




# Revision to ASR and/or Attachments

2022 APR -5 AM 11:56  
RECEIVED

**Date:** April 5, 2022  
**To:** Clerk of the Board of Supervisors  
**CC:** County Executive Office  
**From:** **Frank Kim, County Executive Officer**   
**Re:** ASR Control #: 22-000297, Meeting Date 4/12/22, Item No. # 10  
**Subject:** Approve Amended and Restated Ground Lease for the Stanton Inn and Suites

Digitally signed by Frank Kim  
DN: cn=Frank Kim, o=County of Orange, ou=CEO, email=frank.kim@ocgov.com, c=US  
Date: 2022.04.05 11:15:07 -0700

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## Explanation:

Updated date, formatting and agreed upon language regarding base rent to Attachment A and added County Counsel signature block to Attachment B.

- Revised Recommended Action(s)
- Make modifications to the:
  - Subject
  - Background Information
  - Summary
  - Financial Impact
- Revised Attachments (attach revised attachment(s) and redlined copy(s))  
Revised Attachment A and Attachment B



## AMENDED AND RESTATED GROUND LEASE

THIS AMENDED AND RESTATED GROUND LEASE (“**Lease**”) is made and effective as of the \_\_\_\_ day of April, 2022 (“**Effective Date**”) by and between the COUNTY OF ORANGE, a political subdivision of the State of California (“**County**”), and KATELLA HOUSING PARTNERS LP, a California limited partnership (hereinafter called “**Tenant**”) (also referred to hereinafter each as “**Party**” or collectively as the “**Parties**”).

### RECITALS

A. County owns the Premises (as hereinafter defined) located at 7161 Katella Avenue, Stanton, CA 90680.

B. Pursuant to that certain Ground Lease entered into between County and JHC-Katella LLC, a California limited liability company (the “**Original Tenant**”), dated December 7, 2020 (the “**Original Lease**”), County leased the Premises to the Original Tenant for the purposes of the Project, as more fully defined hereafter, to entitle and redevelop a 72-room motel commonly known as “Stanton Inn & Suites” for interim housing, and following certain rehabilitation work, for use as permanent supportive housing, all as more fully described herein, upon the fulfillment of certain conditions precedent as set forth therein.

C. Concurrently with entering into the Original Lease, County and the Original Tenant executed that certain Memorandum of Lease, which was recorded on December 7, 2020, as Instrument No. 2020000717468 (hereinafter referred to as “**Original Memorandum**”).

D. In connection with entering into the Original Lease, County sold and transferred to the Original Tenant fee title to all personal property and improvements on the Premises as of the date of the Original Lease, pursuant to (i) that certain Bill of Sale for Personal Property, executed by County and the Original Tenant (hereinafter referred to as “**Bill of Sale**”), and (ii) that certain Quitclaim Deed, executed by County and recorded on December 7, 2020, as Instrument No. 2020000717469 (hereinafter referred to as “**Quitclaim Deed**”).

E. Concurrently with entering into the Original Lease, County and the Original Tenant entered into (i) that certain Leasehold Regulatory Agreement and Declaration of Restrictive Covenants, which was recorded on December 7, 2020, as Instrument No. 2020000717470, for purposes of encumbering the Original Tenant’s leasehold interest created by the Original Lease, as amended by that certain First Amendment to Leasehold Regulatory Agreement and Declaration of Restrictive Covenants which is being recorded concurrently herewith (as amendment, hereinafter referred to as “**Regulatory Agreement**”), and (ii) that certain Loan Agreement (hereinafter referred

to as “**Loan Agreement**”), under which the County agreed to provide certain loan funds to the Original Tenant for the purposes of developing the Project.

F. On or about the same date hereof, the Original Tenant assigned to Tenant, and Tenant assumed from the Original Tenant, all of the Original Tenant’s rights and obligations under, among other agreements, the Original Lease, the Regulatory Agreement, and the Loan Agreement.

G. County and Tenant have jointly agreed to enter into this Lease as of the Effective Date set forth above for purposes of amending and restating the Original Lease.

NOW, THEREFORE, in consideration of the above Recitals, which are hereby incorporated into this Lease by reference, and mutual covenants and agreements hereinafter contained, County 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. Intentionally Deleted.

1.1.3. “**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.”

1.1.4. “**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 this Ground Lease, commencing on the Commencement Date, as approved in writing by the County, in County’s reasonable discretion. 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 County, in his/her reasonable discretion. Tenant will deliver an annual budget for the following year no later than December 1 for each year following issuance of a permanent certificate of occupancy for the Improvements. County shall deliver any comments, or its approval to such operating budget within thirty (30) days of receipt thereof. If an operating budget for the following year has not been approved by County and Tenant prior to January 1 of such year, the annual operating budget from the previous year, increased by three percent (3%), with the actual cost of property tax and insurance premiums, shall apply until a new operating budget is approved. 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.

1.1.5. **“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. Notwithstanding the foregoing, Annual Project Revenue shall not include the following items: (a) security deposits from subtenants (except when applied by Tenant to rent or other amounts owing by subtenants); (b) capital contributions to Tenant by its members, partners or shareholders (including capital contributions required to pay deferred developer fee); (c) condemnation or insurance proceeds; (d) there shall be no line item, expense, or revenue shown allocable to vacant unit(s) at the Project; or (e) receipt by an Affiliate of management fees or other bona fide arms-length payments for reasonable and necessary Operating Expenses associated with the Project.

1.1.6. **“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.

1.1.7. **“Base Rent”** shall mean rent paid pursuant to Section 3.1.1.

1.1.8. **“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 County.

1.1.9. **“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.

1.1.10. “**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 County Board of Supervisors. The Chief Real Estate Officer shall have authority to administer the terms of this Lease, including the granting of approvals, waivers, and consents, as required hereunder, except to the extent any of such actions would increase the costs, or decrease the revenues of County hereunder

1.1.11. “**City**” shall mean the City of Stanton, 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 have the same meaning as the “Conversion Date,” as that term is defined in the Loan Agreement and the Regulatory Agreement, which is the date the Project transitions to Permanent Supportive Housing. Notwithstanding anything to the contrary in the Loan Agreement or the Regulatory Agreement, the Commencement Date shall take place no later than five (5) years from the date of the Original Lease. Tenant shall be responsible for informing the County in writing of the Conversion Date, which will also be the Commencement Date. Base Rent shall become due and payable beginning on the Commencement Date.

1.1.14. “**Contractor**” shall mean Tenant’s general contractor for the Work to be performed.

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

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

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

1.1.18. “**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 to an entity majority owned by such 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 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;

(c) A transfer of a 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;

(d) 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) – (c) above;

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

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

(g) 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;

(h) 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**"), (including,

without limitation, a subsequent transfer of the Limited Partner's interest to an Affiliate of the Limited Partner), provided, such syndication shall not extend the Term of this Lease;

(i) The grant or exercise of an option agreement or right of first refusal solely in connection with the tax credit syndication of the Premises in accordance with the Tax Credit Laws provided that the syndication shall not extend the Term of this Lease;

(j) The removal and replacement of one or both of Tenant's general partners pursuant to the terms of Tenant's Partnership Agreement as of the Effective Date and replacement by the Limited Partner, or an Affiliate thereof; or

(k) 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.

