tenant and shall include all references to “investor” in this Ground Lease.~~

~~(a) “Improvement Costs” shall mean the final actual construction costs incurred by Tenant in connection with the construction of the Improvements and in accordance with the terms of this Lease, excluding ordinary repair and maintenance costs and any Permitted Capital Expenditures paid for out of the Capital Improvement Fund.~~

~~(b) “Documented Transaction Costs” shall mean commissions, title and escrow costs, documentary transfer taxes, sales and use taxes, prepayment fees, penalties, or other similar charges (such as yield-maintenance premiums or defeasance costs) and other bona fide closing costs actually paid to third parties and documented to the reasonable satisfaction of District, which costs were directly attributable to the consummation of the particular transaction giving rise to the obligation to pay District the Value Appreciation Rent.~~

~~(c) “Subsequent Refinancing Proceeds” shall mean that portion of the principal amount of any Financing Event after the Effective Date that constituted Net Refinancing Proceeds on which Tenant paid District the Value Appreciation Rent.~~

1.1.43. ~~“Net Transfer Proceeds—Tenant’s Successor” shall mean, in the case of a transfer of the leasehold by a Tenant other than the original Tenant, the Gross Transfer Proceeds received by that successor, minus the Successor’s Basis, Successor’s Improvement Costs, and Successor’s Documented Transaction Costs, each as defined below:~~

~~(a) “Successor’s Basis” shall mean the greatest of (a) the purchase price such successor Tenant paid to Tenant or such successor Tenant’s seller for the interest acquired, or (b) the original principal amount of any Financing Event or Financing Events (on a non-duplicative basis) after such successor Tenant’s acquisition of the leasehold, and with respect to which District was paid Value Appreciation Rent, plus the original principal amount of any other financing existing as of the date on which such successor’s seller acquired the leasehold or any other financing subsequently obtained by Tenant, if such financing has not been refinanced, but without duplication;~~

~~(b) “Successor’s Improvement Costs” shall mean actual costs of Improvements by such successor Tenant after such successor Tenant’s acquisition of its leasehold interest in the Premises (but not duplicative of the principal amount of any Financing Event described above, the proceeds of which were used to fund such Improvement) made in accordance with the terms of this Lease; and~~

~~(c) “Successor’s Documented Transaction Costs” shall mean Documented Transaction Costs~~

~~with respect to the transfer of the interest by the successor Tenant.~~

~~1.1.44. “Net Refinancing Proceeds” shall mean the gross principal amount of any Financing Event after the Effective Date (plus, in the case of secondary financing, the original principal balance of any existing financing that is not repaid as a part of such secondary financing), minus (i) the greatest of (A) the Improvement Costs, (B) the original principal amount of any subsequent refinancing by Tenant in connection with which District was paid Value Appreciation Rent plus, if the financing described in this clause (B) was secondary financing, the original principal balance of any then existing financing that was not repaid as a part of such secondary financing, or (C) in the case of a successor Tenant, the purchase price such successor paid to Tenant or such successor Tenant’s seller for the interest acquired; (ii) any portion of the proceeds of the Financing Event that shall be used for Improvement Costs; (iii) other Improvement Costs incurred by Tenant and not paid for or repaid with the proceeds of any Financing Event; and (iv) Documented Transaction Costs with respect to such Financing Event. Notwithstanding the foregoing, there shall be no double counting of Improvement Costs.~~

~~1.1.451. “New Lease” is defined in Section 17.7.1.~~

~~1.1.462. “Operating Costs” is defined in Section 3.4.1.~~

1.1.473. “Ownership Interests” shall mean the share(s) of stock, partnership interests, membership interests, other equity interests or any other direct or indirect ownership interests in Tenant, regardless of the form of ownership and regardless of whether such interests are owned directly or through one or more layers of constituent partnerships, corporations, limited liability companies, or trusts.

1.1.484. “Partnership Agreement” means the Tenant’s ~~amended~~Amended and ~~restated~~Restated Agreement of ~~limited partnership~~Limited Partnership dated as of _____, 2018.

1.1.494. “Person” shall include firms, associations, partnerships, joint ventures, trusts, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

1.1.504. “Premises” shall mean that certain real property containing approximately 2.34 acres of undeveloped land in the City, together with all easements, rights and privileges appurtenant thereto, to be leased to Tenant pursuant to this Lease and on which Tenant intends to construct the Improvements. The legal description of the Premises is attached hereto as Exhibit A. A rendering showing the approximate boundaries of the Premises is attached hereto as Exhibit A-1.

1.1.514. “Primary Term” is defined in Section 2.2.1.

1.1.524. “Rent” shall mean and includes the Base Rent, ~~Value Appreciation Rent~~, and Additional Rent payable by Tenant under this Lease.

1.1.534. “Residual Receipts” means the Annual Project Revenue less (A) Annual Operating Expenses (hereinafter defined), (B) obligated debt service on Leasehold Mortgages for the funding of the Improvements approved in writing by the County at the closing of the County’s permanent financing for the Improvements or as otherwise approved pursuant to Section 17.2, below, (C) payment obligations (e.g., including but not limited to partnership management fees, asset management fees, and deferred developer fees) approved in writing by the County at the closing of the County’s financing for the Improvements, and (D) scheduled deposits to reserves approved in writing by the County at the closing of the County’s financing for the Improvements- (or such higher reserve deposits as may be reasonably required by any Leasehold Mortgagee).

1.1.545. “Restricted Section” shall mean the 50’ wide strip adjacent to the Channel, as depicted on

Exhibit A-1, within which the Tenant may install and place landscaping and paving subject to the Chief Real Estate Officers' prior written approval and through the County Property Permit process with payment of normal processing fees therefor, and shall not construct and/or install structural improvements within to allow for the widening of the Channel and/or District construction staging purposes.

1.1.~~55~~51. "**Risk Manager**" shall mean the Manager of County Executive Office, Risk Management, County of Orange, or designee, or upon written notice to Tenant, such other person as may be designated by the Board of Supervisors.

1.1.~~56~~52. "**Taxes**" is defined in Section 3.11.2.

1.1.~~57~~53. "**Tenant Group**" shall mean Tenant and Tenant's Affiliates, agents, employees, members, officers, directors and attorneys.

1.1.~~58~~54. "**Tenant Ownership Change**" shall mean (a) any transfer or assignment by Tenant of the Leasehold Estate or (b) any "Aggregate Transfer" of at least twenty five percent (25%) of the "Ownership Interest(s)" in Tenant, in each case that is not an "Excluded Transfer."

1.1.~~59~~55. "**Term**" shall mean the full term of this Lease including the Primary Term and any Extension Term(s).

1.1.~~60~~56. "**Transfer**" is defined in Section 10.1.1.

1.1.~~61~~57. "**Transfer Notice**" is defined in Section 10.4.

1.1.~~62~~58. "**Treasurer-Tax Collector**" shall mean the Treasurer-Tax Collector, County of Orange, or designee, or upon written notice to Tenant, such other person or entity as may be designated by the Board of Supervisors.

1.1.~~63~~59. "**Utility Costs**" is defined in Section 3.4.1.

~~1.1.64. "VHHHP" shall mean the Veterans Housing and Homeless Prevention Program, administered by HCD.~~

~~1.1.65.~~

1.1.61. "**Work**" shall mean both Tenant's construction activity with respect to the Improvements, including permitted future changes, alterations and renovations thereto and also including, without limiting the generality of the foregoing, site preparation, landscaping, installation of utilities, street construction or improvement and grading or filling in or on the Premises.

ARTICLE II LEASE OF PROPERTY

2.1 Lease of Premises.

2.1.1. District hereby leases the Premises to Tenant for the Term, and Tenant hereby leases the Premises from District for the Term, subject to the terms, conditions, covenants, restrictions and reservations of this Lease.

2.1.2. The Channel is situated directly south of the Premises, has yet to be built to 100-year flood control conditions ("**Ultimate Condition**") and will undergo reconstruction at some time in the future. The lease of the Premises to the Tenant excludes the use of the 50' wide strip adjacent to the Channel as shown on **Exhibit A-1** (the "**Restricted**

Section) except as set forth in Subsection (c) below. District shall have uninterrupted ingress and egress across the Restricted Section. Tenant may not construct and/or install any structural improvements within the Restricted Section in order to avoid interference with the widening of the Channel to its Ultimate Condition and/or use of the Restricted Section by the District for construction staging purposes.

(a) No paving, landscaping, signs, structures, improvements, facilities, equipment, above ground or underground utility lines, as may be allowed under this Lease, shall be constructed, erected, altered, or placed on or within the Restricted Section without the prior written consent of the Chief Real Estate Officer and without complying with the County's Property Permit process with payment of normal processing fees therefor. The Chief Real Estate Officers' and County's Property Permit approvals shall not be deemed approval of any applicable structural safety, suitability for purpose or conformance with building or other codes or other governmental requirements. District shall not be responsible for permitting of any construction and/or maintenance, design, assumptions or accuracy of Tenant's construction and/or maintenance plans. District will rely on the professional expertise of the Engineer of Record when approving Tenant's construction and/or maintenance plans.

(b) Tenant acknowledges the District's right to future exclusive use of the Restricted Section and District's right to construct improvements or take actions for the maintenance, repair, operation, improvement, modification or reconstruction of the Channel within the Restricted Section at the sole discretion of the OC Public Works Director ("**Director**"). In the event any action undertaken by District in the Restricted Section require relocation of Improvements either on a temporary or permanent basis, Tenant shall remove Tenant's installations, improvements, or facilities which cannot be adequately accommodated within the modified Restricted Section, if any, at Tenant's sole cost and expense. Except in an emergency situation, District agrees to provide Tenant written notice two (2) years prior to the commencement of any improvement, modification or reconstruction of the Channel that may require the relocation or removal of any Tenant's Improvements. Tenant may at Tenant's sole cost and expense reconstruct Improvements impacted by District's exercise of these reserved rights upon completion of District's Channel work. Any Tenant replacement, reinstallation or reconstruction shall be subject to prior review and approval of the Director and performed in compliance with all applicable Laws. Parties agree Exhibit A and Exhibit A-1 shall be modified by Tenant and Chief Real Estate Officer by an amendment in writing to this Lease if necessary to accurately reflect said changes.

(c) Tenant must submit a written request to the Chief Real Estate Officer for any proposed use of the Restricted Section that sets forth in detail the proposed use. The Chief Real Estate Officer may, in his or her sole discretion, approve or deny the Tenant's proposed use. If the Chief Real Estate Officer approves the Tenant's proposed use, all the terms, conditions, covenants, restrictions and reservations of this Lease shall apply to Tenant's use of the Restricted Section and the Restricted Section used as such shall be included as part of the Premises. Tenant must comply with the County's Property Permit process prior to its use of the Restricted Section.

2.1.3. Warranty of Peaceful Possession. District covenants and warrants that, subject to the Tenant's payment of Rent and performance and observation of all of the covenants, obligations and agreements herein contained and provided to Tenant, Tenant shall and may peaceably and quietly have, hold, occupy, use and enjoy the Premises during the Term and may exercise of all of its rights hereunder. Except as otherwise set forth herein, the District covenants and agrees that it shall not grant any mortgage or lien on or in respect of its fee interest in the Premises unless the same is expressly subject and subordinate to this Lease or any New Lease entered into pursuant to the provisions of Article XVII.

2.2 Term.

2.2.1. Primary Term. The "**Primary Term**" of this Lease shall be ~~fifty seven (57)~~sixty-five (65) years, commencing on the Effective Date of this Lease, and shall expire at 12:00 midnight Pacific Standard Time on the ~~fifty-seventh (57th)~~sixty-fifth (65th) anniversary of the Effective Date, unless sooner terminated as a result of Tenant's non-compliance with any terms, conditions, covenants, restrictions or reservations of this Lease.

2.2.2. Option to Extend Primary Term. Provided Tenant is not in material default of any terms, conditions, covenants, restrictions and reservations of this Lease, including Event of Default, as set forth in Section 11.1, below, Tenant may request that the District extend the Primary Term of this Lease under the same terms, conditions, covenants, restrictions and reservations for one (1) additional term of up to ~~eighteen (18)~~ ten (10) years (“**Extension Term**”), provided the Tenant demonstrates to the District’s reasonable satisfaction that the Extension Term is necessary to satisfy a requirement of Tenant’s Lender or investor that the Lease shall remain in effect for a period up to ~~eighteen (18)~~ ten (10) years as necessary to enable the Tenant to repay all debt(s) secured by the Premises. The Tenant shall request the desired Extension Term by written notice (“**Extension Term Notice**”) to the Chief Real Estate Officer at least twelve months prior to the expiration of the Primary Term, which Extension Term Notice shall include adequate information regarding Tenant’s lender’s or investor’s requirement that support the requested Extension Term. Within ninety (90) days of receipt of the Extension Term Notice, the Chief Real Estate Officer shall either grant the requested Extension Term or inform the Tenant that additional information is required to justify the granting of the Extension Term pursuant to this Section 2.2.2, in which case the process described in this Section shall continue until the District has approved the requested Extension Term. Provided the Tenant satisfies the conditions in this Section to granting the Extension Term, the Extension Term shall be granted by the District in accordance with this Section, and is not subject to approval by the Board of Supervisors. No Base Rent shall be payable for the Extension Term.

2.2.3. The accumulation of the Primary Term and any Extension Term is hereinafter referred to as the “**Term.**”

2.3 Termination at End of Term. This Lease shall terminate without need of further actions of any Party at 12:00 midnight Pacific Standard Time on the last day of the Primary Term or Extension Term, as applicable.

2.4 Condition of the Premises. TENANT HEREBY ACCEPTS THE PREMISES “AS IS”, AND ACKNOWLEDGES THAT THE PREMISES IS IN SATISFACTORY CONDITION. DISTRICT MAKES NO WARRANTY, IMPLIED OR OTHERWISE, AS TO THE SUITABILITY OF THE PREMISES FOR TENANT’S PROPOSED USES. DISTRICT MAKES NO COVENANTS OR WARRANTIES, IMPLIED OR OTHERWISE, RESPECTING THE CONDITION OF THE SOIL, SUBSOIL, OR ANY OTHER CONDITIONS OF THE PREMISES OR THE PRESENCE OF HAZARDOUS MATERIALS, NOR DOES DISTRICT COVENANT OR WARRANT, IMPLIED OR OTHERWISE, AS TO THE SUITABILITY OF THE PREMISES FOR THE PROPOSED DEVELOPMENT, CONSTRUCTION OR USE BY TENANT. DISTRICT SHALL NOT BE RESPONSIBLE FOR ANY LAND SUBSIDENCE, SLIPPAGE, SOIL INSTABILITY OR DAMAGE RESULTING THEREFROM. DISTRICT SHALL NOT BE REQUIRED OR OBLIGATED TO MAKE ANY CHANGES, ALTERATIONS, ADDITIONS, IMPROVEMENTS OR REPAIRS TO THE PREMISES. TENANT SHALL RELY ON ITS OWN INSPECTION AS TO THE SUITABILITY OF THE PREMISES FOR THE INTENDED USE.

TENANT INITIALS: _____

2.5 **Limitations of the Leasehold.** This Lease and the rights and privileges granted Tenant in and to the Premises are subject to all covenants, conditions, restrictions, and exceptions of record as of the date hereof or otherwise disclosed to Tenant prior to the date hereof. Nothing contained in this Lease or in any document related hereto shall be construed to imply the conveyance to Tenant of rights in the Premises which exceed those owned by District, or any representation or warranty, either express or implied, relating to the nature or condition of the Premises or District’s interest therein.

2.6 **Tenant’s Investigation.** Tenant acknowledges that it is solely responsible for investigating the Premises to determine the suitability thereof for the uses contemplated by Tenant. Tenant further acknowledges by executing this Lease that it has completed its investigation and has made such determinations as Tenant believes may be required under the circumstances.

ARTICLE III
TOTAL RENT

3.1 **Base Rent.** Throughout the Primary Term of this Lease, regardless of an earlier termination date Tenant shall pay to the District the Base Rent as set forth herein-, which Base Rent will become due and payable in full as of the Effective Date. To the extent that Base Rent is not paid in full on the Effective Date, commencing after the first anniversary of the Effective Date and within thirty (30) days of such anniversary date, and within thirty (30) days of each successive anniversary date thereafter for the entire Primary Term, Tenant shall make annual payments to County of eighty-eight percent (88%) of the then available Residual Receipts (defined above), but only to the extent said Residual Receipts are available until the Base Rent is fully paid. On the last day of the Primary Term the then outstanding amount of the Base Rent shall be paid in full if not already paid by that time. Any Base Rent which is unpaid as of the Effective Date will bear interest at the simple rate of three percent (3%) until paid in full. Once the Base Rent has been paid in full, Tenant shall have no further obligation for Base Rent under this Lease. Of the available Residual Receipts ~~a minimum of eighty-eight percent (88%) (or such other greater amount as mutually agreed to between the Tenant and the District)~~ shall be paid to the District, until Base Rent is paid in full.

3.2 **Net Refinancing Proceeds/Net Syndication Proceeds.** Any net refinancing and net syndication proceeds, received by Tenant shall be used to pay any unpaid Base Rent. For purposes of this Section 3.2, such proceeds shall be net of all of the following: closing costs; costs to rehabilitate the Project, including the costs necessary to obtain ~~such~~ refinancing or syndication proceeds (such as consultant, legal, and other consultant costs); the soft costs related to the rehabilitation (such as architecture, engineering and other consultant costs, and all required relocation costs), and; all hard costs of the rehabilitation, all of which ~~has~~have been reviewed and reasonably approved by the Chief Real Estate Officer. Additionally, the Tenant's right and obligation to use such net proceeds to pay Base Rent is subject to the rights of Leasehold Mortgagees to control the use of such proceeds pursuant to the terms of their respective loan documents, all of which ~~has been reviewed and reasonably approved by the Chief Real Estate Officer~~have been reviewed and reasonably approved by the Chief Real Estate Officer. Without limiting application of those loan documents, in no case shall Tenant be permitted to retain proceeds from the net refinancing and net syndication without the prior written consent of the Chief Real Estate Officer, until full satisfaction of the unpaid Base Rent. Notwithstanding the foregoing, this Section 3.2 shall not apply to (i) any Excluded Transfer or (ii) any financing described in Section 17.2.