1.1.19. "**Force Majeure Event**" is defined in Article XIV.

1.1.20. "**Hazardous Material(s)**" is defined in Section 4.5.

1.1.21. "**HCD**" shall mean the California Department of Housing and Community Development.

1.1.22 "**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, constructed and/or rehabilitated on the Premises, in accordance with the terms of this Lease. During the entire Term, the Improvements, as they may be reconstructed or rehabilitated, will be restricted to the following uses:

(a) multifamily affordable housing,  
(b) interim housing  
(c) permanent supportive housing units and related services, and  
(d) related commercial and community-serving uses as needed for the siting of the affordable housing and supportive housing units, as approved by the County.

1.1.24. "**Includes**" shall mean "includes but is not limited to" and "**including**" shall mean "including but is not limited to."

1.1.25. "**Interest Rate**" shall mean the lower of: (a) the reference or prime rate of U.S. Bank National Association, in effect from time to time plus three percent (3%); or (b) the

highest rate of interest permissible under the Laws not to exceed the rate of twelve percent (12%) per annum.

1.1.27. “**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, Improvements, and Work to be performed.

1.1.28. “**Lease**” shall mean this Ground Lease (including any and all addenda, amendments and exhibits hereto), as now or hereafter amended.

1.1.29. “**Leasehold Estate**” is defined in Section 17.1.1.

1.1.30. “**Leasehold Foreclosure Transferee**” is defined in Section 17.1.2.

1.1.31. “**Leasehold Mortgage**” is defined in Section 17.1.3.

1.1.32. “**Leasehold Mortgagee**” is defined in Section 17.1.4.

1.1.33. “**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 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.

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

1.1.35. “**County Parties**” shall mean, collectively and individually, the County and its respective Affiliates, governing boards, agents, employees, members, officers, directors and attorneys.

1.1.36. “**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.

1.1.37 “**New Lease**” is defined in Section 17.7.1.



1.1.40. “**Operating Costs**” is defined in Section 3.4.1.

1.1.41. “**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.

1.1.42. “**Partnership Related Fees**” shall mean the following fees of Tenant (or partners thereof pursuant to Tenant’s Partnership Agreement) which are actually paid including:

(i) a limited partner asset management fee payable to the Limited Partner in the annual amount of \$7,500 (increased annually by 3%); and

(ii) partnership management fee (administrative and/or managing general partner) payable to the general partners of Tenant in the aggregate annual amount of \$25,000 (increased annually by 3%).

1.1.43. “**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.

1.1.44. “**Premises**” shall mean that certain real property containing approximately 1.01 acres located at 7161 Katella Avenue, Stanton, CA 90680, and its improvements, parking areas, and fixtures affixed thereto together with all easements, rights and privileges appurtenant thereto, to be leased to Tenant pursuant to this Lease and on which Tenant shall rehabilitate and/or construct, as necessary, the existing motel, the Stanton Inn & Suites into interim housing and then permanent supportive housing. 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**.

1.1.45. “**Project**” shall mean the completed Work for the Tenant’s rehabilitation and/or construction of the Premises, as necessary, for its use as permanent supportive housing after the Interim Use, as defined below.

1.1.46. “**Rent**” shall mean and includes the Base Rent and Additional Rent payable by Tenant under this Lease.

1.1.47. “**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 Project, or as otherwise approved pursuant to Section 17.2, below, (C) payment

obligations approved in writing by the County at the closing of the construction financing for the Project, (D) Partnership Related Fees (including accrued by unpaid Partnership Related Fees from the prior year or years), (E) repayment of loans, if any, made by Limited Partner to Tenant for development and/or operating expense deficits on terms reasonably acceptable to County, (F) repayment of loans, if any, made by a general partner of Tenant solely for development and/or operating expense deficits on terms reasonably acceptable to County, (G) deferred developer fee, and (H) scheduled deposits to reserves approved in writing by the County at the closing of the construction financing for the Project (or such higher reserve deposits as may be reasonably required by the Limited Partner or any Leasehold Mortgagee).

1.1.48. “**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, or designee, or upon written notice to Tenant, such other person as may be designated by the City Council.

1.1.49. “**Taxes**” is defined in Section 3.11.2.

1.1.51. “**TCAC**” is defined as the California Tax Credit Allocation Committee.

1.1.52. “**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.”

1.1.54. “**Tenant’s Partnership Agreement**” shall mean an Amended and Restated Agreement of Limited Partnership to be entered into in connection with the closing of constructing financing for the Project, a copy of which will be provided to the County.

1.1.55. “**Term**” is defined in Section 2.2.

1.1.56. “**Transfer**” is defined in Section 10.1.1.

1.1.57. “**Transfer Notice**” is defined in Section 10.4.

1.1.58. “**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.

1.1.59. “**Utility Costs**” is defined in Section 3.4.1.

1.1.60. “**Work**” shall mean both Tenant’s rehabilitation 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 and/or rehabilitation of utilities, street construction or improvement and grading or filling in or on the Premises necessary for the Project as set forth on Exhibit B. Notwithstanding the foregoing, however, “Work” shall not include any rehabilitation performed by Tenant to enable Tenant to use the Premises for the Interim Use, as more fully discussed in Section 4.1.1.

## **ARTICLE II LEASE OF PROPERTY**

### **2.1 Lease of Premises.**

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

2.1.2. Warranty of Peaceful Possession. County 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 all of its rights hereunder. Except as otherwise set forth herein, the County covenants and agrees that they 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.

### **2.2 Term.**

2.2.1. Primary Term. The “**Primary Term**” of this Lease shall commence on the Effective Date of this Lease, and shall expire at 12:00 midnight Pacific Standard Time on the 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 any Event of Default, as set forth in Section 11.1, below, Tenant may request that the County extend the Primary Term of this Lease under the same terms, conditions, covenants, restrictions and reservations for one (1) additional term of up to ten (10) years (“**Extension Term**”), provided the Tenant demonstrates to the County’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 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 County 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 County 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 notice by any Party, at 12:00 midnight Pacific Standard Time on the last day of the Term.

2.4 **Condition of the Premises.** **TENANT HEREBY ACCEPTS THE PREMISES “AS IS” AND ACKNOWLEDGES THAT THE PREMISES IS IN SATISFACTORY CONDITION. COUNTY MAKES NO WARRANTY, IMPLIED OR OTHERWISE, AS TO THE SUITABILITY OF THE PREMISES FOR TENANT’S PROPOSED USES. COUNTY MAKE 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 COUNTY COVENANT OR WARRANT, IMPLIED OR OTHERWISE, AS TO THE SUITABILITY OF THE PREMISES FOR THE PROPOSED REHABILITATION OR USE BY TENANT. COUNTY SHALL NOT BE RESPONSIBLE FOR ANY LAND SUBSIDENCE, SLIPPAGE, SOIL INSTABILITY OR DAMAGE RESULTING THEREFROM. COUNTY 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 County, or any representation or warranty, either express or implied, relating to the nature or condition of the Premises or County’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.** Beginning on the Commencement Date, Tenant shall pay to the County the Base Rent as set forth herein.

3.1.1 **Base Rent.** Throughout the Primary Term of this Lease, regardless of an early termination date, Tenant shall pay to County twenty-five percent (25%) of the then available Residual Receipts (the “**Base Rent**”), subject to adjustment and as set forth herein. Base Rent shall be due and payable on an annual basis commencing once the certificate of occupancy (or an equivalent form of occupancy certification or approval) for the Project has been issued beginning on the date six (6) months after closing of Tenant’s previous year’s books and every one-year anniversary date thereafter. Notwithstanding the foregoing, Base Rent shall only become due after the Tenant has repaid that certain loan from the County, evidenced by a Loan Agreement, Promissory Note and Leasehold Deed of Trust (collectively, the “**County Loan Documents**”), in the amount of \$1,085,000, which is also being paid out of the same twenty-five percent (25%) of the Residual Receipts. Notwithstanding the foregoing, County acknowledges that the percentage of Residual Receipts to be paid as Base Rent, may be decreased, with the prior written consent of the County, if Tenant obtains commitments for financing that is required to be paid out of Residual Receipts. County agrees to reasonably cooperate with Tenant on a fair and reasonable allocation of Residual Receipts, including compliance with any applicable regulations that require that a designated percentage of Residual Receipts be allocated to such financing. Any reduction of the Base Rent shall be memorialized in an amendment to this Lease executed by the Tenant and the Chief Real Estate Officer. This Lease is not cross-defaulted with the County Loan Documents and any obligation to make payments under the County Loan Documents.

3.2 **Triple Net Rent.** It is the intent of the Parties that all Rent shall be absolutely net to County 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 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 Parties, shall County 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.

3.3 **Insufficient Funds.** For purposes of this Section 3.3, Rent shall have the same meaning as stated in Section 1.1.42. If any payment of Rent or other fees made by check is returned due to insufficient funds or otherwise, County shall have the right to require Tenant to make all subsequent

Rent payments by cashier's check, certified check or automated clearing house 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 County 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 County shall accept such check or payment without prejudice to County's right to recover the balance of the Rent or other fees or pursue any other remedy available to the County in this Lease.

### 3.4 Intentionally Deleted.

### 3.5 Additional Rent.

3.5.1. **Additional Rent.** During the Term, the Base Rent shall be absolutely net to County 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 Article XI. As more particularly set forth in Sections 3.5.3 and 3.5.6, 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.

3.5.2. **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 County in the Premises or any payments in lieu of taxes required to be made by County, 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 County 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.

**3.5.3. 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 County a good and sufficient undertaking in an amount specified by County 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.

**3.5.4. Payment by County.** Should Tenant fail to pay any Taxes required by this Article III to be paid by Tenant within the time specified herein, subject to Tenant's right to contest such Taxes in accordance with Section 3.5.3, and if such amount is not paid by Tenant within fifteen (15) days after receipt of County's written notice advising Tenant of such nonpayment, County 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 County reimburse County for the full amount paid by County 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.

3.5.5. **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.

3.5.6. **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 County 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 shall use the Premises for the Project, including the rehabilitation, construction, entitlement, operation, maintenance, replacement and repair (as necessary to perform the Work and complete the Project) of the Improvements as follows:

4.1.1. **Required Services and Uses.** County’s primary purpose for entering into this Lease is to promote the development of the Project consistent with this Lease. In furtherance of that purpose, Tenant shall rehabilitate and during the entire Term operate, maintain, replace and repair the Improvements in a manner consistent with the Laws and for the following uses:

- (a) multifamily affordable housing, and appurtenant improvements, including, without limitation, parking,
- (b) permanent supportive housing units and related services, and
- (c) related commercial and community-serving uses, as approved by the County.

Notwithstanding anything in this Lease to the contrary, commencing as of the Effective Date, Tenant shall perform necessary rehabilitation or other construction activities to the Improvements in order for the Improvements to be used as interim housing (the “**Interim Use**”). The Interim Use shall be permitted for a period of not more than five (5) years following the Effective Date, which may be extended with the prior written approval of the Chief Real Estate Officer. For the avoidance of doubt, all references in this Lease to Work and/or rehabilitation of the Improvements shall refer to the substantial rehabilitation work that comprises the Project after the Interim Use, and not the earlier rehabilitation work necessary to enable Tenant to use the Premises for the Interim Use; provided,



however, that such minor rehabilitation work and such Interim Use shall be performed and carried out in accordance with all applicable Laws. Plans for the Interim Use shall be approved in writing in advance by the Chief Real Estate Officer, which approval shall not be unreasonably withheld, conditioned or delayed.

4.1.2. **Ancillary Services and Uses.** Subject to the prior written approval of County, which approval may be granted or withheld in the sole discretion of the County, 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 County 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 for the sole purpose to provide affordable housing and/or emergency shelter.

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 County, which approval may be granted or withheld in the sole discretion of the County.

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 County.

4.1.6. **Alcohol Restrictions.** Tenant shall not permit the sale or service of alcoholic beverages on the Premises.

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). County may cooperate with Tenant in all reasonable respects in such contest, including joining with Tenant in any such contest if County joinder is required in order to maintain such contest; provide, however, that any such contest shall be without cost to County, and Tenant shall indemnify, defend (with attorneys acceptable to County), and hold harmless the County 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 County 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 the rehabilitation, operation, maintenance and repair of the Improvements or 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, and excluding Hazardous Materials existing on the Premises prior to the Effective Date (the "**Existing Hazardous Materials**"), 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 remedy or repair any such injury or contamination in accordance with any and all applicable Laws. Without limiting any other rights or remedies of County 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, excluding the Existing Hazardous Materials. 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 County. 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 County.

#### 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 County) County, 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 (collectively, "**Liabilities**"), arising 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, and excluding all Existing Hazardous Materials.

(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; provided, however, that the indemnity contained in this Section 4.4.4 shall not apply to any Liabilities arising or occurring (a) prior to the Effective Date of this Ground Lease, (b) after the expiration or earlier termination of the Term of this Ground Lease, or (c) as a result of the grossly negligent or wrongful acts or omissions of County.

**4.5 Access by County.** County reserves the right for County and its authorized representatives to enter the Premises upon two (2) business days' prior written notice to Tenant, during normal business hours, in order to determine whether Tenant is complying with Tenant's obligations hereunder, or to enforce any rights given to County under this Lease. County and its representatives shall report to the Tenant's on-site office and must be accompanied by a representative of Tenant at all times while on the Property and obey Tenant's rules and regulations. Tenant acknowledges County have the authority to enter the Premises and perform work on the Premises at any time as needed to provide immediate or necessary protection for the general public.

County will take all necessary measures not to unreasonably interfere with Tenant's business at the Premises in exercising its rights under this Section.

County shall indemnify and hold Tenant harmless from and against any loss, cost, damage or liability, including, without limitation, attorneys' fees, which results from County's willful misconduct or gross negligence, or willful misconduct or gross negligence committed by any party acting under County's authority, of the rights granted by this Section 4.5.

**ARTICLE V**  
**WORK ON IMPROVEMENTS**

**5.1 Work on Improvements.**

5.1.1. **Rehabilitation for Permanent Supportive Housing.** 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 County in its governmental capacity, or otherwise), Tenant shall cause the Work to be performed on the Property to be in compliance with Exhibit B.