~~3.3 Value Appreciation Rent. In the event of a Tenant Ownership Change or a Financing Event, Tenant shall pay to District Value Appreciation Rent as described herein. For a Tenant Ownership Change, the Value Appreciation Rent shall be the greater of (a) the lesser of (i) the Net Transfer Proceeds or (ii) four percent (4%) of the Gross Transfer Proceeds, or (b) fourteen percent (14%) of Net Transfer Proceeds. For a Financing Event, Tenant shall pay District fourteen percent (14%) of the Net Refinancing Proceeds as Value Appreciation Rent. Before any Tenant Ownership Change or Financing Event for which Value Appreciation Rent may be due, Tenant shall provide District with its detailed calculation of the Value Appreciation Rent. No Tenant Ownership Change or Financing Event shall occur until agreement is reached on the calculation of Value Appreciation Rent; provided, however, that such Tenant Ownership Change or Financing Event shall be permitted to occur without such agreement as long as District and Tenant make mutually acceptable arrangements for the preservation of any additional Value Appreciation Rent plus interest at the Interest Rate that might be due to District over and above that reflected in the Tenant's calculation should any such dispute be resolved in favor of District (but such interest shall be charged only on that portion of Value Appreciation Rent in excess of the amount determined by Tenant). Value Appreciation Rent shall be due and payable concurrently with the Tenant Ownership Change or Financing Event giving rise to the obligation to pay Value Appreciation Rent (or, with respect to any disputed amount, on resolution of the dispute) and, in the situation of a Tenant Ownership Change, shall be the joint and several obligation of the transferee and transferor.~~

~~3.4~~ **3.3 Triple Net Rent.** It is the intent of the Parties that all Rent shall be absolutely net to District and that, except as otherwise provided herein, Tenant will pay all costs, charges, insurance premiums, taxes, utilities, expenses and assessments of every kind and nature incurred for, against or in connection with the Premises which arise or become due

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during the Term as a result of Tenant's use and occupancy of the Premises. Under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the partiesParties, shall District be obligated or required to make any payment of any kind whatsoever or be under any other obligation or liability under this Lease except as expressly provided herein.

3.54 Insufficient Funds. For purposes of this Section 3.54, Rent shall have the same meaning as stated in Section 1.1.52. If any payment of Rent or other fees made by check is returned due to insufficient funds or otherwise, District shall have the right to require Tenant to make all subsequent Rent payments by cashier's check, certified check or ACH automatic debit system. All Rent or other fees shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand. No payment by Tenant or receipt by District of a lesser amount than the Rent or other fees due shall be deemed to be other than on account of the Rent or other fees due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and District shall accept such check or payment without prejudice to District's right to recover the balance of the Rent or other fees or pursue any other remedy available to the District in this Lease.

3.6 Additional Rent.

3.6.1. Additional Rent. During the Term, the Base Rent shall be absolutely net to District so that all costs (including but not limited to Operating Costs and Utility Costs, as defined below), fees, taxes (including but not limited to Real Estate Taxes and Equipment Taxes, as defined below), charges, expenses, impositions, reimbursements, and obligations of every kind relating to the Premises shall be paid or discharged by Tenant as additional rent ("**Additional Rent**"). Additional Rent shall also include such amounts as described in Sections 11.3 and 11.9. As more particularly set forth in Sections 3.6.3 and 3.6.6, below, Tenant has the right to pay under protest the foregoing Additional Rent, as applicable, and defend against the same. Any imposition rebates shall belong to Tenant.

3.6.2. Taxes. During the Term, Tenant shall pay directly to the taxing authorities all Taxes (as herein defined) at least ten (10) days prior to delinquency thereof. For purposes hereof, "**Taxes**" shall include any form of assessment, license fee, license tax, business license fee, commercial rental tax, levy, penalty, sewer use fee, real property tax, charge, possessory interest tax, tax or similar imposition (other than inheritance or estate taxes), imposed by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage, flood control, water pollution control, public transit or other special district thereof, as against any legal or equitable interest of District in the Premises or any payments in lieu of taxes required to be made by District, including, but not limited to, the following:

(a) Any assessment, tax, fee, levy, improvement district tax, charge or similar imposition in substitution, partially or totally, of any assessment, tax, fee, levy, charge or similar imposition previously included within the definition of Taxes. It is the intention of Tenant and District that all such new and increased assessments, taxes, fees, levies, charges and similar impositions be included within the definition of "**Taxes**" for the purpose of this Lease.

(b) Any assessment, tax, fee, levy, charge or similar imposition allocable to or measured by the area of the Premises or the rent payable hereunder, including, without limitation, any gross income tax or excise tax levied by the city, county, state or federal government, or any political subdivision thereof, with respect to the receipt of such rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof;

(c) Any assessment, tax, fee, levy, charge or similar imposition upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises, including any possessory interest tax levied on the Tenant's interest under this Lease;

(d) Any assessment, tax, fee, levy, charge or similar imposition by any governmental agency related to any transportation plan, fund or system instituted within the geographic area of which the Premises are a part.

The definition of “**Taxes**,” including any additional tax the nature of which was previously included within the definition of “**Taxes**,” shall include any increases in such taxes, levies, charges or assessments occasioned by increases in tax rates or increases in assessed valuations, whether occurring as a result of a sale or otherwise.

3.6.3. **Contest of Taxes.** Tenant shall have the right to contest, oppose or object to the amount or validity of any Taxes or other charge levied on or assessed against the Premises and/or Improvements or any part thereof; provided, however, that the contest, opposition or objection must be filed before such time the Taxes or other charge at which it is directed becomes delinquent. Furthermore, no such contest, opposition or objection shall be continued or maintained after the date the tax, assessment or other charge at which it is directed becomes delinquent unless Tenant has either: (i) paid such tax, assessment or other charge under protest prior to its becoming delinquent; or (ii) obtained and maintained a stay of all proceedings for enforcement and collection of the tax, assessment or other charge by posting such bond or other matter required by law for such a stay; or (iii) delivered to District a good and sufficient undertaking in an amount specified by District and issued by a bonding corporation authorized to issue undertakings in California conditioned on the payment by Tenant of the tax, assessments or charge, together with any fines, interest, penalties, costs and expenses that may have accrued or been imposed thereon within thirty (30) days after final determination of Tenant’s contest, opposition or objection to such tax, assessment or other charge.

3.6.4. **Payment by District.** Should Tenant fail to pay any Taxes required by this Article III to be paid by Tenant within the time specified herein, and if such amount is not paid by Tenant within ~~ten (10)~~ **fifteen (15)** days after receipt of District’s written notice advising Tenant of such nonpayment, District may, without further notice to or demand on Tenant, pay, discharge or adjust such tax, assessment or other charge for the benefit of Tenant. In such event Tenant shall promptly on written demand of District reimburse District for the full amount paid by District in paying, discharging or adjusting such tax, assessment or other charge, together with interest at the Interest Rate from the date advanced until the date repaid.

3.6.5. **Operating Costs.** Tenant shall pay all Operating Costs during the Term prior to delinquency. As used in this Lease, the term “**Operating Costs**” shall mean all charges, costs and expenses related to the Premises, including, but not limited to, management, operation, maintenance, overhaul, improvement, replacement or repair of the Improvements and/or the Premises.

3.6.6. **Utility Costs.** Tenant shall pay all Utility Costs during the Term prior to delinquency. As used in this Lease, the term “**Utility Costs**” shall include all charges, surcharges, taxes, connection fees, service fees and other costs of installing and using all utilities required for or utilized in connection with the Premises and/or the Improvements, including without limitation, costs of heating, ventilation and air conditioning for the Premises, costs of furnishing gas, electricity and other fuels or power sources to the Premises, and the costs of furnishing water and sewer services to the Premises. Tenant agrees to indemnify and hold harmless the District against any liability, claim, or demand for the late payment or non-payment of Utility Costs.

ARTICLE IV USE OF PREMISES

4.1 **Permitted Use of Premises.** Tenant may use the Premises for the construction, development, entitlement, operation, maintenance, replacement and repair of the Improvements as follows:

4.1.1. **Required Services and Uses.** District’s primary purpose for entering into this Lease is to promote the development of the Improvements consistent with this Lease and carry out the objectives and terms of the Orange County Flood Control Act, as set forth in the California uncodified Water Code, Act 5682, Section 2. In furtherance of that purpose, Tenant shall construct and during the entire Term operate, maintain, replace and repair the Improvements in a manner consistent with the Laws and for one or more of the following uses:

- (a) multifamily rental veteran’s housing, and

(b) related commercial and community-serving uses.

4.1.2. Ancillary Services and Uses. Subject to the prior written approval of Chief Real Estate Officer, which approval may be granted or withheld in the sole discretion of the Chief Real Estate Officer, Tenant may provide those additional services and uses which are ancillary to and compatible with the required services and uses set forth in Section 4.1.1., above.

4.1.3. Additional Concessions or Services. Tenant may establish, maintain, and operate such other additional facilities, concessions, and services as Tenant and Chief Real Estate Officer may jointly from time to time reasonably determine to be reasonably necessary for the use of the Premises and which are otherwise permitted by Law.

4.1.4. Restricted Use. The services and uses listed in this Section 4.1, both required and optional, shall be the only services and uses permitted. Tenant agrees not to use the Premises for any other purpose or engage in or permit any other activity within or from the Premises unless approved in writing by the Chief Real Estate Officer, which approval may be granted or withheld in the sole discretion of the Chief Real Estate Officer- (and if during the Compliance Period, the written approval of the Limited Partner).

4.1.5. Continuous Use. During the Term, Tenant shall continuously conduct Tenant's business in the Premises in the manner provided under this Lease and shall not discontinue use of the Premises for any period of time except in the case of a Force Majeure Event or as permitted in advance and in writing by the Chief Real Estate Officer.

4.1.6. Alcohol Restrictions. Tenant shall not permit the sale or service of any beer, wine or alcoholic beverages on the Premises, provided that Tenant may serve beer, wine and/or alcoholic beverages at "special events" (e.g., banquets, birthday parties) so long as Tenant obtains all necessary permits and licenses to permit the sale or service of beer, wine or alcoholic beverages on the Premises and otherwise complies with any applicable laws and ordinances.

4.1.7. Permits and Licenses. Tenant shall be solely responsible to obtain, at its sole cost and expense, any and all permits, licenses or other approvals required for the uses permitted herein and shall maintain such permits, licenses or other approvals for the entire Term.

4.2 Nuisance; Waste. Tenant shall not maintain, commit, or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to the Premises and Improvements or any part thereof. Tenant shall not commit or allow to be committed any waste in or upon the Premises or Improvements and shall keep the Premises and the Improvements thereon in good condition, repair and appearance.

4.3 Compliance with Laws. Tenant shall not use or permit the Premises or the Improvements or any portion thereof to be used in any manner or for any purpose that violates any applicable Laws. Tenant shall have the right to contest, in good faith, any such Laws, and to delay compliance with such Laws during the pendency of such contest (so long as there is no material threat to life, health or safety that is not mitigated by Tenant to the satisfaction of the applicable authorities). District may cooperate with Tenant in all reasonable respects in such contest, including joining with Tenant in any such contest if District's joinder is required in order to maintain such contest; provide, however, that any such contest shall be without cost to District, and Tenant shall indemnify, defend (with attorneys acceptable to District), and hold harmless the District from any and all claims, liabilities, losses, damages, or actions of any kind and nature, including reasonable attorneys' fees, arising or related to Tenant's failure to observe or comply with the contested Law during the pendency of the contest.

4.4 Hazardous Materials.

4.4.1. Definition of Hazardous Materials. For purposes of this Lease, the term "**Hazardous Material**" or "**Hazardous Materials**" shall mean any hazardous or toxic substance, material, product, byproduct, or waste, which is or shall become regulated by any governmental entity, including, without limitation, the District acting in its

governmental capacity, the State of California or the United States government.

4.4.2. Use of Hazardous Materials. Except for those Hazardous Materials which are customarily used in connection with any permitted use of the Premises and Improvements under this Lease (which Hazardous Materials shall be used in compliance with all applicable Laws), Tenant or Tenant's employees, agents, independent contractors or invitees (collectively "**Tenant Parties**") shall not cause or permit any Hazardous Materials to be brought upon, stored, kept, used, generated, released into the environment or disposed of on, under, from or about the Premises (which for purposes of this Section shall include the subsurface soil and ground water).

4.4.3. Tenant Obligations. If the presence of any Hazardous Materials on, under or about the Premises caused or permitted by Tenant or Tenant Parties results in (i) injury to any person, (ii) injury to or contamination of the Premises (or a portion thereof), or (iii) injury to or contamination of any real or personal property wherever situated, Tenant, at its sole cost and expense, shall promptly take all actions necessary or appropriate to return the Premises to the condition existing prior to the introduction of such Hazardous Materials to the Premises and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of District under this Lease, Tenant shall pay the cost of any cleanup or remedial work performed on, under, or about the Premises as required by this Lease or by applicable Laws in connection with the removal, disposal, neutralization or other treatment of such Hazardous Materials caused or permitted by Tenant or Tenant Parties. Notwithstanding the foregoing, Tenant shall not take any remedial action in response to the presence, discharge or release, of any Hazardous Materials on, under or about the Premises caused or permitted by Tenant or Tenant Parties, or enter into any settlement agreement, consent decree or other compromise with any governmental or quasi-governmental entity without first obtaining the prior written consent of the District. All work performed or caused to be performed by Tenant as provided for above shall be done in good and workmanlike manner and in compliance with plans, specifications, permits and other requirements for such work approved by District.

4.4.4. Indemnification for Hazardous Materials.

(a) To the fullest extent permitted by law, Tenant hereby agrees to indemnify, hold harmless, protect and defend (with attorneys acceptable to District) District, its elected officials, officers, employees, agents, independent contractors, and the Premises, from and against any and all liabilities, losses, damages (including, but not limited, damages for the loss or restriction on use of rentable or usable space or any amenity of the Premises or damages arising from any adverse impact on marketing and diminution in the value of the Premises), judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses), whether foreseeable or unforeseeable, arising ~~directly or indirectly~~ out of the presence, use, generation, storage, treatment, on or off-site disposal or transportation of Hazardous Materials on, into, from, under or about the Premises by Tenant or Tenant Parties.

(b) The foregoing indemnity shall also specifically include the cost of any required or necessary repair, restoration, clean-up or detoxification of the Premises and the preparation of any closure or other required plans.

(c) The foregoing indemnity and defense obligations of this Lease shall survive its expiration or termination.

4.5 Access by District. District reserves the right for District and District's authorized representatives to enter the Premises during business hours, in order to determine whether Tenant is complying with Tenant's obligations hereunder, or to enforce any rights given to District under this Lease. Tenant acknowledges District has the authority to enter the Premises and perform work on the Channel at any time as needed to provide flood control protection for the general public. District will take all necessary measures not to unreasonably interfere with Tenant's or any subtenant's business at the Premises in exercising its rights under this Section. Notwithstanding the above, the District shall be allowed uninterrupted access over the Restricted Section at any and all times.

ARTICLE V
CONSTRUCTION OF IMPROVEMENTS

5.1 Construction Of Improvements.

5.1.1. **Initial Improvements.** Upon the fulfillment of the Preconditions set forth in Section 5.1.2, below, and payment for and issuance of all permits required under the Laws (whether from District in its governmental capacity, or otherwise), Tenant shall construct the Initial Improvements. Any constructions or improvements within the Restricted Section shall be in accordance with Section 2.1.2., above.

5.1.2. **Preconditions.** No Work for development of the Initial Improvements shall be commenced, and no building or other materials shall be delivered to the Premises, until:

(a) Chief Real Estate Officer has ~~determined~~provided approval in writing that all the conditions set forth in Section 5 of the Option Agreement have been satisfied;

(b) Tenant has obtained a permit through the County Property Permit agency, submitted project design, conceptual development, plans and special provisions for the construction of Improvements in accordance with the District's criteria, standard and practices;

(c) Tenant has given District written notice of the proposed commencement of construction of the Premises or the delivery of construction materials in order to allow District to take all necessary actions under California Civil Code section 3094, including posting of a notice of non-responsibility at the Premises; and

(d) Tenant has provided to District evidence that (i) Tenant has entered into a Construction Contract with a Contractor in accordance with Section 5.2 below, (ii) Tenant has secured the construction funding required under Section 5.1.4 below, and (iii) Tenant has obtained the bonds required by Section 5.3 below.

5.1.3. **Utilities.** To the extent not already constructed, Tenant, at no cost to District, shall construct or cause to be constructed all water, gas, heat, light, power, air conditioning, telephone, and other utilities and related services supplied to and/or used on the Premises at Tenant's sole cost and expense for the purposes of conducting Tenant's operations thereon. All such utilities shall be separately metered from any utilities which may be used by District in conducting its operations, if any, on or about the Premises. Nothing contained in this Section is to be construed or implied to give Tenant the right or permission to install or to permit any utility poles or communication towers to be constructed or installed on the Premises.

5.1.4. **Construction Funding.** Prior to commencement of construction of the Initial Improvements, Tenant shall provide to District evidence reasonably satisfactory to District of funding available to Tenant that is sufficient to pay for Tenant's estimated total cost of constructing the Initial Improvements, which evidence may consist of (i) a written commitment to Tenant from a Lender selected by Tenant to provide a construction loan to Tenant for the purpose of constructing the Initial Improvements (which may be secured by a Leasehold Mortgage encumbering Tenant's leasehold interest under this Lease), (ii) actual equity funds then held by Tenant or irrevocably committed to be paid to Tenant for the purpose of constructing the Initial Improvements, or (iii) any combination of the foregoing. Tenant may from time to time change any of the foregoing funding sources and the allocation thereof, so long as the aggregate available funding continues to be sufficient to pay for Tenant's estimated remaining cost of constructing the Initial Improvements, provided that Tenant shall promptly notify District of any such change.

5.1.5. **Compliance with Laws and Permits.** Tenant shall cause all Improvements made by Tenant to be constructed in substantial compliance with all applicable Laws, including all applicable grading permits, building permits, and other permits and approvals issued by governmental agencies and bodies having jurisdiction over the construction thereof. No permit, approval, or consent given hereunder by District, in its governmental capacity, shall affect or limit

Tenant's obligations hereunder, nor shall any approvals or consents given by District, as a ~~party~~Party to this Lease, be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, or regulations.

5.1.6. **Reports.** Not less than quarterly from the commencement of construction of the Initial Improvements, Tenant shall provide District with written construction status reports in the form of AIA No. G702 ("**Application and Certification for Payment**") or comparable form, augmented by oral reports if so requested by District.

5.1.7. **Certificate of Occupancy.** Tenant shall provide District with a copy of the Certificate of Occupancy promptly following issuance thereof.

5.1.8. **Insurance.** Tenant (or the Contractor, as applicable) shall deliver to District both (i) certificates of insurance evidencing coverage for "builder's risk," as specified in Section 8.1, and (ii) evidence of worker's compensation insurance, which provide the requisite insurance levels in accordance with Article VIII, for all persons employed in connection with the construction of any Improvements upon the Premises and with respect to whom death or bodily injury claims could be asserted against District or the Premises. Tenant shall (or shall cause Contractor to) maintain, keep in force and pay all premiums required to maintain and keep in said insurance herein at all times during which construction Work is in progress.

5.1.9. **Mechanic's Liens.**

(a) **Payment of Liens.** Tenant shall pay or cause to be paid the total cost and expense of all "Work of Improvement," as that phrase is defined in the California Mechanics' Lien law in effect and as amended from time to time. Tenant shall not suffer or permit to be enforced against the Premises or Improvements or any portion thereof, any mechanics', materialmen's, contractors' or subcontractors' liens arising from any work of improvement, however it may arise. Tenant may, however, in good faith and at Tenant's sole cost and expense contest the validity of any such asserted lien, claim, or demand, provided Tenant (or any contractor or subcontractor, as applicable) has furnished the release bond (if required by District or any construction lender) required in California Civil Code section 8000 et seq. (or any comparable statute hereafter enacted for providing a bond freeing the Premises from the effect of such lien claim). In the event a lien or stop-notice is imposed upon the Premises as a result of such construction, repair, alteration, or installation, Tenant shall either:

(1) Record a valid Release of Lien, or

(2) Procure and record a bond in accordance with Section 3143 of the Civil Code, which releases the Premises from the claim of the lien or stop-notice and from any action brought to foreclose the lien, or

(3) Post such security as shall be required by Tenant's title insurer to insure over such lien or stop-notice, or

(4) Should Tenant fail to accomplish either of the three optional actions above within 30 days after Tenant receives notice of the filing of such a lien or stop-notice, it shall constitute an Event of Default hereunder.

(b) **Indemnification.** Tenant shall at all times indemnify, defend with counsel approved in writing by District and hold District harmless from all claims, losses, demands, damages, cost, expenses, or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Premises, and from the cost of defending against such claims, including attorneys' fees and costs.

(c) **Protection Against Liens.** District shall have the right to post and maintain on the Premises

any notices of non-responsibility provided for under applicable California law. During the course of construction, Tenant shall obtain customary mechanics' lien waivers and releases. Upon completion of the construction of any Improvements, Tenant shall record a notice of completion in accordance with applicable law. Promptly after the Improvements have been completed, Tenant shall (or shall cause Contractor to) record a notice of completion as defined and provided for in California Civil Code section 8000 *et seq.*

(d) **District's Rights.** If Tenant (or any contractor or subcontractor, as applicable) does not cause to be recorded the bond described in California Civil Code section 8000 *et seq.* or otherwise protect the Premises and Improvements under any alternative or successor statute, and a final judgment has been rendered against Tenant by a court of competent jurisdiction for the foreclosure of a mechanic's, materialman's, contractor's or subcontractor's lien claim, and if Tenant fails to stay the execution of judgment by lawful means or to pay the judgment, District shall have the right, but not the duty to pay or otherwise discharge, stay or prevent the execution of any such judgment or lien or both. Upon any such payment by District, Tenant shall immediately upon receipt of written request therefor by District, reimburse District for all sums paid by District under this paragraph together with all District's reasonable attorney's fees and costs, plus interest at the Interest Rate from the date of payment until the date of reimbursement.

5.1.10. **No Responsibility.** Any approvals by District with respect to any Improvements shall not make District responsible for the Improvement with respect to which approval is given or the construction thereof. Tenant shall indemnify, defend and hold District harmless from and against all liability and all claims of liability (including, without limitation, reasonable attorneys' fees and costs) arising during the Term of this Lease for damage or injury to persons or property or for death of persons arising from or in connection with the Improvement or construction thereof.

5.2 Construction Contracts.

5.2.1. **Construction Contract.** Tenant shall enter into a written contract with a general contractor ("**Contractor**") for construction of the Initial Improvements based upon the "Construction Contract Documents" approved pursuant to the Option Agreement. All construction of the Initial Improvements shall be performed by contractors and subcontractors duly licensed as such under the laws of the State of California. Tenant shall give District a true copy of the contract or contracts with the Contractor.

5.2.2. **Assignment to District.** Tenant shall obtain the written agreement of the Contractor that, at District's election and in the event that Tenant fails to perform its contract with the Contractor, such Contractor will recognize District as the assignee of the contract with the Contractor, and that District may, upon such election, assume such contract with credit for payments made prior thereto. Notwithstanding the foregoing, the District's rights under this Section 5.2.2 are hereby made subject and subordinate to the lien of each Leasehold Mortgage.

5.3 **Tenant's Assurance of Construction Completion.** Prior to commencement of construction of the Initial Improvements, or any phase thereof, within the Premises by Tenant, Tenant shall furnish to District evidence that assures District that sufficient monies will be available to complete the proposed construction. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms:

5.3.1. Performance bond and labor and materials bond in a principal sum equal to the total estimated construction cost supplied by Contractor or subcontractors, provided said bonds are issued jointly to Tenant ~~and~~ District and any Leasehold Mortgagees as obligees.

5.3.2. Irrevocable letter of credit issued to District from a financial institution to be in effect until District acknowledges satisfactory completion of construction;

5.3.3. Cash deposited with the District (may be in the form of cashier's check or money order or may be electronically deposited);

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5.3.4. Any combination of the above.

All bonds and letters of credit must be issued by a company qualified to do business in the State of California and acceptable to Chief Real Estate Officer. All bonds and letters of credit shall be in a form acceptable to Chief Real Estate Officer and District's Risk Manager and shall insure faithful and full observance and performance by Tenant of all terms, conditions, covenants, and agreements relating to the construction of improvements within the Premises.

Tenant shall provide or cause its Contractor to provide payment and/or performance bonds in connection with the construction of the Initial Improvements, and shall name District as an additional obligee on, with the right to enforce, any such bonds.

5.4 Ownership of Improvements.

5.4.1. For purposes of this Section 5.4, "**Term**" shall have the meaning stated in Section 2.2.3.

5.4.2. **During Term.** Title to all Improvements constructed or placed on the Premises by Tenant and paid for by Tenant are and shall be vested in Tenant during the Term of this Lease, until the expiration or earlier termination thereof. ~~The parties~~ Any and all depreciation, amortization and tax credits for federal or state purposes relating to the Improvements located on the Premises and any and all additions thereto shall be deducted or credited exclusively by Tenant during the Term. The Parties agree for themselves and all persons claiming under them that the Improvements are real property.

5.4.3. **Upon Expiration or Earlier Termination of Term.** All Improvements on the Premises at the expiration or earlier termination of the Term of this Lease shall, without additional payment to Tenant, then become District's property free and clear of all claims to or against them by Tenant and free and clear of all Leasehold Mortgages and any other liens and claims arising from Tenant's use and occupancy of the Premises, and with Taxes paid current as of the expiration or earlier termination date. Tenant shall upon the expiration or earlier termination of the Term deliver possession of the Premises and the Improvements to District in a well-maintained condition consistent with the requirements of this Lease and in compliance with all applicable laws and regulations for the occupancy of the Project, taking into account reasonable wear and tear and the age of the Improvements. In order to ensure that Tenant has sufficient funds reserved to make certain necessary repairs and/or replacements to the Improvements so as to meet its obligation stated herein, District, five (5) years prior to the expiration of the Term, may request, and Tenant must deliver, an estimate showing estimated costs of all repairs and/or replacements necessary to allow Tenant to deliver possession of the Premises and the Improvements to District in a well-maintained condition. If funds in the Capital Improvement Fund, as more particularly described in Section 5.6, below, are insufficient to bring the Improvements into compliance with this Section 5.4.3, Tenant shall be solely responsible for securing any funding necessary to perform any rehabilitation or maintenance required to timely bring the Improvements into compliance with this Section 5.4.3, which funding shall not be secured by the Improvements on the Premises.

5.5 **"AS-BUILT" Plans.** Within sixty (60) days following completion of any substantial improvement within the Premises, Tenant shall furnish the Chief Real Estate Officer a complete set of reproducible and two 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 District, to District's satisfaction, on District'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 or CD ROM. In addition, Tenant shall furnish Chief Real Estate Officer copy of the final construction costs for the construction of such improvements.

5.6 Capital Improvement Fund.

5.6.1. Tenant shall establish and maintain a reserve fund (the "**Capital Improvement Fund**") during the Term of this Lease (as "Term" is defined in Section 2.2.3) in accordance with the provisions of this Section 5.6 designated to pay for Permitted Capital Expenditures (as defined below) for the Improvements during the Term of this Lease.

5.6.2. Tenant and District agree and acknowledge that the purpose of the Capital Improvement Fund shall be to provide sufficient funds to pay for the costs of major replacements, renovations or significant upgrades of or to the Improvements, including without limitation building facade or structure and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural or roof) that significantly affect the capacity, efficiency, useful life or economy of operation of the Improvements or their major systems, after the completion of the Initial Improvements (“**Permitted Capital Expenditure(s)**”).

5.6.3. The Capital Improvement Fund shall not be used to fund any portion of the construction cost of the Initial Improvements. In addition, Permitted Capital Expenditures shall not include the cost of periodic, recurring or ordinary maintenance expenditures or maintenance, repairs or replacements that keep the Improvements in an ordinarily efficient operating condition, but that do not significantly add to their value or appreciably prolong their useful life. Permitted Capital Expenditures must constitute capital replacements, improvements or equipment under generally accepted accounting principles consistently applied or constitute qualifying aesthetic improvements. Permitted Capital Expenditures shall not include costs for any necessary repairs to remedy any broken or damaged Improvements, all of which costs shall be separately funded by Tenant.

5.6.4. All specific purposes and costs for which Tenant desires to utilize amounts from the Capital Improvement Fund shall be at Tenant’s reasonable discretion and subject to Chief Real Estate Officer’s written approval as provided for in Section 5.6.9, below. Tenant shall furnish to the Chief Real Estate Officer applicable invoices, evidence of payment and other back-up materials concerning the use of amounts from the Capital Improvement Fund.

5.6.5. The Capital Improvement Fund shall be held in an account established with a Lender acceptable to the District, into which deposits shall be made by Tenant pursuant to Section 5.6.8, below.

5.6.6. Tenant shall have the right to partly or fully satisfy the Capital Improvement Fund obligations of this Section 5.6 with capital improvement reserves required by Tenant’s Leasehold Mortgagee or by the terms of Tenant’s agreement of limited partnership (the “Partnership Agreement”), as long as such capital improvement reserves are in all material respects administered and utilized in accordance, and otherwise comply, with the terms, provisions and requirements of this Section 5.6.

5.6.7. In the event of default by Tenant and ~~earlier~~the early termination of this Lease, the District shall have full access to the Capital Improvement Fund, provided the Tenant’s Leasehold Mortgagee does not use it within a reasonable time for the purposes stated in this Section 5.6—; provided, however, that District’s rights under this Section 5.6.7 are hereby made subject and subordinate to the lien of each Leasehold Mortgagee.

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5.6.8. During the first ~~fifty seven (57)~~sixty-five (65) years of the Term following the issuance of a certificate of occupancy for the Improvements (the “**Extended Use Period**”), Tenant shall make annual deposits into the Capital Improvement Fund in an amount sufficient to satisfy the most restrictive requirements of the Tax Credit Allocation Committee, any permanent lender for the Project, or the Partnership Agreement (the “**Capital Improvement Deposit Requirements**”), which amount, as of the Effective Date, is estimated at ~~SixFive~~ Hundred Dollars (~~\$600,500~~) per residential unit per year. For illustration purposes only, such estimate is projected to increase to Nine Hundred Sixty Six Dollars and Thirty Cents (\$966.30) during the fifty-sixth (56th) year of the Initial Term of the Lease; provided that the actual amount of such deposits shall be the most restrictive of the Capital Improvement Deposit Requirements in effect from time to time. Should the annual deposit amount decrease below the ~~SixFive~~ Hundred Dollars (~~\$600,500~~) level, Tenant shall provide written notice thereof to, and obtain the approval of, the Chief Real Estate Officer. The Chief Real Estate Officer, ~~in its sole discretion~~with the prior written approval of each Leasehold Mortgagee and Limited Partner, may require additional deposits into the Capital Improvement Fund beyond the amount required by the most restrictive of the Capital Improvement Deposit Requirements, if the Chief Real Estate Officer reasonably determines that such additional deposits are reasonably necessary to pay for Permitted Capital Expenditures for the Improvements during the Term of this Lease. All interest and earnings on the Capital Improvement Fund shall be added to the Capital Improvement Fund, but

shall not be treated as a credit against the Capital Improvement Fund deposits required to be made by Tenant pursuant to this Section 5.6. Beginning on the first day of the ~~fifty-eighth (58th)~~ sixty-fifth (65th) year of the Term, Tenant shall continue to make deposits into the Capital Improvement Fund in the same amount as in effect as of the expiration of the Extended Use Period.

5.6.9. Disbursements shall be made from the Capital Improvement Fund only for costs which satisfy the requirements of this Section 5.6. For the purpose of obtaining the Chief Real Estate Officer's prior approval of any Capital Improvement Fund disbursements, Tenant shall submit to the Chief Real Estate Officer on an annual calendar year basis a capital expenditure plan for the upcoming three (3) year period which details the amount and purpose of anticipated Capital Improvement Fund expenditures ("**Capital Improvement Plan**"). Chief Real Estate Officer shall approve or disapprove such Capital Improvement Plan within thirty (30) days of receipt, which approval shall not be unreasonably withheld, conditioned or delayed. Any expenditure set forth in the approved Capital Improvement Plan shall be considered pre-approved by District (but only up to the amount of such expenditure set forth in the Capital Improvement Plan) for the duration of the upcoming year. Tenant shall have the right during the course of each year to submit to the Chief Real Estate Officer for the Chief Real Estate Officer's approval revisions to the then current Capital Improvement Plan, or individual expenditures not noted on the previously submitted Capital Improvement Plan. In the event of an unexpected emergency that necessitates a Permitted Capital Expenditure not contemplated by the Capital Improvement Plan, the Tenant may complete such work using the funds from the Capital Improvement Fund with contemporaneous or prior (if possible) written notice to the District and provide applicable documentation to the Chief Real Estate Officer thereafter for approval. If the Chief Real Estate Officer disapproves the emergency expenditure, Tenant shall refund the amount taken from the Capital Improvement Fund within thirty (30) days of written notice from the District of its decision.

5.6.10. Notwithstanding anything above to the contrary, if Tenant incurs expenditures that constitute Permitted Capital Expenditures but which are not funded out of the Capital Improvement Fund because sufficient funds are not then available in such fund, then Tenant may credit the Permitted Capital Expenditures so funded by Tenant out of its own funds against future Capital Improvement Fund contribution obligations of Tenant; provided, that such credit must be applied, if at all, within four (4) years after such Permitted Capital Expenditure is incurred by the Tenant.

ARTICLE VI

REPAIRS, MAINTENANCE, ADDITIONS AND RECONSTRUCTION

6.1 Maintenance by Tenant. Throughout the Term of this Lease, Tenant shall, at Tenant's sole cost and expense, keep and maintain the Premises and any and all Improvements now or hereafter constructed and installed on the Premises in good order, condition and repair (*i.e.*, so that the Premises does not deteriorate more quickly than its age and reasonable wear and tear would otherwise dictate) and in a safe and sanitary condition and in compliance with all applicable Laws in all material respects. Tenant shall immediately notify the Chief Real Estate Officer of any damage relating to the Channel.

6.2 Interior Improvements, Additions and Reconstruction of Improvements. Following the completion of construction of the Initial Improvements, Tenant shall have the right from time to time to make any interior improvements to the Improvements that are consistent with the District approved use of the Premises as reflected in this Lease, without District's prior written consent, but with prior written notice to the District (except in the event of an emergency, in which case no prior written notice shall be required but Tenant shall notify District of any emergency work done as soon as practicable).. With prior written notice to District and approval of the Director, Tenant may restore and reconstruct the Improvements, and in that process make any modifications otherwise required by changes in Laws, following any damage or destruction thereto (whether or not required to do so under Article VII); and/or to make changes, revisions or improvements to the Improvements for uses consistent with the District approved use of the Premises as reflected in this Lease. Tenant shall perform all work authorized by this Section at its sole cost and expense and in compliance with all applicable Laws in all material respects.

6.3 All Other Construction, Demolition, Alterations, Improvements and Reconstruction. Following the

completion of construction of the Initial Improvements, and except as specified in Sections 6.1 and 6.2, any construction, alterations, additions, repairs, maintenance, demolition, improvements or reconstruction of any kind shall require the prior written consent of the District, which consent shall not be unreasonably conditioned, delayed or withheld and may require Board of Supervisors approval. Tenant shall perform all work authorized by this Section at its sole cost and expense and in compliance with all applicable Laws in all material respects.

6.4 Requirements of Governmental Agencies. At all times during the Term of this Lease, Tenant, at Tenant's sole cost and expense, shall: (i) make all alterations, improvements, demolitions, additions or repairs to the Premises and/or the Improvements required to be made by any law, ordinance, statute, order or regulation now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity; (ii) observe and comply in all material respects with all Laws now or hereafter made or issued respecting the Premises and/or the Improvements (subject to Tenant's right to contest such Laws in accordance with Section 4.4); (iv) indemnify, defend and hold District, the Premises and the Improvements free and harmless from any and all liability, loss, damages, fines, penalties, claims and actions resulting from Tenant's failure to comply with and perform the requirements of this Article VI.

6.5 District Obligations. Tenant specifically acknowledges and agrees that District and the District Parties do not and shall not have any obligations with respect to the maintenance, alteration, improvement, demolition, replacement, addition or repair of any Improvements.

6.6 District Reservations. Without limiting District's rights with respect to the Premises, District reserves for itself, its successors and assigns those rights necessary to assure proper maintenance and operation of the Channel and to permit any steps to be taken which the Director deems necessary or desirable to maintain, repair, improve, modify or reconstruct the Channel- (any rights of access shall be restricted to the driveways and parking lots constructed by the Tenant on the Premises and the Restricted Section). The rights reserved to District in this section or any other section of this Lease shall be exercised by the District at the sole discretion of the Director.