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

(a) Tenant has obtained a permit through the City, submitted Project design, conceptual development, plans and special provisions for the Work in accordance with the County's criteria, standard and practices;

(c) Tenant has given County written notice of the proposed commencement of Work on the Premises or the delivery of construction materials in order to allow County 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 County 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 provided County with assurances sufficient to complete the Project in accordance with Section 5.3 below.

5.1.3. **Utilities.** Tenant, at no cost to County, shall perform any necessary rehabilitation with respect to the water, gas, heat, light, power, air conditioning, telephone, broadband internet, 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 County 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 any Work, Tenant shall provide to County evidence reasonably satisfactory to County of funding available to Tenant that is sufficient to pay for Tenant's estimated total cost of the Work, 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 the Work (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 the Work, 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 rehabilitating the Improvements, provided that Tenant shall promptly notify County of any such change.

**5.1.5. Compliance with Laws and Permits.** Tenant shall cause all Work to be performed 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 Project. No permit, approval, or consent given hereunder by County, in its governmental capacity, shall affect or limit Tenant's obligations hereunder, nor shall any approvals or consents given by County, as a 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 monthly from the commencement of the Work, Tenant shall provide County with written Project 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 County.

**5.1.7. Certificate of Occupancy.** Tenant shall provide County 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 County 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 Work on the Premises and with respect to whom death or bodily injury claims could be asserted against County 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 County 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, and provided the lien is not the result of actions of, or work performed by, the County, Tenant shall either:

(1) Record a valid Release of Lien, or

(2) Procure and record a bond in accordance with Section 8424 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 County and hold County harmless from all claims, losses, demands, damages, cost, expenses, or liability costs for labor or materials in connection with rehabilitation, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Premises, and from the cost of defending against such claims, including reasonable attorneys' fees and costs, but excluding any liability to the extent resulting from the gross negligence or willful misconduct of County, and excluding any liens resulting from the actions of, or work performed by, the County.

(c) **Protection Against Liens.** County 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 the Work, Tenant shall obtain customary mechanics' lien waivers and releases. Upon completion of the Project, Tenant shall record a notice of completion in accordance

with applicable law. Promptly after completion of the Project, 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) **County'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, County 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 County, Tenant shall immediately upon receipt of written request therefor by County, reimburse County for all sums paid by County under this paragraph together with all County 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 County with respect to any Improvements shall not make County responsible for the Improvement with respect to which approval is given or the construction thereof. Tenant shall indemnify, defend and hold County 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, but excluding any liability to the extent resulting from the active negligence or willful misconduct of County, and excluding any liens resulting from the actions of, or work performed by, the County.

## 5.2 Construction Contracts.

5.2.1. **Construction Contract.** Tenant shall enter into a written contract with a general contractor ("**Contractor**") for the Work and completion of the Project. All Work shall be performed by contractors and subcontractors duly licensed as such under the laws of the State of California. Tenant shall give County a true copy of the contract or contracts with the Contractor.

5.2.2. **Assignment to County.** Tenant shall obtain the written agreement of the Contractor that, at County election and in the event that Tenant fails to perform its contract with the Contractor, such Contractor will recognize County as the assignee of the contract with the Contractor, and that County may, upon such election, assume such contract with credit for payments made prior thereto. Notwithstanding the foregoing, the County'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 Work, or any phase thereof, within the Premises by Tenant, Tenant shall furnish

to County evidence that assures County that sufficient monies will be available to complete the Work. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms, with such form to be elected by Tenant, subject to the approval of County, which approval shall not be unreasonably withheld, conditioned, or delayed:

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, County, and any Leasehold Mortgagees as obligees.

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

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

5.3.4. A completion guaranty, in favor of County from the Tenant, in a form reasonably acceptable to County;

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 County. All bonds and letters of credit shall be in a form acceptable to County, and County's Risk Manager in their reasonable discretion, and shall insure faithful and full observance and performance by Tenant of all terms, conditions, covenants, and agreements relating to Work within the Premises.

Tenant shall provide or cause its Contractor to provide payment and/or performance bonds in connection with the construction of the Work and shall name the County 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.** Fee title to all personal property and Improvements on the Premises, including Improvements transferred pursuant to the Bill of Sale and Quitclaim Deed, and as rehabilitated, and/or any new Improvements that are constructed or placed on the Premises by Tenant are and shall be vested in Tenant during the Term of this Lease, until the expiration or earlier termination thereof. 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 County'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 execute a quitclaim deed as necessary for any Improvements at the expiration of the term, in the same form and substance as the Quitclaim Deed. Tenant shall upon the expiration or earlier termination of the Term deliver possession of the Premises and the Improvements to County in good order, condition and repair 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, County, 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 County 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.

Notwithstanding anything to the contrary herein, at all times during the Term of this Lease, (i) the improvements shall be owned by Tenant, (ii) Tenant alone shall be entitled to all of the tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the low-income housing tax credit described in Section 42 of the Internal Revenue Code of 1986, as amended, and (iii) Tenant shall have the right to amortize capital costs and to claim any other federal or state tax benefit attributable to the Project.

**5.5 "AS-BUILT" Plans.** Within sixty (60) days following completion of any substantial improvement within the Premises, including the Work, to the extent such improvement, or the Work, consists of the construction of new Improvements or the expansion of the existing Improvements, Tenant shall furnish the County 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 County, to County's satisfaction, on County's computer aided mapping and design ("CAD") equipment. CAD files are also to be converted to Acrobat Reader (pdf format), which shall be included on the disk or CD ROM. In addition, Tenant shall furnish County copy of the final construction costs for the construction of such improvements.

## 5.6 Capital Improvement Fund.

5.6.1. As of the conversion of the construction financing for the Project to term phase financing, Tenant shall establish and maintain, for the remainder of the Term (as "Term" is defined in Section 2.2), a reserve fund (the "**Capital Improvement Fund**") 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 County 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 Project ("**Permitted Capital Expenditure(s)**").

5.6.3. The Capital Improvement Fund shall not be used to fund any portion of the cost of the Work. 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 County's written approval as provided for in Section 5.6.9, below. Tenant shall furnish to the County 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 County, 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 (or replacement reserves) required by Tenant's Leasehold Mortgagees or the Limited Partner, as long as such capital improvement reserves or replacement 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 the early termination of this Lease, the County 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 County's rights under this Section 5.6.7 are hereby made subject and subordinate to the lien of each Leasehold Mortgage.

5.6.8. Commencing on the fifteenth (15th) day of the month during which the fifth (5th) anniversary of the Commencement Date occurs, and continuing on or before the fifteenth (15th) day of each month thereafter until five (5) years prior to the expiration of the Term, Tenant shall make an annual contribution to the Capital Improvement Fund in an amount equal to three-hundred dollars (\$300) per unit per year. . 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.

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 County's prior approval of any Capital Improvement Fund disbursements, Tenant shall submit to the County on an annual calendar year basis a capital expenditure plan for the upcoming year which details the amount and purpose of anticipated Capital Improvement Fund expenditures ("**Capital Improvement Plan**"). County 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 County (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 County for the County'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 County and provide applicable documentation to the County thereafter for approval. If the County disapproves the emergency expenditure which was not previously approved by County, Tenant shall refund the amount taken from the Capital Improvement Fund within thirty (30) days of written notice from the County 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 County of any damage relating to the Premises.