ARTICLE VII DAMAGE AND RESTORATION

7.1 Damage and Restoration. In the event the whole or any part of the Improvements shall be damaged or destroyed by fire or other casualty, damage or action of the elements which is fully covered by insurance required to be carried by Tenant pursuant to this Lease or in fact caused by Tenant, at any time during the Term, Tenant shall with all due diligence, at Tenant's sole cost and expense, repair, restore and rebuild the Improvements on substantially the same plan and design as existed immediately prior to such damage or destruction and to substantially the same condition that existed immediately prior to such damage, with any changes made by Tenant to comply with then applicable Laws and with any upgrades or improvements that Tenant may determine in its reasonable discretion. If Tenant desires to change the use of the Premises following such casualty, then Tenant may make appropriate changes to the Premises to accommodate such changed use after approval of such change of use by the District pursuant to Article IV above. This Article shall not apply to cosmetic damage or alterations. In the event that Tenant shall determine, subject to the rights of the Leasehold Mortgagees and Section 4 of **Exhibit F**, by notice to the District given by the later of ninety (90) days after the date of the damage or destruction or thirty (30) days after receipt by Tenant of any such insurance proceeds, that there are not adequate proceeds to restore the Improvements and/or the Premises to substantially the same condition in which they existed prior to the occurrence of such damage or destruction, then Tenant may terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice. Notwithstanding Section 17.9, if Tenant terminates this Lease pursuant to this Section 7.1, Tenant shall surrender possession of the Premises to the District immediately and assign to the District (or, if same has already been received by Tenant, pay to the District) all of its right, title and interest in and to the proceeds from Tenant's insurance upon the Premises.

7.2 Restoration. In the event of any restoration or reconstruction pursuant to this Section, all such work performed by Tenant shall be constructed in a good and workmanlike manner according to and in conformance with the Laws, rules and regulations of all governmental bodies and agencies and the requirements of this Lease applicable to the

construction of the Initial Improvements.

7.3 No Rental Abatement. Tenant shall not be entitled to any abatement, allowance, reduction, or suspension of Rent because part or all of the Improvements become untenable as a result of the partial or total destruction of the Improvements, and Tenant's obligation to keep and perform all covenants and agreements on its part to be kept and performed hereunder, shall not be decreased or affected in any way by any destruction of or damage to the Improvements.

7.4 Application of Insurance Proceeds. If following the occurrence of damage or destruction to the Premises or Improvements, Tenant is obligated to or determines that there are adequate proceeds to restore the Premises and Improvements pursuant to this Article VII, then all proceeds from the insurance required to be maintained by Tenant on the Premises and the Improvements shall be applied to fully restore the same, and, subject to the rights of the Leasehold Mortgagees, if applicable, any excess proceeds shall be paid to Tenant and any deficit in necessary funds plus the amount of any deductible shall be paid by Tenant. If Tenant after commencing or causing the commencement of the restoration of Premises and Improvements shall determine that the insurance proceeds are insufficient to pay all costs to fully restore the Improvements, Tenant shall pay the deficiency and shall nevertheless proceed to complete the restoration of Premises and the Improvements and pay the cost thereof. Upon lien free completion of the restoration, subject to the rights of the Leasehold Mortgagees, if applicable, any balance of the insurance proceeds remaining over and above the cost of such restoration shall be paid to Tenant.

7.5 Exclusive Remedies. Notwithstanding any destruction or damage to the Premises and/or the Improvements, Tenant 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 VII. District and Tenant hereby expressly waive the provisions of California Civil Code Sections 1932(2) and 1933(4) with respect to any damage or destruction of the Premises and/or the Improvements and agree that their rights shall be exclusively governed by the provisions of this Article VII.

7.6 Damage Near End of Term. If, during the last three (3) years of the Initial Term or Extension Term, as applicable, the Improvements shall be damaged or destroyed for which the repair and/or replacement cost is fifty percent (50%) or more of then replacement cost of the Improvements, then Tenant shall have the option, to be exercised within ninety (90) days after such damage or destruction:

7.6.1 to notify the District of its election to repair or restore the Improvements as provided in this Article VII; or

7.6.2 subject to the rights of Leasehold Mortgagees and such provisions of this Lease that survive termination, to terminate this Lease by notice to the District, which termination shall be deemed to be effective as of the date of the damage or destruction. If Tenant terminates this Lease pursuant to this Section 7.6.2, Tenant shall surrender possession of the Leased Premises to the District immediately and assign to the District (or, if same has already been received by Tenant, pay to the District) all of its right, title and interest in and to the proceeds from Tenant's insurance upon the Premises less (i) any costs, fees, or expenses incurred by Tenant in connection with the adjustment of the loss or collection of the proceeds, (ii) any reasonable costs incurred by Tenant in connection with the Premises after the damage or destruction, which costs are eligible for reimbursement from such insurance proceeds, and (iii) the proceeds of any rental loss or business interruption insurance applicable prior to the date of surrender of the Premises to the District.

ARTICLE VIII

INSURANCE AND INDEMNITY

8.1 Tenant's Required Insurance.

8.1.1. Tenant agrees to purchase all required insurance at Tenant's expense and to deposit with Chief Real Estate Officer certificates of insurance, including all endorsements required herein, necessary to satisfy Chief Real Estate Officer that the insurance provisions of this Lease have been complied with and to keep such insurance coverage and the

certificates and endorsements therefore on deposit with Chief Real Estate Officer during the Term of this Lease, as applicable. It shall constitute an Event of Default hereunder if Tenant's insurance coverage is cancelled, terminated or expired and not reinstated within ~~ten (10)~~ fifteen (15) business days after notice from District of such termination.

8.1.2. Tenant agrees that it shall not operate on the Premises at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of Chief Real Estate Officer; Rent however shall not be suspended. In no event shall assurances by Tenant, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Chief Real Estate Officer will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. Tenant also agrees that upon cancellation, termination, or expiration of Tenant's insurance, Chief Real Estate Officer may, in addition to any other remedies available to the District under this Lease, take whatever steps are necessary to interrupt any operation from or on the Premises until such time as the Chief Real Estate Officer reinstates the Lease.

8.1.3. If Tenant fails to provide Chief Real Estate Officer with a valid certificate of insurance and endorsements, or binder, meeting the requirements of this Article 8 at any time during the Term of the Lease within ~~five (5)~~ ten (10) business days following written request by the District, District and Tenant agree that this shall constitute an Event of Default hereunder. Whether or not a notice of default has or has not been sent to Tenant, Tenant's failure to provide the certificate of insurance and endorsement, or binder, shall permit Chief Real Estate Officer, in addition to any other remedies available to the District under this Lease, to take whatever steps are necessary to interrupt any operation from or on the Premises, and to prevent any persons, including, but not limited to, members of the general public, and Tenant's employees and agents, from entering the Premises until such time as the Chief Real Estate Officer is provided with adequate evidence of insurance required herein. Tenant further agrees to indemnify and hold the District harmless from any liability, claims, or demands resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business due to Chief Real Estate Officer's action.

8.1.4. The Contractor performing Work on behalf of Tenant pursuant to this Lease shall obtain the commercial general liability, automobile liability and Workers' Compensation insurance described in Section 8.1.6 below, subject to the same terms and conditions as set forth herein for Tenant's coverage. Tenant shall not allow the Contractor or its subcontractors to work if Contractor has less than the level of such coverages required by District from the Tenant under this Lease. It is the obligation of the Tenant to provide written notice of the insurance requirements to every Contractor and to receive proof of insurance prior to allowing any Contractor to begin work within the Premises. Such proof of insurance must be maintained by Tenant through the Term of this Lease and be available for inspection by Chief Real Estate Officer at any reasonable time.

8.1.5. All self-insured retentions (~~“(SIRs)”~~) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a “0” by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in excess of \$25,000 (\$5,000 for automobile liability) shall specifically be approved by District's Risk Manager upon review of Tenant's current audited financial report.

8.1.6. **Qualified Insurer.** The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Tenant in accordance with Section 8.1.4 shall provide the minimum limits and coverage as set forth below:

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<u>Coverages</u>	<u>Minimum Limits</u>
Commercial General Liability	\$2,000,000 per occurrence \$4,000,000 aggregate
Sexual Misconduct including Abuse and Molestation	\$1,000,000 per occurrence
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory Minimum
Employers' Liability Insurance	\$1,000,000 per occurrence
Commercial Property Insurance	100% of the Replacement Cost Value and no coinsurance provision on an "All Risk" or "Special Causes of Loss" basis covering all building, contents and any tenant improvements including Business Interruption/Loss of Rents with a 12 month limit

The policy or policies of insurance maintained by Contractor in accordance with Section 8.1.4 shall provide the minimum limits and coverage as set forth below:

<u>Coverages</u>	<u>Minimum Limits</u>
Commercial General Liability Including XCU and Completed Operations	\$5,000,000 per occurrence \$10,000,000 aggregate
Contractor's Pollution Liability	\$1,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$5,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Builders' Risk Insurance	100% of the Replacement Cost Value and no coinsurance provision

8.1.7. Required Coverage Forms.

(a) The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

(b) The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

8.1.8. Required Endorsements. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

(a) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the Orange County Flood Control District and the County of Orange, their respective elected and appointed officials, officers, employees, and agents as Additional Insureds.

(b) A primary non-contributing endorsement evidencing that the Tenant's insurance is primary and any insurance or self-insurance maintained by District shall be excess and non-contributing.

(c) All insurance policies required by this contract shall waive all rights of subrogation against the Orange County Flood Control District and the County of Orange, their respective elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

(d) The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the Orange County Flood Control District and the County of Orange, their respective elected and appointed officials, officers, agents and employees.

(e) The Commercial Property policy shall contain a Loss Payee endorsement naming the Orange County Flood Control District and the County as respect to the District's and/or County's financial interest when applicable. (Specific to the Tenant).

(f) Tenant shall notify District in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to District. Failure to provide written notice of cancellation may constitute a material breach of the Lease, upon which the District may suspend or terminate this Lease. (g) The Commercial General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

(h) Insurance certificates should be forwarded to District address provided in Section 19.19 below or to an address provided by Chief Real Estate Officer. Tenant has ten (10) business days to provide adequate evidence of insurance or it shall constitute an Event of Default.

(i) District expressly retains the right to require Tenant to reasonably increase or decrease insurance of any of the above insurance types throughout the term of this Lease to a level consistent with then commercially reasonable limits of coverage required by commercial landowners or commercial lenders for improvements like the Improvements used for purposes like those for which the Improvements are used, which shall be mutually agreed upon. Any change in the insurance requirements under this Lease shall be effective no earlier than thirty (30) days following written notice from the District. In no event shall the District require that Tenant obtain insurance against earthquakes or terrorism.

(j) Chief Real Estate Officer shall notify Tenant in writing of changes in the insurance requirements consistent with subsection (i) above. If Tenant does not deposit copies of certificates of insurance and endorsements with Chief Real Estate Officer incorporating such changes within thirty (30) days of receipt of such notice, it shall constitute an Event of Default.

(k) The procuring of such required policy or policies of insurance shall not be construed to limit Tenant's liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease, nor in any way to reduce the policy coverage and limits available from the insurer.

8.2 Indemnification. Tenant acknowledges the Premises is adjacent to the Channel and may be subject to all hazards associated with flood conditions. Tenant agrees to assume all risks, financial or otherwise, associated therewith. Tenant hereby releases and waives all claims and recourse against District and the County, including the right of contribution for loss or damage of persons or property, arising from, growing out of or in any way connected with or related to this Lease, including any damage to or interruption of use of the Premises including, but not limited to, loss of business, damage to, destruction of, or relocation costs of Tenant's Improvements or impaired utility of the Premises caused by erosion, flood, or flood overflow conditions of the Channel, or caused by any action undertaken in the operation, maintenance, repair, reconstruction, replacement, enlargement or improvement of the Channel or by District's flood control operations except claims arising from the active or sole negligence of District, its officers, agents, employees and contractors. Tenant hereby agrees to indemnify, defend (with counsel approved in writing by District), and hold harmless, District and the County, their respective elected and appointed officials, officers, agents, employees and contractors against any and all claims, losses, demands, damages, cost, expenses or liability for injury to any persons or property, arising out of the operation or maintenance of the Premises, and/or Tenant's exercise of the rights under this Lease, except for liability arising out of the active or sole negligence of District, its elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom. If District and/or County is named as co-defendant in a lawsuit in connection with this Lease, Tenant shall notify District of such fact and shall represent the District and/or County in such legal action unless District undertakes to represent itself as co-defendant in such legal action, in which event, Tenant shall pay to District and County their litigation costs, expenses, and attorneys' fees. If judgment is entered against District and Tenant by a court of competent jurisdiction because of the concurrent active negligence of District and Tenant, District and Tenant agree that liability will be apportioned as determined by the court. Neither partyParty shall request a jury apportionment. A judgment or other judicial determination regarding District's negligence shall not be a condition precedent to Tenant's obligations stated in this Section.

Tenant acknowledges that it is familiar with the language and provisions of California Civil Code Section 1542 which provides as follows:

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.

Tenant, being aware of and understanding the terms of Section 1542, hereby waives all benefit of its provisions to the extent described in this paragraph.

For purposes of this Section, Tenant agrees District shall not be deemed negligent in the maintenance and/or operation of Channel if District operates and maintains the Channel in conformance with industry standards used for similar District facilities.

The foregoing indemnity and defense obligations of this Lease shall survive its expiration or termination.

8.3 Damage to Tenant's Premises. District shall not be liable for injury or damage which may be sustained by the person, goods, wares, merchandise, or other property of Tenant, of Tenant's employees, invitees, customers, or of any other person in or about the Premises or the Improvements caused by or resulting from any peril which may affect the Premises or Improvements, including fire, steam, electricity, gas, water, or rain which may leak or flow from or into any part of the Premises or the Improvements, whether such damage or injury results from conditions arising upon the Premises or from other sources. Tenant assumes the risks of operating in proximity to the Channel, and District shall not be liable for any injury, damage, loss of income, or suspension of business incurred by Tenant or its employees, invitees, customers, or any other person due to any peril related the Channel or the Premises proximity to the Channel.

ARTICLE IX CONDEMNATION

9.1 Definitions.

9.1.1. “**Condemnation**” means (i) the taking or damaging, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute, whether by legal proceedings or otherwise, by a Condemnor (hereinafter defined), and (ii) a voluntary sale or transfer to a Condemnor, either under threat of condemnation or while condemnation legal proceedings are pending.

9.1.2. “**Date of Taking**” means the later of (i) the date actual physical possession is taken by the Condemnor; or (ii) the date on which the right to compensation and damages accrues under the law applicable to the Premises.

9.1.3. “**Award**” means all compensation, sums or anything of value awarded, paid or received for a Total Taking, a Substantial Taking or a Partial Taking (hereinafter defined), whether pursuant to judgment or by agreement or otherwise.

9.1.4. “**Condemnor**” means any public or quasi-public authority or private corporation or individual having the power of condemnation.

9.1.5. “**Total Taking**” means the taking by Condemnation of all of the Premises and all of the Improvements.

9.1.6. “**Substantial Taking**” means the taking by Condemnation of so much of the Premises or Improvements or both that one or more of the following conditions results, as reasonably determined by Tenant: (i) The remainder of the Premises would not be economically and feasibly usable by Tenant; and/or (ii) A reasonable amount of reconstruction would not make the Premises and Improvements a practical improvement and reasonably suited for the uses and purposes for which the Premises were being used prior to the Condemnation; and/or (iii) The conduct of Tenant’s business on the Premises would be materially and substantially prevented or impaired.

9.1.7. “**Partial Taking**” means any taking of the Premises or Improvements that is neither a Total Taking nor a Substantial Taking.

9.1.8. “**Notice of Intended Condemnation**” means any notice or notification on which a reasonably prudent person would rely and which he would interpret as expressing an existing intention of Condemnation as distinguished from a mere preliminary inquiry or proposal. It includes but is not limited to service of a Condemnation summons and complaint on a [partyParty](#) hereto. The notice is considered to have been received when a [partyParty](#) receives from the Condemnor a notice of intent to condemn, in writing, containing a description or map reasonably defining the extent of the Condemnation.

9.2 Notice and Representation.

9.2.1. **Notification.** The [partyParty](#) receiving a notice of one or more of the kinds specified below shall promptly notify the other [partyParty \(and the Limited Partner, if during the Compliance Period\)](#) of the receipt, contents and dates of such notice: (i) a Notice of Intended Condemnation; (ii) service of any legal process relating to the Condemnation of the Premises or Improvements; (iii) any notice in connection with any proceedings or negotiations with respect to such a Condemnation; (iv) any notice of an intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of Condemnation.

9.2.2. **Separate Representation.** District and Tenant each have the right to represent its respective interest in each Condemnation proceeding or negotiation and to make full proof of his claims. No agreement, settlement, sale or transfer to or with the Condemnor shall be made without the consent of District and Tenant. District and Tenant shall each execute and deliver to the other any instruments that may be required to effectuate or facilitate the provisions of this Lease relating to Condemnation.

9.3 Total or Substantial Taking.

9.3.1. **Total Taking.** On a Total Taking, this Lease shall terminate on the Date of Taking.

9.3.2. **Substantial Taking.** If a taking is a Substantial Taking, Tenant may, with the consent of each Leasehold Mortgagee, by notice to District given within ninety (90) days after Tenant receives a Notice of Intended Condemnation, elect to treat the taking as a Total Taking. If Tenant does not so notify District, the taking shall be deemed a Partial Taking.

9.3.3. **Early Delivery of Possession.** Tenant may continue to occupy the Premises and Improvements until the Condemnor takes physical possession. At any time following Notice of Intended Condemnation, Tenant may with the consent of each Leasehold Mortgagee, in its sole discretion elect to relinquish possession of the Premises to District before the actual Taking. The election shall be made by notice declaring the election and agreeing to pay all Rent required under this Lease to the Date of Taking. Tenant's right to apportionment of or compensation from the Award shall then accrue as of the date that the Tenant relinquishes possession.

9.3.4. **Apportionment of Award.** On a Total Taking all sums, including damages and interest, awarded for the fee or leasehold or both shall be distributed and disbursed as finally determined by the court with jurisdiction over the Condemnation proceedings in accordance with applicable law. Notwithstanding anything herein to the contrary, Tenant shall be entitled to receive compensation for the value of its leasehold estate under this Lease including its fee interest in all Improvements, personal property and trade fixtures located on the Premises, its relocation and removal expenses, its loss of business goodwill and any other items to which Tenant may be entitled under applicable law.

9.4 Partial Taking.

9.4.1. **Effect on Rent.** On a Partial Taking this Lease shall remain in full force and effect covering the remainder of the Premises and Improvements, and Tenant shall not be entitled to any refund of the Base Rent.

9.4.2. **Restoration of Improvements.** Promptly after a Partial Taking, Tenant shall repair, alter, modify or reconstruct the Improvements ("Restoring") so as to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises are leased.