**6.2 Interior Improvements, Additions and Reconstruction of Improvements.** Following the completion of the Project, Tenant shall have the right from time to time to make any interior improvements to the Improvements that are consistent with the County's approved use of the Premises as reflected in this Lease, without County's prior written consent, but with prior written notice to the County (except in the event of an emergency, in which case no prior written notice shall be required but Tenant shall notify County of any emergency work done as soon as practicable). Tenant may restore and reconstruct the Improvements into the condition such Improvements were in immediately prior to such damage or destruction, 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 County 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, including, without limitation, with insurance proceeds approved for such use in accordance with Article VII, if any, 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 the Project, and except as specified in Sections 6.1 and 6.2, any construction, alterations, additions, demolition, or improvements of any kind shall require the prior written consent of the Chief Real Estate Officer, which consent shall not be unreasonably conditioned, delayed or withheld and if not contemplated pursuant to this Lease may require the approval of the Board of Supervisors. Tenant shall perform all work authorized by this Section at its sole cost and expense, including, without limitation, with insurance proceeds approved for such use in accordance with Article VII, if any, 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 County, 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 County Obligations.** Tenant specifically acknowledges and agrees that County, and County 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 County Reservations.** Without limiting County's rights with respect to the Premises, County reserves for themselves, its successors and assigns those rights necessary to assure proper maintenance and operation of the Premises and to permit any steps to be taken which the County deems necessary or desirable to maintain, repair, improve, modify or reconstruct the Premises. The rights reserved to County in this section or any other section of this Lease shall be exercised by the County at its sole discretion, unless otherwise provided herein.

## **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 County 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 Limited Partner, if applicable, by notice to the County 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, with the prior consent of all Leasehold Mortgagees, terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice. If Leasehold Mortgagees refuse to consent to the termination of the Lease by Tenant, the Lease and all terms and condition shall remain in full force and effect and may be enforced without reservation by the County. Subject to the rights of Leasehold Mortgagees in

Section 17.9, if Tenant terminates this Lease pursuant to this Section 7.1, Tenant shall surrender possession of the Premises to the County immediately and assign to the County (or, if same has already been received by Tenant, pay to the County) 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, (iii) any amounts applied by Leasehold Mortgagees in accordance with the terms of their respective Leasehold Mortgages, and (iv) the proceeds of any rental loss or business interruption insurance applicable prior to the date of surrender of the Premises to the County.

**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 Work.

**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; except as otherwise provided herein.

**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, subject to the rights of the Leasehold Mortgagees and Limited Partner, if applicable, to fully restore the same, and, subject to the rights of the Leasehold Mortgagees and Limited Partner, 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. County 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 its rights shall be exclusively governed by the provisions of this Article VII.

**7.6 Damage Near End of Term.** If, during the last five (5) years of the 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 County of its election to repair or restore the Improvements as provided in this Article VII; or

7.6.2. subject to the rights of (and the consent of, if required) Leasehold Mortgagees and such provisions of this Lease that survive termination, to terminate this Lease by notice to the County, 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 County immediately and assign to the County (or, if same has already been received by Tenant, pay to the County) 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 County.

## **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 entire term of this Lease.

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 cases 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 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 at any time during the term of the Lease, County and Tenant agree that this shall constitute a material breach of the Lease. Whether or not a notice of default has or has not been sent to Tenant, said material breach shall permit Chief Real Estate Officer 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 hold County harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from Chief Real Estate Officer's action.

8.1.4. All contractors and subcontractors performing work on behalf of Tenant pursuant to this Lease shall obtain insurance subject to the same terms and conditions as set forth herein for Tenant and limits of insurance as described in Section 8.1.6 (e), Section 8.1.6 (f) and Section 8.1.6 (g). Tenant shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by County 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 entirety 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) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Tenant's current audited financial report. If Tenant's SIR is approved, Tenant, in addition to, and without limitation of, any other indemnity provision(s) in this Lease, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Tenant's, its agents, employee's or subcontractor's performance of this Lease, Tenant shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Tenant's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and



- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Tenant's SIR provision shall be interpreted as though the Tenant was an insurer and the County was the insured.

If the Tenant fails to maintain insurance acceptable to the County for the full term of this Lease, the County may terminate this Lease.

8.1.6. All policies of insurance required under this Article VIII 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 must be licensed to do business in the state of California.

(a) If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the Chief Real Estate Officer retains the right to approve or reject a carrier after a review of the carrier's performance and financial ratings.

(b) If the insurance carrier is not an admitted carrier in the state of California and does not have an A.M. Best rating of A-/VIII, the Chief Real Estate Officer retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

(c.1) The policy or policies of insurance maintained by the **TENANT DURING CONSTRUCTION** shall provide the minimum limits and coverage as set forth below:

Coverages	Minimum Limits
Builder's Risk (during the Construction Period) naming retained General Contractor	Project value and no coinsurance provision.
Commercial General Liability	\$5,000,000 per occurrence \$5,000,000 aggregate
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

(c.2) The policy or policies of insurance maintained by the **TENANT'S GENERAL CONTRACTOR DURING CONSTRUCTION** shall provide the minimum limits and coverage as set forth below:

Coverages	Minimum Limits
Commercial General Liability	\$5,000,000 per occurrence \$10,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$2,000,000 limit per occurrence
Workers' Compensation	Statutory Minimum
Employers' Liability Insurance	\$1,000,000 per occurrence
Contractor's Pollution Liability including NODS	\$5,000,000 per claims made or per occurrence

(d) The policy or policies of insurance maintained by the **TENANT'S SUBCONTRACTORS DURING CONSTRUCTION** shall provide the minimum limits and coverage as set forth below:

Coverages	Minimum Limits
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory Minimum
Employer's Liability Insurance (not required for self-employed subcontractors)	\$1,000,000 per occurrence

Contractor's Pollution Liability including NODS (Required only of those subcontractors involved in pollution remediation)	\$1,000,000 per claims made or per occurrence
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(e) The policy or policies of insurance maintained by the **ARCHITECT-ENGINEER** shall provide the minimum limits and coverage as set forth below:

Coverages	Minimum Limits
Professional Liability (architect, structural, electrical engineer, mechanical/plumbing engineering, environmental engineer, civil engineer, landscape architect, and geotechnical engineer)	\$2,000,000 per occurrence \$2,000,000 aggregate
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
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

(f) The policy or policies of insurance maintained by the **TENANT AFTER CONSTRUCTION** shall provide the minimum limits and coverage as set forth below:

Coverages	Minimum Limits
Commercial General Liability	\$5,000,000 per occurrence
Including Sexual Misconduct (defined as abuse, molestation and assault and battery)	\$5,000,000 aggregate
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 on an "All Risk" or "Special Causes of Loss" basis covering all buildings, contents and any tenant improvements including Business Interruption/Loss of Rents with a 12 month limit	100% of the Replacement Cost Value and no coinsurance provision

Tenant shall provide a builder's risk policy, naming the Contractor, providing coverage for the full project value and no coinsurance provision. The policy shall provide coverage for all perils excluding earthquake, and flood. Tenant is responsible for any deductible amount. The County of Orange shall be named as a Loss Payee as its financial interests may appear. This shall be evidenced by a Loss Payee endorsement which shall accompany the Certificate of Insurance.

The Builder's Risk policy shall not be required to cover any tools, equipment, or supplies, unless such tools, equipment, or supplies are part of the Work being constructed. The Contractor shall be responsible for securing and maintaining appropriate insurance on any tools, equipment, or supplies that are not part of the work being constructed.

The County and the Contractor waive all rights against each other and the subcontractors, sub-subcontractors, officers, and employees of each other, and the Contractor waives all rights against County's separate contractors, if any, and its subcontractors, sub-subcontractors, officers and employees for damages caused by fire or other perils to the extent paid by the Builder's Risk insurance, except such rights as they may have to the proceeds of such insurance. The Contractor shall require of its subcontractors and sub-subcontractors by appropriate agreements, similar waivers, each in favor of all other parties enumerated in the preceding sentence.

(g) The policy or policies of insurance maintained by the **TENANT'S CONTRACTOR AFTER CONSTRUCTION** shall provide the minimum limits and coverage as set forth below when performing maintenance and minor work after the building is in operation:

Coverages	Minimum Limits
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate

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

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:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the County of Orange, and its respective elected and appointed officials, officers, employees, agents as Additional Insureds. Blanket coverage may also be provided which will state, as required by Lease.
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad, evidencing that the TENANT's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.
- 3) A Products and Completed Operations endorsement using ISO Form CG2037 (ed.04/13) or a form at least as broad, or an acceptable alternative is the ISO form CG2010 (ed. 11/85). (Pertains to contractors and subcontractors performing major construction). Contractors shall maintain Products and Completed Operations coverage for ten (10) years following completion of construction.

The Contractors Pollution Liability and Pollution Liability policies shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement naming the County of Orange, and its respective elected and appointed officials, officers, employees, and agents as Additional Insureds.

- 2) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by County shall be excess and non-contributing.

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

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

(c) The Commercial Property Building policy shall include the County of Orange as a Named Insured. A Certificate of Insurance shall be submitted as evidence of this requirement. The Builders' Risk policy shall be endorsed to include the County of Orange as a Loss Payee. A Loss Payee endorsement shall be submitted with the Certificate of Insurance as evidence of this requirement.

(d) Tenant shall notify County 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 the County. Failure to provide written notice of cancellation may constitute a material breach of the Lease, after which the County may suspend or terminate this Lease.

(e) 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).

(f) If Contractor's Pollution Liability and Pollution Liability are claims-made policies, Contractor shall agree to maintain coverage for five (5) years following completion of the construction. If Contractor's Professional Liability is a claims-made policy, Contractor shall agree to maintain coverage for ten (10) years following the completion of construction. Products and Completed Operations coverage shall be maintained for ten (10) years following the completion of construction.

(g) Insurance certificates should be forwarded to the County addresses provided in Section 18.19 below. Tenant has ten (10) business days to provide adequate evidence of insurance or it shall constitute an Event of Default.

(h) County expressly retains the right to require Tenant to increase or decrease insurance of any of the above insurance types throughout the term of this Lease which shall be mutually agreed upon by County and Tenant.

(i) Chief Real Estate Officer shall notify Tenant in writing of changes in the insurance requirements consistent with subsection (h) 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.

(j) 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 agrees to assume all risks, financial or otherwise, associated with the Premises. Tenant hereby releases and waives all claims and recourse against 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, or caused by any action undertaken in the operation, maintenance, repair, reconstruction, replacement, enlargement or improvement of the Premises except to the extent claims arise from the gross negligence or willful misconduct of County, its officers, agents, employees and contractors. Tenant hereby agrees to indemnify, defend (with counsel approved in writing by County in County's reasonable discretion), and hold harmless, County, its 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 to the extent liability arises out of the gross negligence or willful misconduct of County, or any of its elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom, and except for claims arising after the later to occur of the expiration or earlier termination of the Term, or the date Tenant vacates the Premises. If County is named as co-defendant in a lawsuit in connection with this Lease, Tenant shall notify County of such fact and shall represent the County in such legal action unless County undertakes to represent themselves as co-defendant in such legal action, in which event, Tenant shall be responsible to pay County's litigation costs, expenses, and reasonable attorneys' fees. If judgment is entered against County and Tenant by a court of competent jurisdiction because of the concurrent active negligence of County and Tenant, County and Tenant agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. A judgment or other judicial determination regarding County'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 or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

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.

The foregoing indemnity and defense obligations of this Lease shall survive its expiration or termination. This Section 8.2 notwithstanding, indemnification with respect to Hazardous Materials shall be governed by Section 4.4.4.

**8.3 Damage to Tenant's Premises.** County 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; provided, however, County shall be liable for injury or damage under this Section 8.3 resulting from County and/or its elected and appointed officials, officers, agents, employees or contractor's gross negligence or willful misconduct.

## **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 Party hereto. The notice is considered to have been received when a Party 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 Party receiving a notice of one or more of the kinds specified below shall promptly notify the other Party (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.** County 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 County and Tenant. County 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 and the Limited Partner, to the extent required, by notice to County 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 County, 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 in its sole discretion, with the consent of each Leasehold Mortgagee and the Limited Partner, to the extent required, elect to relinquish possession of the Premises to County 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, Tenant 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) County shall be entitled to receive any portion of such award expressly allocated to County's Fee Interest the Property (exclusive of the Improvements, as encumbered by this Lease).

**9.5 Waiver of Termination Rights.** Both 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 IX.

## **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 County, which consent may not be unreasonably withheld, conditioned or delayed. County's consent may be subject to approval by its respective governing bodies (e.g. Board of Supervisors). Tenant's failure to obtain the County's written consent to a Transfer shall render such Transfer void. Occupancy of the Premises by a prospective transferee, sublessee, or assignee prior to County'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 require the written consent of the County, as set forth in Section 10.3, above, which consent may not be unreasonably withheld, conditioned or delayed.

10.1.2. Should County 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 County'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 County's consent to space leases (subleases of less than Tenant's entire Lease interest), including leases of

individual residential units in the Improvements, which are consistent with the approved uses under this Lease.

**10.2 Leasehold Mortgage.** Under no circumstances may Tenant mortgage, encumber or hypothecate County's Fee Interest, other than as required by TCAC pursuant to its lease rider, if any, in connection with the award of low income housing tax credits to Tenant, the form of which shall have been approved by County.

**10.3 Excluded Transfers.** County'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 County of such Excluded Transfer at least twenty (20) days prior to the consummation of such Excluded Transfer, and shall provide County 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 County with a written assumption of Tenant's obligations and liabilities under this Lease executed by such transferee in a form approved by the County, 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 County's consent is required hereunder, Tenant shall provide County 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. Thereafter, Tenant shall furnish such supplemental information as County may reasonably request concerning the proposed transferee. County shall, no later than ninety (90) days after County's receipt of the information specified above, deliver written notice to Tenant which shall (i) indicate whether County give or withhold consent to the proposed Transfer, and (ii) if County withhold consent to the proposed Transfer, setting forth a detailed explanation of County's grounds for doing so. If County consents to a proposed Transfer, then Tenant may thereafter effectuate such Transfer to the proposed transferee based upon the specific terms of the County's approval and after execution of a consent to assignment by County in a form approved by the County, 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. However, under no circumstances shall any such assignment result in a Leasehold Mortgagee assuming responsibility or liability for any Excluded Defaults or as otherwise expressly provided in 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. 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 County evidence of sufficient and adequate assets, including any required insurance policies, subject to approval by County, which approval shall not be unreasonably withheld, that evidence said Permitted Transferee's or other transferees' financial and otherwise competence to assume transferor's obligations and liability (an "**Approved Release**"). Except as otherwise provided in Section 17.6.5 and except for an Approved Release, 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. Except as otherwise provided in Section 17.6.5 and except for an Approved Release, the County 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, County consent shall not be required for any of the following: (i) the exercise by the Limited Partner of its rights pursuant to Tenant's 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 Tenant's 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 County Consent.**

10.6.1. County may withhold consent to a Transfer (excluding Excluded Transfers which shall not require County consent) 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 Work has not been completed, subsequent to the Interim Use.