9.4.3. **Apportionment of Award.** On a Partial Taking, District shall be entitled to receive the entire award for such Partial Taking, except that (i) the proceeds of such Partial Taking shall first be applied towards the cost of Restoring the Premises pursuant to Section 9.4.2 and (ii) Tenant shall be entitled to receive any portion of such award allocated to Tenant's interest in any of Tenant's Improvements, Personal property and trade fixtures taken.

9.5 **Waiver of Termination Rights.** Both ~~parties~~Parties waive their rights under Section 1265.130 of the California Code of Civil Procedure (and any successor provision) and agree that the right to terminate this Lease in the event of Condemnation shall be governed by the provisions of this Article XIX.

ARTICLE X ASSIGNMENT, SUBLETTING AND ENCUMBERING

10.1 **General.** Except as provided in Sections 10.3 and 17.6.4, below, Tenant shall not mortgage, pledge, hypothecate, encumber, transfer, sublease Tenant's interest in this Lease or assign (including an assignment by operation of law) Tenant's interest in the Premises or Improvements or any part or portion thereof (hereinafter referred to collectively as "**Transfer**") without the written consent of the District, which consent may not be unreasonably withheld, conditioned or delayed. District's consent may be subject to approval by the Board of Supervisors acting in the Capacity of the Orange County Flood Control District. ~~Pursuant to Section 3.5, Value Appreciation Rent may also be due on~~

~~certain assignments, transfers or encumbrances, as more fully set forth therein.~~ Tenant's failure to obtain the District's written consent to a Transfer shall render such Transfer void. Occupancy of the Premises by a prospective transferee, sublessee, or assignee prior to District's written consent of a Transfer shall constitute an Event of Default, except as set forth in Section 10.3, below.

10.1.1. Except as provided in Section 10.3, below, if Tenant hereunder is a corporation, limited liability company, an unincorporated association or partnership, the sale or transfer of any stock or interest in said corporation, company, association and partnership in the aggregate exceeding 25% shall ~~requires~~require the written consent of the District, as set forth in Section 10.3, above, which consent may not be unreasonably withheld, conditioned or delayed.

10.1.2. Should District consent to any Transfer, such consent and approval shall not constitute a waiver of any of the terms, conditions, covenants, restrictions or reservations of this Lease nor be construed as District's consent to any further Transfer. Such terms conditions, covenants, restrictions and reservations shall apply to each and every Transfer hereunder and shall be severally binding upon each and every party thereto. Any document to regarding the Transfer of the Premises or any part thereof shall not be inconsistent with the provisions of this Lease and in the event of any such inconsistency, the provisions of this Lease shall control.

10.1.3. This Section shall not be interpreted to prohibit, disallow or require District's consent to space leases (subleases of less than Tenant's entire Lease interest), including leases of individual residential units in the Improvements, or concession agreements within the Improvements between the Tenant and a sub-tenant, which are consistent with the approved uses under this Lease.

10.2 Leasehold Mortgage. Under no circumstances may Tenant mortgage, encumber or hypothecate District's Fee Interest.

10.3 Excluded Transfers. District's consent, as set forth in Section 10.1, above, shall not be required to for any Excluded Transfer (each party to whom an Excluded Transfer may be made is a "**Permitted Transferee**"), provided, however, that (1) Tenant shall notify District of such Excluded Transfer at least ~~sixty (60)~~thirty (30) days prior to the consummation of such Excluded Transfer, and shall provide District with information regarding the transferee evidencing that the Transfer falls within the scope of this Section 10.3 and the definition of Excluded Transfer, set forth in Section 1.1.21, above, and (2) if such Transfer involves an assignment of Tenant's rights under this Lease, Tenant or such transferee shall provide District with a written assumption of Tenant's obligations and liabilities under this Lease executed by such transferee in a form approved by the District, which approval shall not be unreasonably withheld, conditioned or delayed in the event that the assignment is consistent with the terms of this Lease; provided, however, that the provisions of this Section 10.3 shall not apply to any Transfer to a Foreclosure Transferee.

10.4 Transfer Procedure. The provisions of this Section 10.4 shall not be applicable to an Excluded Transfer, which shall be governed by Sections 1.1.21 and 10.3, above. If Tenant desires at any time to enter into a Transfer for which District's consent is required hereunder, Tenant shall provide District with written notice ("**Transfer Notice**") at least ninety (90) days prior to the proposed effective date of the Transfer. The Transfer Notice shall include (i) the name and address of the proposed transferee, (ii) the nature of the Transfer (e.g., whether an assignment, sublease, etc.), (iii) the proposed effective date of the Transfer, (iv) income statements and "fair market" balance sheets of the proposed transferee for the two (2) most recently completed fiscal or calendar years (provided however, if the proposed transferee is a newly formed entity and has not been in existence for such two (2) year period, the financial statements submitted shall be those of its principals), (v) a detailed description of the proposed transferees qualifications and experience that demonstrates the transferee meets the criteria for a Tenant as established by this Lease, and (vi) a bank or other credit reference, ~~and (viii) whether any Value Appreciation Rent is due pursuant to Section 3.2, above.~~ Thereafter, Tenant shall furnish such supplemental information as District may reasonably request concerning the proposed transferee. District shall, no later than ninety (90) days after District's receipt of the information specified above, deliver written notice to Tenant which shall (i) indicate whether District gives or withholds its consents to the proposed Transfer, and (ii) if District withholds its consent to the proposed Transfer, setting forth a detailed explanation of District's grounds for doing so. If

District consents to a proposed Transfer, then Tenant may thereafter effectuate such Transfer to the proposed transferee based upon the specific terms of the District's approval and after execution of a consent to assignment by District in a form approved by the District, which approval shall not be unreasonably withheld, conditioned or delayed in the event that the assignment is consistent with the terms of this Lease, provided, however, that the provisions of this Section 10.4 shall not apply to any Transfer to a Foreclosure Transferee.

10.5 Liability of Transferors/Transferees For Lease Obligations. In the case of an assignment, including an assignment pursuant to Section 17.6.5, each Permitted Transferee and any other assignees or transferees of this Lease shall assume in writing all of Tenant's obligations thereafter arising under this Lease. All assignees or transferees of any interest in this Lease or the Premises or Improvements (whether or not directly liable on this Lease) shall be subject to the terms, conditions, covenants, restrictions and reservations of this Lease. ~~The~~Except as otherwise provided in Section 17.6.5, the transferor may be released from all liability under this Lease only if the Permitted Transferee or other transferee agrees in writing to assume all of transferor's obligations and liabilities and provides to District evidence of sufficient and adequate assets, including any required insurance policies, subject to approval by District, which approval shall not unreasonably withheld, that evidence said Permitted Transferee's or other transferees' financial and otherwise competence to assume transferor's obligations and liability. ~~For~~Except as otherwise provided in Section 17.6.5 for all other Transfers, any transferor of any interest in this Lease or the Premises or Improvements shall remain primarily liable for all obligations hereunder and shall be subject to the terms, conditions, covenants, restrictions and reservations of this Lease. ~~The~~Except as otherwise provided in Section 17.6.5 the District may proceed directly against the transferor in its sole and absolute discretion, with no obligation to exhaust its remedies against the transferee. Notwithstanding anything to the contrary contained herein, District consent shall not be required for any of the following: (i) the exercise by the Limited Partner of its rights pursuant to the Partnership Agreement to remove the general partner of the Tenant and appoint the Limited Partner or an affiliate thereof as interim general partner of the Tenant; (ii) the exercise by the Limited Partner of its right to enforce any repurchase requirements under the Partnership Agreement; and/or (iii) a transfer by the Limited Partner of its partnership interest in Tenant to an Affiliate of the Limited Partner.

10.6 Conditions of Certain District Consent.

10.6.1. District may withhold consent to a Transfer at its and absolute sole discretion if any of the following conditions exist:

- (a) An Event of Default exists under this Lease.
- (b) The prospective transferee has not agreed in writing to keep, perform, and be bound by all the terms conditions, covenants, restrictions and reservations of this Lease.
- (c) In the case of an assignment, the prospective transferee has not agreed in writing to assume all of transferor's obligations and liabilities.
- (d) The construction of the Initial Improvements has not been completed.
- (e) The construction required of Tenant as a condition of this Lease has not been completed.
- (f) All the material terms, covenants, and conditions of the Transfer that are relevant to the District approval of the Transfer have not been disclosed in writing to the District.

10.7 Conditions Deemed Reasonable. Tenant acknowledges that each of the conditions to a Transfer, and the rights of District set forth in this Article X in the event of a Transfer is a reasonable restriction for the purposes of California Civil Code Section 1951.4.

10.8 Transfer of Mortgages of District's Interest. Any and all mortgages or liens placed or suffered by the

District encumbering the District's fee interest in the Premises shall be expressly subject and subordinate to this Lease, to all obligations of District hereunder, to all of the rights, titles, interests, and estates of the Tenant created or arising hereunder, to each New Lease and to each Leasehold Mortgage. Furthermore, any Person succeeding to the District's fee interest as a consequence of any conveyance, foreclosure or other transfer shall succeed to all of the obligations of the District hereunder.

ARTICLE XI DEFAULT AND REMEDIES

11.1 **Event of Default.** Each of the following events shall constitute an “**Event of Default**” by Tenant:

11.1.1. **Failure to Pay.** Tenant's failure or omission to pay any Rent or other sum payable hereunder on or before the date due where such failure shall continue for a period of three (3) business days after written notice thereof from District to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure §1161 *et seq.*

11.1.2. **Failure to Perform.** The failure or inability by Tenant to observe or perform any of its obligations under this Lease—(other than those specified in Sections 11.1.1, 11.1.3, 11.1.6, or 11.1.8 herein, which have their own notice and cure periods—), where such failure shall continue for a period of thirty (30) days after written notice thereof from District to Tenant or past any such longer period as reasonably agreed upon by the Tenant and District in writing as may be necessary for completion of its cure; provided, however, that any such notice by District shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 *et. seq.*; provided, further, that if the nature of such failure is such that it can be cured by Tenant but that more than thirty (30) days are reasonably required for its cure (for any reason other than financial inability), then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said thirty (30) days, and thereafter diligently pursues such cure to completion.

11.1.3. **Abandonment.** The abandonment (as defined in California Civil Code Section 1951.3) or vacation of the Premises by Tenant.

11.1.4. **Assignments.**

(a) The making by Tenant of any assignment of its leasehold estate under this Lease without District's consent, as set forth in Article X;

(b) A case is commenced by or against Tenant under Chapters 7, 11 or 13 of the Bankruptcy Code, Title 11 of the United States Code as now in force or hereafter amended and if so commenced against Tenant, the same is not dismissed within sixty (60) days of such commencement;

(c) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days; or

(d) Tenant's convening of a meeting of its creditors or any class thereof for the purpose of effecting a moratorium upon or composition of its debts. In the event of any such default, neither this Lease nor any interests of Tenant in and to the Premises shall become an asset in any of such proceedings ~~and, in any such event and in addition to any and all rights or remedies of the District hereunder or by law; provided, it shall be lawful for the District to declare the term hereof ended and to re-enter the Premises and take possession thereof and remove all persons therefrom, and Tenant and its creditors (other than District) shall have no further claim thereon or hereunder.~~

11.1.5. **Failure to Reimburse District.** Tenant's failure to reimburse the District pursuant to Section 3.56.4.

11.1.6. **Termination of and Failure to Reinstatement Insurance Coverage.** Termination of Tenant's insurance coverage and lack of reinstatement within ~~ten (10)~~fifteen (15) business days after notice from District of such termination.

11.1.7. **Failure to Provide Evidence of Insurance.** Tenant's failure to provide Chief Real Estate Officer with a valid and adequate certificate of insurance and endorsements, or binder, at any time during the Term of the Lease, within the time period required under Section 8.1.3.

11.1.8. **District's Consent and Approval of Transfer.** Occupancy of the Premises by a prospective transferee, sublessee, or assignee which requires District's consent or approval, before District's written consent and approval of a Transfer is obtained as required in Section 10.1.

11.1.9. Tenant's failure to make Additional Rent payment(s) as set forth in Sections 11.3 and 11.9.

11.2 **District's Remedies.** If an Event of Default occurs, District shall have the following remedies in addition to all rights and remedies provided by law or equity to which District may resort cumulatively or in the alternative:

11.2.1. **Termination of Lease.** Subject to ~~Section Article 17-5~~, as applicable, District shall have the right to terminate this Lease and all rights of Tenant hereunder including Tenant's right to possession of the Premises. In the event that District shall elect to so terminate this Lease then District may recover from Tenant:

(a) The worth at the time of award of the unpaid Rent and other charges, which had been earned as of the date of the termination hereof; plus

(b) The worth at the time of award of the amount by which the unpaid Rent and other charges which would have been earned after the date of the termination hereof until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid Rent and other charges for the balance of the Term hereof after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(d) Any other amount necessary to compensate District for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary repair, renovation and alteration of the Premises, reasonable attorneys' fees, expert witness costs, and any other reasonable costs; plus

(e) ~~The~~Subject to the rights of any Leasehold Mortgagees, the funds in the Capital Improvement Fund; plus

(f) Any other amount which District may by law hereafter be permitted to recover from Tenant to compensate District for the detriment caused by Tenant's default.

The term "Rent" as used herein shall mean as defined in Section 1.1.50. Additional Rent shall be computed on the basis of the average monthly amount thereof accruing during the 24-month period immediately prior to default, except that if it becomes necessary to compute such Additional Rent before such 24-month period has occurred, then it shall be computed on the basis of the average monthly amount during such shorter period. As used in Sections 11.2.1(a) and 11.2.1(b) above, the "worth at the time of award" shall be computed by allowing interest at the maximum rate permitted

by law. As used in Sections 11.2.1 (c) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%), but not in excess of the Interest Rate.

11.2.2. Continue Lease in Effect. District may continue this Lease in effect without terminating Tenant's right to possession and to enforce all of District's rights and remedies under this Lease, at law or in equity, including the right to recover the Rent as it becomes due under this Lease; provided, however, that District may at any time thereafter elect to terminate this Lease for the underlying Event(s) of Default by notifying Tenant in writing that Tenant's right to possession of the Premises has been terminated.

11.2.3. Removal of Personal Property Following Termination of Lease. District shall have the right, following a termination of this Lease and Tenant's rights of possession of the Premises under Section 11.2.1 above, to re-enter the Premises and, subject to applicable law, to remove Tenant's personal property from the Premises. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant, or disposed of without such storage, in accordance with applicable California law.

11.3 District's Right to Cure Tenant Defaults. If Tenant shall have failed to cure, after expiration of the applicable time for curing, a particular default under this Lease, District (and the Limited Partner, if during the Compliance Period) may at its election, but is not obligated to, make any payment required of Tenant under this Lease or perform or comply with any term, agreement or condition imposed on Tenant hereunder, and the amount so paid plus the reasonable cost of any such performance or compliance, plus interest on such sum at the Interest Rate from the date of payment, performance or compliance until reimbursed shall be deemed to be Additional Rent payable by Tenant on District's demand. Tenant's failure to reimburse the District within 30 days of District's demand shall constitute an Event of Default under this Lease. No such payment, performance or compliance shall constitute a waiver of default or of any remedy for default, or render District liable for any loss or damage resulting from the same. Cures offered on behalf of the Tenant by the Limited Partner shall be received by the District as if offered by Tenant itself hereunder.

11.4 District's Default. District shall not be considered to be in default under this Lease unless Tenant has given District written notice specifying the default, and either (i) as to monetary defaults, District has failed to cure the same within ten (10) business days after written notice from Tenant, or (ii) as to nonmonetary defaults, District has failed to cure the same within thirty (30) days after written notice from Tenant, or if the nature of District's nonmonetary default is such that more than thirty (30) days are reasonably required for its cure, then such thirty (30) period shall be extended automatically so long as District commences a cure within such thirty (30) day period and thereafter diligently pursues such cure to completion. Tenant shall have no right to offset or abate alleged amounts owing by District under this Lease against any amounts owing by Tenant under this Lease. Additionally, Tenant's sole remedy for any monetary default shall be towards the District's interest in the property and not to any other assets. Any and all claims or actions accruing hereunder shall be absolutely barred unless such action is commenced within six (6) months of the event or action giving rise to the default.

11.5 Remedies Cumulative. All rights and remedies of District contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and District shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease.

11.6 Waiver by District. No delay or omission of District to exercise any right or remedy shall be construed as a waiver of such right or remedy or any default by Tenant hereunder. The acceptance by District of Rent or any other sums hereunder shall not be (a) a waiver of any preceding breach or default by Tenant of any provision thereof, other than the failure of Tenant to pay the particular rent or sum accepted, regardless of District's knowledge of such preceding breach or default at the time of acceptance of such rent or sum, or (b) waiver of District's right to exercise any remedy available to District by virtue of such breach or default. No act or thing done by District or District's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender shall be valid

unless in writing and signed by District.

11.7 Interest. Any installment or Rent due under this Lease or any other sums not paid to District when due (other than interest) shall bear interest at the maximum rate allowed by law from the date such payment is due until paid, provided, however, that the payment of such interest shall not excuse or cure the default.

11.8 Waiver by Tenant. Tenant's waiver of any breach by District of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

11.9 Tenant Covenants and Agreements. All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expenses and without any abatement of Rent. If Tenant shall fail to pay any sum of money, other than Rent required to be paid by it hereunder, or shall fail to perform any other act on its part to be performed hereunder, or to provide any insurance or evidence of insurance to be provided by Tenant, then in addition to any other remedies provided herein, District may, but shall not be obligated to do so, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such act on Tenant's part to be made or performed as provided in this Lease or to provide such insurance. Any payment or performance of any act or the provision of any such insurance by District on Tenant's behalf shall not give rise to any responsibility of District to continue making the same or similar payments or performing the same or similar acts. All costs, expenses, and other sums incurred or paid by District in connection therewith, together with interest at the maximum rate permitted by law from the date incurred or paid by District, shall be deemed to be Additional Rent hereunder and shall be paid by Tenant within thirty (30) days of receipt of ~~aaa~~ demand and invoice from District, and Tenant's failure to pay the District, as stated herein, shall constitute an Event of Default under this Lease.