(e) Any 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 County's approval of the Transfer have not been disclosed in writing to the County.

**10.7 Transfer of Mortgages of County's Interest.** Notwithstanding anything to the contrary set forth in this Ground Lease, unless required by statute, court order or operation of law, County shall not transfer, assign, pledge or hypothecate its fee interest in the Premises (other than to entities under common control with County or other governmental entities under applicable law) without the prior written consent of Tenant, all Leasehold Mortgagees and the Limited Partner (provided, the Limited Partner's consent shall be required only during the tax credit compliance period). Any and all mortgages or liens placed or suffered by the County encumbering the County's fee interest in the Premises shall be expressly subject and subordinate to this Lease (and all amendments, modifications, extensions and renewals hereof), to all obligations of County 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 County's fee interest as a consequence of any conveyance, foreclosure or other transfer shall succeed to all of the obligations of the County hereunder. During the term of any mortgage held by Leasehold Mortgagee applicable herein, County shall, at the request of any Leasehold Mortgagee, require the holder of each such mortgage, deed of trust and other security instrument to execute and deliver to the requesting Leasehold Mortgagee a written and recordable subordination agreement in form and substance as required by such Leasehold Mortgagee in its sole and absolute discretion.

## **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 thirty (30) days after the date such Rent or other sum is due.

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 County to Tenant or past any such longer period as reasonably agreed upon by the Tenant, County in writing as may be necessary for completion of its cure; provided, however, that any such notice by County 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 for a period of thirty (30) days or more.

11.1.4. **Assignments.**

(a) The making by Tenant of any assignment of its leasehold estate under this Lease without County'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 ninety (90) 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 sixty (60) 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.

11.1.5. **Failure to Reimburse County.** Tenant's failure to reimburse the County pursuant to Section 3.6.4.

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

11.1.7. **Failure to Provide Evidence of Insurance.** Tenant's failure to provide County 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. **County's Consent and Approval of Transfer.** Occupancy of the Premises by a prospective transferee, sublessee, or assignee which requires County's consent or approval, before County'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 11.10.

11.1.10 Tenant's failure to convert the use of the Property to Permanent Supportive Housing as required pursuant to the Loan Agreement and the Regulatory Agreement and section 1.1.13 of this Lease by the Commencement Date.

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

11.2.1. **Termination of Lease.** Subject to Article 17, as applicable, County 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 County shall elect to so terminate this Lease then County 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 County 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; plus



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

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

The term "**Rent**" as used herein shall mean as defined in Section 1.1.41. 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 Interest Rate. 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.** County may continue this Lease in effect without terminating Tenant's right to possession and to enforce all of County'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 County 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.** County 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 County'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, County 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 County's demand. Tenant's failure to reimburse the County within 30 days of County'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 County liable for any loss or damage resulting from the same.

**11.4 County's Default.** County shall not be considered to be in default under this Lease unless Tenant has given County written notice specifying the default, and either (i) as to monetary defaults, County have failed to cure the same within ten (10) business days after written notice from Tenant, or (ii) as to nonmonetary defaults, County have failed to cure the same within thirty (30) days after written notice from Tenant, or if the nature of County's nonmonetary default is such that more than thirty (30) days are reasonably required for its cure, then such thirty (30) day period shall be extended automatically so long as County 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 County 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 County'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 County contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and County 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 County.** No delay or omission of County 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 County 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 County's knowledge of such preceding breach or default at the time of acceptance of such rent or sum, or (b) waiver of County's right to exercise any remedy available to County by virtue of such breach or default. No act or thing done by County 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 County.

**11.7 Interest.** Any installment or Rent due under this Lease or any other sums not paid to County when due (other than interest) shall bear interest at the Interest Rate 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 Conditions Deemed Reasonable.** Tenant acknowledges that each of the conditions to a Transfer, and the rights of County 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.

**11.9 Waiver by Tenant.** Tenant's waiver of any breach by County 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.

**11.10 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 within the time period required under this Lease, then in addition to any other remedies provided herein, County 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 County on Tenant's behalf shall not give rise to any responsibility of County 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 County in connection therewith, together with interest at the Interest Rate from the date incurred or paid by County, shall be deemed to be Additional Rent hereunder and shall be paid by Tenant within thirty (30) days of receipt of a demand and invoice from County, and Tenant's failure to pay the County, 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 County, Tenant shall become a Tenant at sufferance only, at a monthly rental rate of (a) Fifty Thousand Dollars (\$50,000) to the extent the Premises are not subject to any tenant income or rent restrictions and all units may be rented at market-rate rents, or (b) Twenty Five Thousand Dollars (\$25,000) to the extent the Premises are subject to any tenant income or rent restrictions ("**Hold Over Rent**"), increased annually commencing with commencement of the hold over period by an amount equal to the greater of (i) three percent (3%) for each year of the Term, or (ii) a percentage equal to the percentage increase from the Base Period of the Consumer Price Index ("CPI") for Los Angeles- Riverside-Orange County [All Urban Consumers-All Items, not seasonally adjusted (Base Period 1982-84=100)]. Said CPI for the month of December for the second year of the Term shall be considered the "Base Period." Said adjustment shall be made by comparing the CPI for the Base Period to the CPI for the month of December immediately preceding each such adjustment. If at any time there shall not exist the CPI, County shall substitute any official index published by the Bureau of Labor Statistics, or successor or similar governmental agency, as may then be in existence, and shall be most nearly equivalent thereto. If Tenant fails to surrender the Premises and the Improvements as stated herein, and County 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 County in connection with such eviction action; Tenant shall also indemnify and hold County harmless from all loss or liability or reasonable attorney's fees and costs, including any claim made by any succeeding tenant, incurred by County 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 County or Tenant (the “**requesting party**”), the other Party (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 County 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 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 Parties.

**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 County, 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 (“**CPA**”) who is a member of the American Institute of Certified Public Accountants (“**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 County with copies of any CPA's management letters prepared in conjunction with their audits of Tenant's operations from the Premises. Copies of management letters shall be provided directly to County 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 County with such budget.

15.1.1. Tenant acknowledges its understanding that any and all of the Financial Statement submitted to the County 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 County unless an alternative location is approved in writing by the County. County 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 County 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 affordable residential rental development, including permanent supportive housing, in accordance with Section 4.1.1. 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 or as permitted by applicable Law. Tenant and all of Tenant's agents, employees and contractors shall conduct operations under this Lease so as to ensure 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 or as permitted by applicable law.