ARTICLE XII HOLDING OVER

If Tenant holds over after the expiration or earlier termination of the Term hereof without the express written consent of District, Tenant shall become a Tenant at sufferance only, at a monthly rental rate of Twenty Five Thousand Dollars (\$25,000) ("**Hold Over Rent**"), and otherwise subject to the terms, conditions, covenants, restrictions and reservations of this Lease. Acceptance by District of the Hold Over Rent after expiration or earlier termination of this Lease shall not result in an extension of this Lease. Tenant shall surrender the Premises and Improvements upon written demand by District upon expiration or earlier termination of this Lease or any time thereafter. If Tenant fails to surrender the Premises and the Improvements as stated herein, and District shall take legal action to cause Tenant's eviction from the Premises and is successful in such action, Tenant shall be responsible for all costs and expenses, including reasonable attorney's fees and costs, incurred by District in connection with such eviction action; Tenant shall also indemnify and hold District harmless from all loss or liability or reasonable attorney's fees and costs, including any claim made by any succeeding tenant, incurred by District founded on or resulting from such failure to surrender.

ARTICLE XIII ESTOPPEL CERTIFICATES

At any time and from time to time, within ten (10) business days after written request by either District or Tenant (the "**requesting party**"), the other partyParty (the "**responding party**") shall execute, acknowledge and deliver an estoppel certificate addressed to the requesting party, and/or to such other beneficiary (as described below) as the requesting party shall request, certifying (i) that this Lease is in full force and effect, (ii) that this Lease is unmodified, or, if there have been modifications, identifying the same, (iii) the dates to which Rent has been paid in advance, (iv) that, to the actual knowledge of the responding party, there are no then existing and uncured defaults under the Lease by either District or Tenant, or, if any such defaults are known, identifying the same, and (v) any other factual matters (which shall be limited to the actual knowledge of the responding party) as may be reasonably requested by the requesting party. Such certificate may designate as the beneficiary thereof the requesting party, and/or any third party having a reasonable need

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for such a certificate (such as, but not limited to, a prospective purchaser, transferee or lender) ~~and any such certificate may be relied upon by the Limited Partner.~~

ARTICLE XIV FORCE MAJEURE

Unless otherwise specifically provided herein, the period for performance of any nonmonetary obligation by either party shall be extended by the period of any delay in performance caused by Acts of God, strikes, boycotts, lock-outs, inability to procure materials not related to the price thereof, failure of electric power, riots, civil unrest, acts of terrorism, insurrection, war, declaration of a state or national emergency, weather that could not have reasonably been anticipated, changes in the Laws which would prevent the Premise from being operated in accordance with this Lease, or other reasons beyond the reasonable control of District, Tenant, or their respective agents or representatives (collectively, “**Force Majeure Events**”). In no event, however, shall Force Majeure Events include the financial inability of a party to this Lease to pay or perform its obligations hereunder. Further, nothing herein shall extend the time for performance of any monetary obligation owing under this Lease (including Tenant’s obligation to pay Rent owing hereunder).

ARTICLE XV RECORDS AND ACCOUNTS

15.1 Financial Statements. Within one hundred eighty (180) after the end of each accounting year, Tenant shall at his own expense submit to Auditor-Controller a balance sheet and income statement prepared by a Certified Public Accountant who is a member of AICPA and the California Society of CPAs, reflecting business transacted on or from the Premises during the preceding accounting year. The Certified Public Accountant must attest that the balance sheet and income statement submitted are an accurate representation of Tenant’s records as reported to the United States of America for income tax purposes. At the same time, Tenant shall submit to Auditor-Controller a statement certified as to accuracy by a Public Accountant who is a member of AICPA and the California Society of CPAs, wherein the total Gross Receipts for the accounting year are classified according to the categories of business established for percentage rent and listed in Section 3.4.1(d) and for any other business conducted on or from the Premises. Tenant shall provide District with copies of any Certified Public Accountant’s (“**CPA**”) management letters prepared in conjunction with their audits of Tenant’s operations from the Premises. Copies of management letters shall be provided directly to District by the CPA at the same time Tenant’s copy is provided to Tenant. In the event that when such financial statements are submitted, the Tenant has a budget for the following accounting year, Tenant, at the same time, shall also provide District with such budget.

15.1.1. Tenant acknowledges its understanding that any and all of the Financial Statement submitted to the District pursuant to this Lease become Public Records and may be subject to public inspection and copying pursuant to §§ 6250 *et. seq.* of the California Government Code.

15.1.2. All Tenant’s books of account and records and supporting source documents related to this Lease or to business operations conducted within or from the Premises shall be kept and made available at one location within the limits of the District unless an alternative location is approved in writing by the District. District shall, through its duly authorized agents or representatives, have the right to examine and audit said books of account and records and supporting source documents at any and all reasonable times for the purpose of determining the accuracy thereof in connection with such Sections of this Lease as the Parties mutually and reasonably agree the audit is relevant thereto.

15.2 Reports. In the event that the Tenant commissions, requests or is required to produce any reports related to the physical condition of the Improvements or Premises, Tenant shall submit copies of such reports to District along with the financial statements required above in Section 15.1.

ARTICLE XVI
OPERATIONAL OBLIGATIONS OF TENANT

16.1 Standards of Operation.

16.1.1. Tenant shall operate the Premises in a manner reasonably comparable to other comparable facilities or businesses within the County of Orange. Tenant shall at all times during the Term provide adequate security measures to reasonably protect persons and property on the Premises.

16.1.2. The ultimate purpose of this Lease is to permit the construction and operation of a multifamily veteran's residential rental development. Accordingly, Tenant covenants and agrees to operate said Premises fully and continuously to accomplish said purposes and not to abandon or vacate the Premises at any time.

16.1.3. The facilities on the Premises shall be operated during normal business hours, subject to any temporary interruptions in operations or closures due to ordinary maintenance and repair and any Force Majeure Event, defined in Article XIV above.

16.2 Protection of Environment. Tenant shall take all reasonable measures available to:

16.2.1. Avoid any pollution of the atmosphere or littering of land or water caused by or originating in, on, or about Tenant's facilities.

16.2.2. Maintain a reasonable noise level on the Premises so that persons in the general neighborhood will be able to comfortably enjoy the other facilities and amenities in the area.

16.2.3. Prevent the light fixtures of the Premises from emitting light that could negatively affect the operation of cars, boats, or airplanes in the area.

16.2.4. Prevent all pollutants from Tenant's operations on the Premises from being discharged, including petroleum products of any nature, except as may be permitted in accordance with any applicable permits. Tenant and all of Tenant's agents, employees and contractors shall conduct operations under this Lease so as to assure that pollutants do not enter the municipal storm drain system (including but not limited to curbs and gutters that are part of the street systems), or directly impact receiving waters (including but not limited to rivers, creeks, streams, estuaries, lakes, harbors, bays and the ocean), except as may be permitted by any applicable permits.

16.2.5. The District may enter the Premises and/or review Tenant records at any time to assure that activities conducted on the Premises comply with the requirements of this Section.

16.3 On-Site Manager. Tenant shall employ a competent manager who shall be responsible for the day-to-day operation and level of maintenance, cleanliness, and general order for the Premises. Such person shall be vested with the authority of Tenant with respect to the supervision over the operation and maintenance of the Premises, including the authority to enforce compliance by Tenant's agents, employees, concessionaires, or licensees with the terms and conditions of this Lease and any and all rules and regulations adopted hereunder. Tenant shall notify District in writing of the name of the Manager currently so employed as provided in Section 19.20 of this Lease.

16.4 Policies and Procedures to be Established by Tenant. Prior to the completion of construction, Tenant shall submit to Chief Real Estate Officer proposed policies and procedures pertinent to the operation of the multifamily veteran's residential rental development and manner of providing the uses required by this Lease ("**Policies and Procedures**").

ARTICLE XVII
LEASEHOLD MORTGAGES

17.1 **Definitions.** The following definitions are used in this Article (and in other Sections of this Lease):

17.1.1. “**Leasehold Estate**” shall mean Tenant’s leasehold estate in and to the Premises, including Tenant’s rights, title and interest in and to the Premises and the Improvements, or any applicable portion thereof or interest therein.

17.1.2. “**Leasehold Foreclosure Transferee**” shall mean any person (which may, but need not be, a Leasehold Mortgagee) which acquires the Leasehold Estate pursuant to a foreclosure, assignment in lieu of foreclosure or other enforcement of remedies under or in connection with a Leasehold Mortgage.

17.1.3. “**Leasehold Mortgage**” shall mean and includes a mortgage, deed of trust, security deed, conditional deed, deed to secure debt or any other security instrument (including any assignment of leases and rents, security agreement and financing statements) held by a Lender by which Tenant’s Leasehold Estate is mortgaged to secure a debt or other obligation, including a purchase money obligation.

17.1.4. “**Leasehold Mortgagee**” shall mean a Lender which is the holder of a Leasehold Mortgage.

17.1.5. “**Tenant**” shall mean all of the following: (i) the Tenant under this Lease; (ii) an approved assignee, transferee or subtenant of the Tenant under this Lease who is or becomes directly and primarily liable to District; and (iii) any further assignee, transferee or subtenant of any of the parties listed in (ii) who is or becomes directly and primarily liable to District.

17.2 Tenant’s Right to Encumber Leasehold Estate; No Right to Encumber District’s Fee Interest.

Provided that an Event of Default has not occurred and is continuing, Tenant may, at any time during the Term of this Lease (with consent of District after prior written notice providing evidence that all requirements of this Lease have been complied with), encumber all or any portion of Tenant’s Leasehold Estate with one (1) or more Leasehold Mortgages; provided, however:

17.2.1. Such Leasehold Mortgage(s) (as of the date recorded) shall not exceed (a) if recorded before completion of the Initial Improvements, One Hundred Percent (100%) of the costs of the Initial Improvements-prior to, or (b) if recorded after completion and Eighty Percent of the Initial Improvements, eighty percent (80%) of the Leasehold Estate value (including the value of all improvements) after completion;

17.2.2. That Tenant shall not have the power to encumber, and no Leasehold Mortgage shall encumber, District’s Fee Interest;

17.2.3. Except as expressly provided in this Lease, the Leasehold Mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease and to all rights and interests of District hereunder; and

17.2.4. Nothing in this Lease shall be construed so as to require or result in a subordination in whole or in part in any way of the District’s Fee Interest to any Leasehold Mortgage, and;

17.2.5. ~~In~~Except as otherwise expressly provided herein, in the event of any conflict between the provisions of this Lease and the provisions of any such Leasehold Mortgage, the provisions of this Lease shall control.

Tenant’s encumbrance of its Leasehold Estate with a Leasehold Mortgage, as provided in this Section 17.2, shall not constitute an assignment or other Transfer under Article X or otherwise, nor shall any Leasehold Mortgage, as such, be

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deemed to be an assignee or transferee of this Lease or of the Leasehold Estate so as to require such Leasehold Mortgagee, as such, to assume the Tenant's obligations and liabilities under this Lease.

Notwithstanding the foregoing, if any Leasehold Mortgagee (or its nominee) acquires title to the Premises by foreclosure or deed in lieu thereof, any required consent of the District under this Section 17.2 shall not be unreasonably withheld.

17.3 Notification to District of Leasehold Mortgage. Tenant or any Leasehold Mortgagee shall, prior to making any Leasehold Mortgage, provide District and Chief Real Estate Officer with written notice of such Leasehold Mortgage and the name and address of the Leasehold Mortgagee. At the time of notice, Tenant or such Leasehold Mortgagee shall furnish to Chief Real Estate Officer a complete copy of any trust deed and note to be secured thereby, together with the name and address of the holder thereof. Thereafter, Tenant or any Leasehold Mortgagee shall notify District of any change in the identity or address of such Leasehold Mortgagee. District shall be entitled to rely upon the addresses provided pursuant to this Section for purposes of giving any notices required by this Article XVII.

17.4 Notice and Cure Rights of Leasehold Mortgagees With Respect to Tenant Defaults. District, upon delivery to Tenant of any notice of a default or demand for payment by Tenant under this Lease or a matter as to which District may predicate or claim a default, will ~~endeavor to concurrently deliver a copy of such notice to each Leasehold Mortgagee promptly deliver a copy of such notice to each Leasehold Mortgagee and Limited Partner. Each notice or demand required to be given by District to a Leasehold Mortgagee or Limited Partner under this Lease shall be in writing and shall be given by certified or registered mail, postage prepaid, return receipt requested, to such Leasehold Mortgagee at the address(es) provided by such Leasehold Mortgagee or Limited Partner, as applicable, to District from time to time in writing and shall be effective upon receipt (or refusal to accept receipt). No notice or demand given by District to Tenant shall be effective until the duplicate copy of such notice or demand to the Tenant shall have been effectively given to each Leasehold Mortgagee and Limited Partner in accordance with this Lease.~~ From and after the date such notice has been given to any Leasehold Mortgagee, such Leasehold Mortgagee and Limited Partner shall have the same cure period for such default (or act or omission which is the subject matter of such notice) that is provided to Tenant under this Lease or as otherwise agreed upon by District and the Tenant, to commence and/or complete a cure of such default (or act or omission which is the subject matter of such notice). District shall accept any and all performance by or on behalf of any Leasehold Mortgagee(s) and Limited Partner, including by any receiver obtained by any Leasehold Mortgagee(s) and Limited Partner, as if the same had been done by Tenant. Tenant authorizes each Leasehold Mortgagee and Limited Partner to take any such action at such Leasehold Mortgagee's and Limited Partner's option, and hereby authorizes any Leasehold Mortgagee and Limited Partner (or any receiver or agent) to enter upon the Premises for such purpose.

17.5 Limitation on District's Termination Right. If following the delivery of notice pursuant to Section 17.4, above, the default by Tenant continues and is not cured by Tenant (or any Leasehold Mortgagee and Limited Partner as allowed under Section 17.4, above), and such failure entitles District to terminate this Lease, District shall have no right to terminate this Lease unless District shall notify in writing each and every Leasehold Mortgagee and Limited Partner who has complied with Section 17.3 of District's intent to so terminate at least ~~thirty (30)~~ sixty (60) days in advance of the proposed effective date of such termination. If any Leasehold Mortgagee and Limited Partner, within such ~~thirty (30)~~ sixty (60) day period, (i) notifies District of such Leasehold Mortgagee's and Limited Partner's desire to cure such default and initiates such cure and (ii) pays or cause to be paid the amount that is necessary to cure any monetary default as stated in such notice, if any, then Section 17.6 shall apply. The Chief Real Estate Officer, at its sole discretion, may permit such additional time as necessary for any Leasehold Mortgagee and Limited Partner to commence the cure or make payment(s), as stated herein. If any Leasehold Mortgagee and Limited Partner fails to respond to said notice of termination within the allotted ~~thirty (30)~~ sixty (60) days as consistent with the conditions of this Section 17.5, District is entitled to immediately terminate this Lease.

17.6 Leasehold Mortgagee Foreclosure Period. If any Leasehold Mortgagee and Limited Partner complies with Section 17.5 above, then the following provisions shall apply:

17.6.1. If District's notice under Section 17.5 specifies only monetary Events of Default as the basis for

District's election to terminate this Lease, and Leasehold Mortgagee [and Limited Partner](#) has fully paid the monetary amount designated by District in its notice, then such payment shall be deemed to have cured the Event of Default. If District's notice under Section 17.5 specifies both monetary and non-monetary Events of Default or non-monetary Events of Default as the basis for District's election to terminate this Lease, and Leasehold Mortgagee [and Limited Partner](#) has fully paid the monetary amount designated by District in its notice, as applicable, then the date of termination specified in District's notice shall be extended for a period of twelve (12) months, provided that such Leasehold Mortgagee [and Limited Partner](#) shall, during such twelve (12) month period:

(a) pay or cause to be paid all Rent under this Lease as the same becomes due, ~~and~~ [\(subject to the notice and cure rights expressly set forth herein\); and](#)

(b) continue (subject to any stay as described in Section 17.6.2 below) its good faith efforts to perform (and complete performance of) all of Tenant's nonmonetary obligations under this Lease, excepting nonmonetary obligations (whether or not a default exists with respect thereto) that are not [then](#) reasonably susceptible of being cured by Leasehold Mortgagee [and Limited Partner](#); and

(c) commence and pursue with reasonable diligence until completion (subject to any stay as described in Section 17.6.2 below) a judicial or nonjudicial foreclosure or other enforcement of remedies under its Leasehold Mortgage.

17.6.2. In the event of a judicial or non-judicial foreclosure, the twelve (12) month period described in Section 17.6.1, above, shall automatically be extended by the length of any delay caused by any stay (including any automatic stay arising from any bankruptcy or insolvency proceeding involving Tenant), injunction or other order arising under applicable Laws or issued by any court (which term as used herein includes any other governmental or quasi-governmental authority having such power) (the foregoing being collectively referred to as a "Stay"). Further, Leasehold Mortgagee's obligations stated in Section 17.6.1(b) and (c) shall be automatically suspended during any period that any Stay prevents Leasehold Mortgagee from taking any such actions. Nothing herein, however, shall be construed to extend this Lease beyond the Term hereof nor to require a Leasehold Mortgagee to continue such foreclosure proceedings after the Event of Default has been cured. If the Event of Default has been cured and the Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

17.6.3. In the event the Leasehold Mortgage requires a new lease with the Leasehold Mortgagee, District shall enter into such new lease with the Leasehold Mortgagee pursuant to Section 17.7, below, provided District is provided with the necessary and adequate documents related to the new lease requirements in the Leasehold Mortgage [as described in Section 17.7](#).

17.6.4. So long as any Leasehold Mortgagee [and Limited Partner](#) is complying with Sections 17.6.1 and 17.6.2 above, then upon the acquisition of Tenant's Leasehold Estate by a Leasehold Foreclosure Transferee, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease; provided that no Leasehold Foreclosure Transferee shall have any liability for the performance of any of the Tenant's obligations under this Lease until the Leasehold Foreclosure Transferee has acquired the Tenant's interest under the Lease, and then the Leasehold Foreclosure Transferee shall be liable for the performance of only those obligations of the Tenant arising from and after the effective date of the Leasehold Foreclosure Transferee's acquisition of the Tenant's Leasehold Estate. Any such Leasehold Foreclosure Transferee shall be deemed to be an assignee or transferee and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Tenant to be performed hereunder from and after the effective date on which such Leasehold Foreclosure Transferee acquires title to the Leasehold Estate, but only for so long as such purchaser or assignee is the owner of the leasehold estate.

17.6.5. Any Leasehold Mortgagee (or its designee) that becomes a Leasehold Foreclosure Transferee, upon acquiring title to Tenant's Leasehold Estate without obtaining District's consent and provided it is not in default of

any of the provisions of this Lease, shall have a one-time right to assign the Leasehold Estate to an assignee (a) which is an Affiliate of the Leasehold Foreclosure Transferee, or (b) which has substantial experience, or will employ a property management company with substantial experience, managing, maintaining and operating developments like that on the Premises. Upon such assignment, the Leasehold Foreclosure Transferee shall automatically be released of all obligations thereafter accruing under this Lease, provided that, substantially concurrently with such assignment, the assignee delivers to District a written agreement assuming Tenant's obligations under the Lease thereafter accruing. Any subsequent Transfers occurring after the one-time assignment permitted under this Section shall be subject to Article X.

17.7 Leasehold Mortgagee's Right to New Lease.

17.7.1. In the event of ~~a default by Tenant~~ any termination of this Lease (including any termination because of an Event of Default, or because of any rejection or disaffirmance of this Lease pursuant to bankruptcy law or any other law affecting creditor's rights), ~~but other than by reason of a Total Taking—and as consistent with the provisions), District shall give prompt written notice of Sections 17.5 and 17.6 or which results in a such termination of this Lease. District to each Leasehold Mortgagee and~~ shall (subject to Section 17.8 below if more than one Leasehold Mortgagee then exists) enter into a new lease ("New Lease") of the Premises with ~~such~~ the Leasehold Mortgagee ("New Lease") ~~holding the Leasehold Mortgage that has the most senior lien priority, in accordance with Section 17.8 below,~~ or its designee, upon notice to District by such Leasehold Mortgagee, ~~if the Leasehold Mortgage requires that a new lease must be entered into with the Leasehold Mortgage in the event of a default by the Tenant or a termination of the Lease.~~ The New Lease shall commence as of its effective date and shall continue for the remainder of the scheduled Term of this Lease, at the same Rent that is payable under this Lease, and on the same terms, conditions, covenants, restrictions and reservations that are contained in this Lease (including any extension options, purchase options and rights of first refusal, if any, provided for in this Lease), and subject to the rights of any tenants under residential subleases or other subtenants then in valid occupancy of the Premises and Improvements and further subject to any then existing senior Leasehold Mortgagees; provided that, substantially concurrently with the delivery of a notice by Leasehold Mortgagee requiring District to enter into a New Lease, Leasehold Mortgagee shall pay to District all Rent or any other amounts payable by Tenant hereunder which are then due and shall commence and proceed with diligence to cure all nonmonetary defaults under this Lease, other than those nonmonetary defaults which are personal to the foreclosed tenant and impossible for the Leasehold Mortgagee to remedy.

17.7.2. If such Leasehold Mortgagee elects to enter into a New Lease pursuant to Section 17.7.1 above, then District and the Leasehold Mortgagee (or its designee) shall promptly prepare and enter into a written New Lease; but until such written New Lease is mutually executed and delivered, this Lease shall govern, from and after the giving of notice pursuant to Section 17.7.1 but prior to the execution of the New Lease, the District's and Leasehold Mortgagee's relationship with respect to the Premises and the Improvements and the Leasehold Mortgagee shall (i) be entitled to possession of the Premises and to exercise all rights of Tenant hereunder, (ii) pay to District any Rent accruing under the New Lease as it becomes owing, and (iii) perform or cause to be performed all of the other covenants and agreements under this Lease. Further, at such time as the written New Lease is mutually executed and delivered, Leasehold Mortgagee (or its designee) shall pay to District its reasonable expenses, including reasonable attorneys' fees and costs, incurred in connection with the preparation, execution and delivery of such written New Lease— In addition, upon execution of any such New Lease, District shall execute, acknowledge and deliver to such Leasehold Mortgagee (or its designee) a grant deed, in recordable form, conveying to such Leasehold Mortgagee (or its designee) fee title to all Improvements in the event that title to such Improvements have vested with the District.

17.7.3. In the event that District receives any net income (*i.e.*, gross income less gross expenses on a cash basis), if any, from the Premises and Improvements during any period that District may control the same, then the Leasehold Mortgagee under the New Lease shall be entitled to such net income received by District except to the extent that it was applied to cure any default of Tenant.

17.7.4. All rights and claims of Tenant under this Lease shall be subject and subordinate to all right and

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claims of the tenant under the New Lease.

17.8 Multiple Leasehold Mortgages. If more than one Leasehold Mortgagee shall make a written request upon District for a New Lease in accordance with the provisions of Section 17.7, then such New Lease shall be entered into pursuant to the request of the Leasehold Mortgagee holding the Leasehold Mortgage that has the most senior lien priority.

Notwithstanding anything herein to the contrary, District shall have no duty or obligation to resolve any disputes or conflicting demands between Leasehold Mortgagees. In the event of any conflicting demands made upon District by multiple Leasehold Mortgagees, District may (subject to any applicable court orders to the contrary) rely on the direction of the Leasehold Mortgagee whose Leasehold Mortgage is recorded first in time in the Official Records of the District, as determined by any national title company.

17.9 Condemnation and Insurance Proceeds. ~~Any~~Notwithstanding anything to the contrary contained herein, all condemnation proceeds ~~(other than proceeds payable on account of the value of the District's Fee Interest as encumbered by this Lease)~~ or insurance proceeds ~~to which Tenant is entitled pursuant to this Lease~~ shall be subject to and paid in accordance with the ~~requirement of any~~requirements of the most senior (in order of lien priority) Leasehold Mortgage, subject, however, to any requirement in this Lease that, ~~to the extent not in conflict with the terms of the applicable Leasehold Mortgage,~~ such proceeds must be used to repair and restore the Improvements to the Premises which were damaged or destroyed by such condemnation or casualty (including, without limitation, as required in Article VII following a casualty and in Section 9.4.3 following a condemnation). The handling and disbursement of any such proceeds used to repair or restore the Improvements to the Premises shall be subject to the requirements of ~~any Leasehold Mortgage, so long as such proceeds are used towards repair or reconstruction of the Improvements to the Premises to the extent required by this Lease;~~ such senior Leasehold Mortgage.

17.10 Mortgage Clauses. A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all insurance policies required to be carried by Tenant hereunder, provided that any such Leasehold Mortgagee shall hold and apply such insurance proceeds subject to the provisions of this Lease.

17.11 No Waiver. No payment made to District by a Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and a Leasehold Mortgagee having made any payment to District pursuant to District's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof.

17.12 Fees and Costs. Tenant agrees to reimburse District for its reasonable attorneys' fees and costs incurred in connection with District's review and/or approval of any documentation which may be required in connection with any Leasehold Mortgage by Tenant as provided herein.

~~17.13 VHHP Requirements. As a condition to the receipt of VHHP funds from HCD, the Tenant agrees to comply with the requirements of Exhibit F attached hereto.~~ **17.14 No Termination, Cancellation, Surrender or Modification.** Without the prior written consent of each Leasehold Mortgagee and Limited Partner, (a) this Lease may not be terminated or cancelled by mutual agreement of District and Tenant, (b) District may not accept the surrender this Lease or the Leasehold Estate created hereunder without the consent of each Leasehold Mortgagee, and (c) this Lease may not be amended, modified or supplemented (and any action taken in furtherance of any of the foregoing without the required consent of each Leasehold Mortgagee and Limited Partner shall be void and of no effect). In addition, if any term or provision of this Lease gives Tenant the right to terminate or cancel this Lease, in whole or in part, no such termination or cancellation shall be or become effective unless Tenant has first received approval in writing by each Leasehold Mortgagee and Limited Partner.

17.15 Effect of Foreclosure upon Base Rent. Notwithstanding anything to the contrary contained elsewhere in this Lease, (i) in no event shall any Leasehold Mortgagee (or its designee) be required to pay or cure, in order to prevent the termination of this Lease, to exercise its cure rights hereunder or to obtain a New Lease or otherwise, any Base Rent.

and (ii) in no event shall any Leasehold Mortgagee (or its designee) or its (or their) successors and assigns be required to pay or cure any Base Rent which otherwise became due and payable prior to completion of any foreclosure under any Leasehold Mortgage (or acceptance of any assignment or deed in lieu thereof).

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ARTICLE XVIII BEST MANAGEMENT PRACTICES

18.1 Tenant and all of Tenant's, subtenant, agents, employees and contractors shall conduct operations under this Lease so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("**Stormwater Drainage System**"), and to ensure that pollutants do not directly impact "**Receiving Waters**" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).

18.2 The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System ("**NPDES**") permits ("**Stormwater Permits**") to the County of Orange, and to the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as "**District Parties**") which regulate the discharge of urban runoff from areas within the County of Orange, including the Premises leased under this Lease. The District Parties have enacted water quality ordinances that prohibit conditions and activities that may result in polluted runoff being discharged into the Stormwater Drainage System.

18.3 To assure compliance with the Stormwater Permits and water quality ordinances, the District Parties have developed a Drainage Area Management Plan ("**DAMP**") which includes a Local Implementation Plan ("**LIP**") for each jurisdiction that contains Best Management Practices ("**BMPs**") that parties using properties within Orange County must adhere to. As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. These BMPs are found within the District's LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "**BMP Fact Sheets**") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.

18.4 BMP Fact Sheets that apply to uses authorized under this Lease include the BMP Fact Sheets that are attached hereto as **Exhibit C**. These BMP Fact Sheets may be modified during the term of the Lease; and the Chief Real Estate Officer shall provide Tenant with any such modified BMP Fact Sheets. Tenant, its agents, contractors, representatives and employees and all persons authorized by Tenant to conduct activities on the Premises shall, throughout the term of this Lease, comply with the BMP Fact Sheets as they exist now or are modified, and shall comply with all other requirements of the Stormwater Permits, as they exist at the time this Lease commences or as the Stormwater Permits may be modified. Tenant agrees to maintain current copies of the BMP Fact Sheets on the Premises throughout the term of this Lease. The BMPs applicable to uses authorized under this Lease must be performed as described within all applicable BMP Fact Sheets.

18.5 Tenant may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP Fact Sheets. Any such alternative BMPs shall be submitted to the Chief Real Estate Officer for review and approval prior to implementation.

18.6 Chief Real Estate Officer may enter the Premises and/or review Tenant's records at any reasonably time during normal business hours to assure that activities conducted on the Premises comply with the requirements of this ~~section~~Section. Tenant may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this ~~section~~Section.

ARTICLE XIX
GENERAL CONDITIONS & MISCELLANEOUS PROVISIONS

19.1 **Signs.** Tenant agrees not to construct, maintain, or allow any signs, banners, flags, etc., upon the Premises except (a) as approved in writing in advance by Chief Real Estate Officer, which approval may be withheld in the sole and absolute discretion of the Chief Real Estate Officer, or (b) required by any of Tenant's lenders, provided that any such signage is in compliance with all applicable Laws. Tenant further agrees not to construct, maintain, or allow billboards or outdoor advertising signs upon the Premises. Unapproved signs, banners, flags, etc., may be removed by Chief Real Estate Officer without prior notice to Tenant.

19.2 **Nondiscrimination.** Tenant agrees not to discriminate against any person or class of persons by reason of sex, age (except as permitted by law), race, color, creed, physical handicap, or national origin in employment practices and in the activities conducted pursuant to this Lease.

19.3 **Taxes and Assessments.** Pursuant to California Revenue and Taxation Code Section 107.6, Tenant is specifically informed that this Lease may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Premises or upon fixtures, equipment, or other property installed or constructed thereon, shall be the full responsibility of Tenant, and Tenant shall cause said taxes and assessments to be paid promptly.

19.4 **Quitclaim of Interest upon Termination.** Upon execution of this Lease, Tenant shall execute, acknowledge, and deliver to District, within thirty (30) days a good and sufficient deed, in a form as approved by the Chief Real Estate Officer, whereby all right, title, and interest of Tenant in the Premises is quitclaimed to District ("**Quitclaim Deed**"). The Quitclaim Deed shall be retained by the Chief Real Estate Officer for the Term and shall be recorded in the event of the termination of this Lease for any reason to remove any cloud on title created by this Lease.

19.5 **Public Records.** Tenant acknowledges that any written information submitted to and/or obtained by District from Tenant or any other person or entity having to do with or related to this Lease and/or the Premises, either pursuant to this Lease or otherwise, is a "public record" open to inspection and copying by the public pursuant to the California Public Records Act (Government Code §6250, *et seq.*) ("**CPRA**") as now in force or hereafter amended, or any Law in substitution thereof, or otherwise made available to the public, unless such information is exempt from disclosure pursuant to the applicable sections of CPRA. In the event that a CPRA request is made for any financial statements and records (not including Gross Receipts Statements) and the District determines that the records must be turned over, the District will give Tenant fifteen (15) days' written notice prior to turning over such records so that Tenant can take any necessary action, including, but not limited to, injunctive relief, to prevent District from turning over such financial statements and records.

19.6 Child Support Enforcement.

19.6.1. At all times during the term of this Lease, Tenant shall comply with all District, State and Federal reporting requirements for child support enforcement and comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment.

19.6.2. In order for Tenant to comply with County of Orange requirements, Tenant shall deliver to Chief Real Estate Officer the required data and certifications, as shown in **Exhibit D** attached hereto concurrent with the execution of this Lease by District.

19.6.3. Failure of Tenant to comply with all County, State, and Federal reporting requirements for child support enforcement, or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this Lease. Failure to cure such breach within thirty (30) days of

Tenant's receipt of written notice from District of such breach by Tenant shall constitute grounds for termination of this Lease.

19.7 Attorney's Fees. In any action or proceeding brought to enforce or interpret any provision of this Lease, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorneys' fees and costs.

19.8 Payment Card Compliance. Should Tenant conduct credit/debit card transactions in conjunction with Tenant's business with the District, on behalf of the District, or as part of the business that Tenant conducts on the Premises, Tenant covenants and warrants that it will during the course of such activities be Payment Card Industry Data Security Standard ("PCI/DSS") and Payment Application Data Security Standard ("PA/DSS") compliant and will remain compliant during the entire duration of its conduct of such activities. Tenant agrees to immediately notify District in the event Tenant should ever become non-compliant at a time when compliance is required hereunder, and will take all necessary steps to return to compliance and shall be compliant within ten (10) days of the commencement of any such interruption. Upon demand by District, Tenant shall provide to District written certification of Tenant's PCI/DSS and/or PA/DSS compliance.

19.9 Right to Work and Minimum Wage Laws.

19.9.1. In accordance with the United States Immigration Reform and Control Act of 1986, Tenant shall require its employees that directly or indirectly service the Premises, pursuant to the terms and conditions of this Lease, in any manner whatsoever, to verify their identity and eligibility for employment in the United States. Tenant shall also require and verify that its contractors or any other persons servicing the Premises, pursuant to the terms and conditions of this Lease, in any manner whatsoever, verify the identity of their employees and their eligibility for employment in the United States.

19.9.2. Pursuant to the United States of America Fair Labor Standard Act of 1938, as amended, and State of California Labor Code, Section 1178.5, Tenant shall pay no less than the greater of the Federal or California Minimum Wage to all its employees that directly or indirectly service the Premises, in any manner whatsoever. Tenant shall require and verify that all its contractors or other persons servicing the Premises on behalf of the Tenant also pay their employees no less than the greater of the Federal or California Minimum Wage.

19.9.3. Tenant shall comply and verify that its contractors comply with all other Federal and State of California laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant to the servicing of the Premises or terms and conditions of this Lease.

19.10 Declaration of Knowledge by Tenant. Tenant warrants that Tenant has carefully examined this Lease and by investigation of the site and of all matters relating to the Lease arrangements has fully informed itself as to all existing conditions and limitations affecting the construction of the Lease improvements and business practices required in the operation and management of the uses contemplated hereunder.

19.11 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of California.

19.12 Venue. The Parties hereto agree that this Lease has been negotiated and executed in the State of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Lease, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

19.13 Headings and Titles. The captions of the Articles or Sections of this Lease are only to assist the

~~parties~~Parties in reading this Lease and shall have no effect upon the construction or interpretation of any part hereof.

19.14 **Interpretation.** Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the conduct, acts or omissions of Tenant, the term “**Tenant**” shall include Tenant’s agents, employees, contractors, invitees, successors or others using the Premises with Tenant’s expressed or implied permission. In any provision relating to the conduct, acts or omissions of District, the term “**District**” shall include District’s agents, employees, contractors, invitees, successors or others using the Premises with District’s expressed or implied permission.

19.15 **Ambiguities.** Each ~~party~~Party hereto has reviewed this Lease with legal counsel, and has revised (or requested revisions of) this Lease based on the advice of counsel, and therefore any rules of construction requiring that ambiguities are to be resolved against a particular ~~party~~Party shall not be applicable in the construction and interpretation of this Lease or any exhibits hereto.

19.16 **Successors and Assigns.** Except as otherwise specifically provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the ~~parties~~Parties hereto and their respective heirs, personal representatives, successors and assigns.

19.17 **Time is of the Essence.** Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

19.18 **Severability.** If any term or provision of this Lease is held invalid or unenforceable to any extent under any applicable law by a court of competent jurisdiction, the remainder of this Lease shall not be affected thereby, and each remaining term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

19.19 **Integration.** This Lease, along with any exhibits, attachments or other documents affixed hereto or referred to herein and related County Property Permits, constitute the entire agreement between District and Tenant relative to the leasing of the Premises. This Lease and such exhibits, attachments and other documents may be amended or revoked only by an instrument in writing signed by both District and Tenant. District and Tenant hereby agree that no prior agreement, understanding or representation pertaining to any matter covered or mentioned in this Lease shall be effective for any purpose.

19.20 **Notices.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or electronic mail, shall be deemed received upon the earlier of (a) if personally delivered, the date of delivery to the address of the person to receive such notice, (b) if mailed, three (3) business days after the date of posting by the United States post office, (c) if given by electronic mail, when sent if before 5:00 p.m., otherwise on the next business day, or (d) if delivered by overnight delivery, one (1) business day after mailing. Any notice, request, demand, direction or other communication sent by electronic mail must be confirmed within by letter mailed or delivered within two business days in accordance with the foregoing.

Either Party may change the address for notices by giving the other Party at least ten (10) calendar days’ prior written notice of the new address.

If to District: Orange County Flood Control District
 c/o CEO/Corporate Real Estate
 333 W. Santa Ana Blvd, 3rd Floor
 Santa, Ana, CA 92702
 Attn: ~~Scott Mayer~~Thomas A. Miller, Chief Real Estate Officer

 Email: ~~scott.mayer~~Thomas.Miller@ocgov.com

If Director’s review required send copy to:

OC Development Services
300 N. Flower Street
Santa Ana, CA 92703
Fax: 714-667-8885
Email:ocpcustomer@ocpw.ocgov.com

If to Tenant: Mercy Housing California
1500 S. Grand Avenue, Suite 100
Los Angeles, California 90015
Attention: Ed Holder, Vice President
Email: eholder@mercyhousing.org

With a copy to: [ADD LIMITED PARTNER NOTICE ADDRESS]
U.S. Bancorp Community Development Corporation
1307 Washington Avenue, Suite 300
Mail Code: SL MO RMCD
St. Louis, MO 63103
Project Number: []
Attn: Director of LIHTC Asset Management

and
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attn: Jill H. Goldstein, Esq.

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19.21 **Amendments.** This Lease is the sole and only agreement between the Parties regarding the subject matter hereof; other agreements, either oral or written, are void. Any changes to this Lease shall be in writing and shall be properly executed by both Parties: and, if during the Compliance Period, with the written consent of the Limited Partner. The Parties agree to enter into such amendments to this Lease as reasonably required as a condition of Tenant’s ability to secure financing and equity commitments sufficient to fund the cost of Tenant’s proposed development of the Premises.

19.22 **Limited Partner Cure Rights.** In the event the Tenant is a partnership, the District agrees to accept a cure of any Event of Default by Tenant made by any one or more of the Tenant’s limited partners as if such cure had been made by Tenant, provided such cure is made in accordance with the applicable provisions of this Lease.

19.23 **Dispositions of Abandoned Property.** If Tenant abandons or quits the Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to and left on the Premises thirty (30) days after such event shall, at District’s option, be deemed to have been transferred to District. District shall have the right to remove and to dispose of such property at Tenant’s cost, including the cost of labor, materials, equipment and an administrative fee equal to fifteen percent (15%) of the sum of such costs without liability therefor to Tenant or to any person claiming under Tenant, and shall have no need to account therefor. At Chief Real Estate Officer's option, Chief Real Estate Officer may provide Tenant with an invoice for such costs, which invoice Tenant agrees to pay within fifteen (15) days of receipt.

19.24 **Brokers.** If Tenant has engaged a broker in this transaction pursuant to a separate agreement, Tenant shall

be solely responsible for the payment of any broker commission or similar fee payable pursuant to such separate agreement. Tenant each hereby agree to indemnify and hold the District harmless from and against all costs, expenses or liabilities (including attorney fees and court costs, whether or not taxable and whether or not any action is prosecuted to judgment) incurred by the District in connection with any claim or demand by a person or entity for any broker's, finder's or other commission or fee from the District in connection with the Tenant's entry into this Lease and the transactions contemplated hereby based upon any alleged statement or representation or agreement of the Tenant. No broker, finder or other agent of any [partyParty](#) hereto shall be a third-party beneficiary of this Lease.

19.25 No Partnership. This Lease shall not be construed to constitute any form of partnership or joint venture between District and Tenant. District and Tenant mutually acknowledge that no business or financial relationship exists between them other than as District and tenant, and that District is not responsible in any way for the debts of Tenant or any other [partyParty](#).

19.26 Authorization. District and Tenant (each, a "signing party") each represents and warrants to the other that the person or persons signing this Lease on behalf of the signing party has full authority to do so and that this Lease binds the signing party. Concurrently with the execution of this Lease, each signing party shall deliver to the other a certified copy of a resolution of the signing party's board of directors or other governing board authorizing the execution of this Lease by the signing party.

19.27 Recording. This Lease itself shall not be recorded, but in the event that the Tenant encumbers the leasehold as set forth in Article XVII, a memorandum hereof may be recorded in the form of **Exhibit E** attached hereto (the "Memorandum"). The Memorandum may be executed concurrently with this Lease and thereafter recorded in the Official Records of the County Recorder only after the Commencement Date of this Lease has occurred. Tenant shall be responsible for the payment of all charges imposed in connection with the recordation of the Memorandum, including, without limitation, any documentary transfer tax imposed in connection with this transaction and all recording fees and charges.

19.28 Exhibits. This Lease contains the following exhibits, schedules and addenda, each of which is attached to this Lease and incorporated herein in its entirety by this reference:

- Exhibit A: Legal Description of the Premises
- Exhibit A-1: Rendering of the Premises
- Exhibit B: Initial Improvements
- Exhibit C: Best Management Practices Fact Sheets
- Exhibit D: Child Support Enforcement Certification Requirements
- Exhibit E: Form of Memorandum of Lease
- ~~Exhibit F: VHHP Requirements~~

19.29 Consent/Duty to Act Reasonably. Except as otherwise expressly provided herein, whenever this Lease grants District or Tenant the right to take any action, grant any approval or consent, or exercise any discretion, District and Tenant shall act reasonably and in good faith and take no action which might result in the frustration of the other [party'sParty's](#) reasonable expectations concerning the benefits to be enjoyed under this Lease.

19.30 Counterparts. For the convenience of the [partiesParties](#) to this Lease, this Lease may be executed in several original counterparts, each of which shall together constitute but one and the same agreement. Original executed pages may be assembled together into one fully executed document.

19.31. **No Merger.** The interests created by this Lease shall not be extinguished by merger of any or all of the ownership interests the Premises or the Improvements in one person or entity.

[Signatures On Following Pages]

IN WITNESS WHEREOF, the Parties have executed this Lease on the date first written above.

<p>APPROVED AS TO FORM: COUNTY COUNSEL</p> <p>By: _____ Deputy</p> <p>Date _____</p>	<p>TENANT</p> <p>By: _____</p> <p>By: _____ Name: _____ Title: _____</p> <p>By: _____ Name: _____ Title: _____</p> <p>DISTRICT</p> <p>ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic</p> <p>_____ Scott D. Mayer <u>Thomas A. Miller</u>, Chief Real Estate Officer Orange County, California</p>
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EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Santa Ana, County of Orange, State of California, described as follows:

PARCEL 1. A STRIP OF LAND 65.00 FEET WIDE IN LOT 3, BLOCK 36 OF THE YORBA LINDA TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 5, PAGES 17 AND 18 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, SAID STRIP LYING 28.00 FEET NORTHERLY AND 37.00 FEET SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE CENTER LINE OF FEE ANA STREET DISTANT SOUTH 0° 23' 34" EAST, 323.72 FEET FROM THE INTERSECTION OF SAID CENTER LINE WITH THE CENTER LINE OF ORANGETHORPE AVENUE; THENCE NORTH 89° 37' 35" EAST, 61.00 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHERLY AND HAVING A RADIUS OF 500.00 FEET; THENCE EASTERLY 132.18 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15° 08' 48"; THENCE TANGENT TO SAID CURVE SOUTH 75° 13' 37" EAST, 912.31 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHERLY AND HAVING A RADIUS OF 1000.00 FEET; THENCE EASTERLY 126.29 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 7° 14' 09"; THENCE TANGENT TO SAID CURVE SOUTH 82° 27' 46" EAST, 312.63 FEET TO A POINT ON THE CENTER LINE OF TAYLOR STREET DISTANT SOUTH 0° 48' 16" EAST, 413.51 FEET FROM THE INTERSECTION OF SAID CENTER LINE WITH THE CENTER LINE OF SAID ORANGETHORPE AVENUE AS SAID CENTER LINE IS LOCATED EASTERLY OF SAID CENTER LINE OF TAYLOR STREET.

EXCEPTING THAT PORTION THEREOF AS DESCRIBED IN THE DEED TO ELMER DE LOS REYES AND WIFE, RECORDED SEPTEMBER 12, 1950 AS INSTRUMENT NO. 43142 IN BOOK 2070, PAGE 205 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ALL MINERALS, GAS, OIL, PETROLEUM, NAPHTHA AND OTHER HYDROCARBON SUBSTANCES BELOW THE DEPTH OF 500 FEET FROM THE SURFACE OF THE ABOVE DESCRIBED PROPERTY, SUBJECT TO THE EXPRESS LIMITATION THAT THE FOREGOING RESERVATION SHALL IN NO WAY BE INTERPRETED TO INCLUDE ANY RIGHT OF ENTRY IN AND UPON THE SURFACE OF THE ABOVE DESCRIBED PROPERTY, OR THE FIRST 500 FEET OF THE SUBSURFACE THEREOF, AS EXCEPTED IN THE DEED FROM JAMES MANASSERO AND WIFE TO THE ORANGE COUNTY FLOOD CONTROL DISTRICT RECORDED MAY 23, 1963 AS INSTRUMENT NO. 19556 IN BOOK 6559, PAGE 709 OF OFFICIAL RECORDS.

PARCEL 2. THAT PORTION OF LOT 3, BLOCK 36 OF THE YORBA LINDA TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 5, PAGES 17 AND 18 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, THAT LIES NORTHERLY OF A LINE WHICH IS NORTHERLY 28.00 FEET FROM AND PARALLEL AND CONCENTRIC WITH THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE CENTER LINE OF FEE ANA STREET DISTANT SOUTH 0° 23' 34" EAST, 323.72 FEET FROM THE INTERSECTION OF SAID CENTER LINE WITH THE CENTER LINE OF ORANGETHORPE AVENUE; THENCE NORTH 89° 37' 35" EAST, 61.00 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHERLY AND HAVING A RADIUS OF 500.00 FEET; THENCE EASTERLY 132.18 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15° 08' 48"; THENCE TANGENT TO SAID CURVE SOUTH 75° 13' 37" EAST, 912.31 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHERLY AND HAVING A RADIUS OF 1000.00 FEET; THENCE EASTERLY 126.29 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 7° 14' 09"; THENCE TANGENT TO SAID CURVE SOUTH 82° 27' 46" EAST, 312.63 FEET TO A POINT ON THE CENTER LINE OF TAYLOR STREET DISTANT SOUTH 0° 48' 16" EAST, 413.51 FEET FROM THE INTERSECTION OF SAID CENTER LINE WITH THE CENTER LINE OF SAID ORANGETHORPE AVENUE AS SAID CENTER LINE IS LOCATED EASTERLY OF SAID CENTER LINE OF TAYLOR STREET.

EXCEPTING THAT PORTION THEREOF AS DESCRIBED IN THE DEED TO ELMER DE LOS REYES AND WIFE, RECORDED SEPTEMBER 12, 1950 AS INSTRUMENT NO. 43142 IN BOOK 2070, PAGE 205 OF

OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ALL MINERALS, GAS, OIL, PETROLEUM, NAPHTHA AND OTHER HYDROCARBON SUBSTANCES BELOW THE DEPTH OF 500 FEET FROM THE SURFACE OF THE ABOVE DESCRIBED PROPERTY, SUBJECT TO THE EXPRESS LIMITATION THAT THE FOREGOING RESERVATION SHALL IN NO WAY BE INTERPRETED TO INCLUDE ANY RIGHT OF ENTRY IN AND UPON THE SURFACE OF THE ABOVE DESCRIBED PROPERTY, OR THE FIRST 500 FEET OF THE SUBSURFACE THEREOF, AS EXCEPTED IN THE DEED FROM JAMES MANASSERO AND WIFE TO THE ORANGE COUNTY FLOOD CONTROL DISTRICT RECORDED MAY 23, 1963 AS INSTRUMENT NO. 19556 IN BOOK 6559, PAGE 709 OF OFFICIAL RECORDS.
APN: 346-241-02

EXHIBIT A-1
RENDERING OF THE PROPERTY

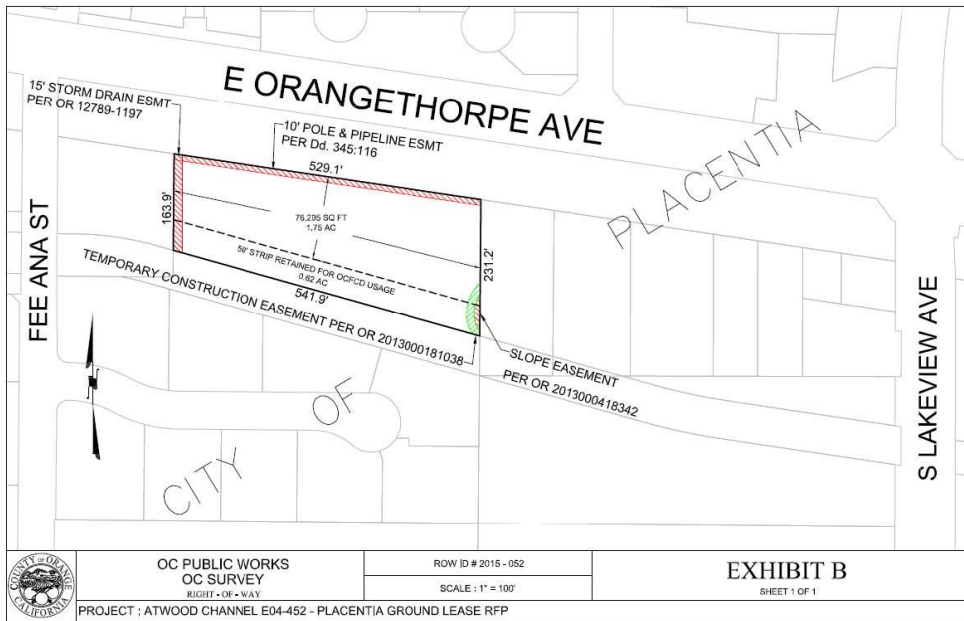


EXHIBIT B
INITIAL IMPROVEMENTS

A 50-unit multifamily affordable housing development consisting of one- and two-bedroom apartments in a 3-story wood frame Craftsman style building with surface parking for approximately 50 cars, and including facilities for community meetings and social services.

EXHIBIT C
Best Management Practices ("BMPs" Fact Sheets)

Best Management Practices can be found at: <http://ocwatersheds.com/default.aspx> which website may change from time to time.

TENANT shall be responsible for implementing and complying with all BMP Fact Sheet requirements that apply to this TENANT's operations. TENANT is to be aware that the BMP clause within this Lease, along with all related BMP Exhibits, may be revised, and may incorporate more than what is initially being presented in this Lease. Although the Harbor is not the TENANT's leased Premises, BMPs apply to the TENANT's defined Premises and BMPs also apply to the TENANT in their conducting business operations throughout the Harbor.

Suggested BMPs Fact Sheets may include, but may not be limited to, the following list shown below and can be found at: <http://ocwatersheds.com/IndustrialCommercialBusinessesActivities.aspx> (which website may change from time to time):

- IC3 Building Maintenance
- IC4 Carpet Cleaning
- IC6 Contaminated or Erodible Surface Areas
- IC9 Outdoor Drainage from Indoor Areas
- IC10 Outdoor Loading/Unloading of Materials
- IC12 Outdoor Storage of Raw Materials, Products, and Containers
- IC14 Painting, Finishing, and Coatings of Vehicles, Boats, Buildings, and Equipment
- IC17 Spill Prevention and Cleanup
- IC21 Waste Handling and Disposal
- IC22 Eating and Drinking Establishments
- IC23 Fire Sprinkler Testing/Maintenance
- IC24 Wastewater Disposal Guidelines

EXHIBIT D

**COUNTY OF ORANGE
CHILD SUPPORT ENFORCEMENT
CERTIFICATION REQUIREMENTS**

A. In the case of a COUNTY doing business as an individual, his/her name, date of birth, the last four digits of the Social Security number, and residence address:

Name:
Date of Birth:
Last Four Digits of Social Security No:
Residence Address:

B. In the case of a COUNTY doing business in a form other than as an individual, the name, date of birth, the last four digits of the Social Security number, and residence address of each individual who owns an interest of ten (10) percent or more in the leased Premises:

Name:
Date of Birth:
Last Four Digits of Social Security No:
Residence Address:

Name:
Date of Birth:
Last Four Digits of Social Security No:
Residence Address:

Name:
Date of Birth:
Last Four Digits of Social Security No:
Residence Address:

(Attach additional sheets if necessary)

I certify that _____ is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Lease agreement with the County of Orange dated _____. I understand that failure to comply shall constitute a material breach of the Lease and that failure to cure such breach within sixty (60) calendar days of notice from the County of Orange shall constitute grounds for termination of the Lease agreement without cost to the County.

Authorized Signature Print Name Title Date

EXHIBIT E
FORM OF MEMORANDUM OF LEASE
MEMORANDUM OF LEASE

This is a Memorandum of Lease (“**Memorandum**”) made and entered into as of this _____ day of _____, 20____, by and between the ORANGE COUNTY FLOOD CONTROL DISTRICT, a political subdivision of the State of California (“**District**”), and _____, (“**Tenant**”), residing at _____, upon the following terms:

1. **Lease.** The provisions set forth in a written lease between the parties hereto dated _____ (“**Lease**”), are hereby incorporated by reference into this Memorandum.

2. **Subject Premises.** The Premises which are the subject of the Lease are more particularly described as on **Exhibit A**, attached hereto

3. **Commencement Date of Lease.** The Lease shall be deemed to have commenced on _____ (the “**Commencement Date**”) as set forth within the terms of the Lease.

4. **Term.** The Primary Term of the Lease shall be ~~Fifty-Seven (57)~~Sixty-Five (65) years from the Commencement Date as stated in the written Lease. The Primary Term shall commence on the date hereof and terminate on _____. The Primary Term may be extended for up to an additional ~~eighteen (18)~~ten (10) years, subject to the conditions stated in the Lease.

5. **Duplicate Copies** of the originals of the Lease are in the possession of the District and Tenant and reference should be made thereto for a more detailed description thereof and for resolution of any questions pertaining thereto. The addresses for District and Tenant are as follows:

DISTRICT:

TENANT:

6. **Purpose.** It is expressly understood and agreed by all Parties that the sole purpose of this Memorandum is to give record notice of the Lease; it being distinctly understood and agreed that said Lease constitutes the entire lease and agreement between District and Tenant with respect to the Premises and is hereby incorporated by reference. The Lease contains and sets forth additional rights, terms, conditions, duties, and obligations not enumerated within this instrument which govern the Lease. This Memorandum is for informational purposes only and nothing contained herein may be deemed in any way to modify or vary any of the terms or conditions of the Lease. In the event of any inconsistency between the terms of the Lease and this instrument, the terms of the Lease shall control. The rights and obligations set forth herein shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, representatives, successors, and assigns.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum pursuant to due authorization on the dates herein acknowledged.

DISTRICT:

By: _____

Name: _____

Title: _____

TENANT:

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT F
~~VHHP Requirements~~

- ~~1. Subject to the provisions of this Lease, the documents securing the VHHP funds, including but not limited to a deed of trust and regulatory agreement, may be recorded against the Tenant's leasehold interest in the Premises and fee interest in the Improvements.~~
- ~~2. HCD may enforce all VHHP requirements against the Tenant's leasehold interest in the Premises and fee interest in the Improvements, subject to the provisions of this Lease.~~
- ~~3. The Tenant may assign the Lease to HCD as security for the performance of Tenant's obligations with respect to the VHHP, subject to the provisions of this Lease.~~
- ~~4. No termination of, modification, or amendment to any terms of the Lease by Tenant shall be effective with respect to Tenant without HCD's prior written consent, and any attempts on the part of Tenant to take such actions are void without HCD's consent.~~