16.2.5. The County may enter the Premises in accordance with Section 4.5 and/or review Tenant records at all reasonable times 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 County 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 County proposed policies and procedures pertinent to the operation of the multifamily affordable 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 fee interest in 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 (or accepts a new lease under Section 17.7 below).

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 County; 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 County.

**17.2 Tenant’s Right to Encumber Leasehold Estate; No Right to Encumber County’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 (after providing prior written notice to County, no later than 30 days prior to the encumbrance, along with 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 (and to amend, modify, and supplement any such encumbrance, including encumbrances refinancing the same); provided, however:

17.2.1. Such Leasehold Mortgage(s) (as of the date recorded) shall not exceed (a) if recorded before completion of the Work, One Hundred Percent (100%) of the costs of the acquisition of the Tenant's interest in the Property (including closing and financing costs) and the Work, or (b) if recorded after completion of the Work, 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, County'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 County 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 County's Fee Interest to any Leasehold Mortgage, and;

17.2.5. 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 Mortgagee, as such, be 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 (or by a new lease under Section 17.7), any required consent of the County under this Section 17.2 shall not be unreasonably withheld.

**17.3 Notification to County of Leasehold Mortgage.** Tenant or any Leasehold Mortgagee shall, prior to making any Leasehold Mortgage, provide County 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 County 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 County of any change in the identity or address of such Leasehold Mortgagee. County 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 and Limited Partner With Respect to Tenant Defaults.** County, 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 County may predicate or claim a default, will promptly deliver a copy of such notice to each Leasehold Mortgagee and to the Limited Partner. Notwithstanding anything to the contrary set forth in this Lease, each notice or demand required to be given by County to a Leasehold Mortgagee and the 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 and the Limited Partner at the address(es) provided by such Leasehold Mortgagee and the Limited Partner, as applicable, to County from time to time in writing and shall be effective upon receipt (or refusal to accept receipt). No notice or demand given by County 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 to the Limited Partner in accordance with this Lease. From and after the date such notice has been given to any Leasehold Mortgagee and to the Limited Partner, such Leasehold Mortgagee and the 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 County 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). County shall accept any and all performance by or on behalf of any Leasehold Mortgagee(s) and/or by the Limited Partner, including by any receiver obtained by any Leasehold Mortgagee(s), as if the same had been done by Tenant. Tenant authorizes each Leasehold Mortgagee and the Limited Partner to take any such action at such Leasehold Mortgagee's or Limited Partner's (as applicable) 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 County'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 or the Limited Partner as allowed under Section 17.4, above), and such failure entitles County to terminate this Lease, County shall have no right to terminate this Lease unless County shall notify in writing each and every Leasehold Mortgagee and the Limited Partner who has complied with Section 17.3 of County's intent to so terminate at least ninety (90) days in advance of the proposed effective date of such termination. If any Leasehold Mortgagee or the Limited Partner, within such ninety (90) day period, (i) notifies County of such Leasehold Mortgagee's or 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 County, at its sole discretion, may permit such additional time as necessary for any Leasehold Mortgagee and/or 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 ninety (90) days as consistent with the conditions of this Section 17.5, County are entitled to immediately terminate this Lease.

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

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

(a) pay or cause to be paid all Rent under this Lease as the same becomes due (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 that are capable of being performed by the Leasehold Mortgagee without having possession of the Premises, 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

(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. The twelve (12) month period described in Section 17.6.1, above shall automatically be extended as long as the Leasehold Mortgagee is diligently and in good faith prosecuting the judicial or nonjudicial foreclosure to completion, in the County's reasonable discretion based upon evidence provided to County of such good faith prosecution by the Leasehold Mortgagee. 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 between the County and the Leasehold Mortgagee, County shall enter into such new lease with the Leasehold Mortgagee pursuant to Section 17.7, below, provided County are 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 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 County'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 affordable housing 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 County 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 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), County shall give prompt written notice of such termination 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 the Leasehold Mortgagee holding the Leasehold

Mortgage that has the most senior lien priority, in accordance with Section 17.8 below, or its designee, upon notice to County by such Leasehold Mortgagee. 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 County to enter into a New Lease, Leasehold Mortgagee shall pay to County 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 County 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 County'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 County 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 County 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, County 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 County.

17.7.3. In the event that County 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 County may control the same, then the Leasehold Mortgagee under the New Lease shall be entitled to such net income received by County except to the extent that it was applied to cure any default of Tenant (excluding specifically the application towards obligations under the County Loan Documents).

17.7.4. All rights and claims of Tenant under this Lease shall be subject and subordinate to all right and 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 County 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, County 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 County by multiple Leasehold Mortgagees, County may (subject to any applicable court orders to the contrary) rely on the senior lien priority created when taking into account all subordination and intercreditor agreements then recorded against the Property as determined by a national title company, and, if and to the extent a national title company determines that there are no such subordination and intercreditor agreements so recorded, at the direction of the Leasehold Mortgagee whose Leasehold Mortgage is recorded first in time in the Official Records of the County, as determined by any national title company.

**17.9 Condemnation and Insurance Proceeds.** Notwithstanding anything to the contrary contained herein, all condemnation proceeds (other than proceeds payable on account of the value of the County's Fee Interest as encumbered by this Lease) or insurance proceeds shall be subject to and paid in accordance with the 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 such senior Leasehold Mortgage. The Parties shall give all Leasehold Mortgagee(s) notice of any arbitration or condemnation proceedings, or of any pending adjustment of insurance claims, and any Leasehold Mortgagee shall have the right to intervene therein and shall be made a party to such proceedings. The Parties hereby consent to such intervention. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to the proceedings, that Leasehold Mortgagee shall receive notice and a copy of any award or decision made in connection therewith. This provision, and Leasehold Mortgagee's right to condemnation proceeds provided herein shall survive any termination of this Lease upon a total taking under Section 9.3.

**17.10 Mortgagee 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 to the extent not in conflict with the terms of such Leasehold Mortgage.

**17.11 No Waiver.** No payment made to County 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 County pursuant to County'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 County for its reasonable attorneys' fees and costs incurred in connection with County'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 **No Termination, Cancellation, Surrender or Modification.** Without the prior written consent of each Leasehold Mortgagee, (a) this Lease may not be terminated or cancelled by mutual agreement of County and Tenant, (b) County 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 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.

17.14 **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 or any obligations under the County Loan Documents (collectively, "**Excluded Defaults**"), 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) or any obligations under the County Loan Documents. Notwithstanding anything to the contrary set forth in this Lease, in no event shall "Annual Project Revenue" for purposes of calculating Base Rent under this Lease, include (i) the proceeds of a foreclosure sale by any Leasehold Mortgagee (or its nominee), or (ii) the proceeds of the first transfer by any such Leasehold Mortgagee (or its nominee) following any foreclosure or deed in lieu of foreclosure of a Leasehold Mortgage.

**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, in violation of applicable Laws, 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 ("**District**") and cities within Orange County, as co-permittees (hereinafter collectively referred to as "**NPDES Parties**") which regulate the discharge of urban runoff from areas within the County of Orange, including the Premises leased under this Lease. The NPDES 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 NPDES 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 and/or County'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 County 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 County for review and approval prior to implementation.

18.6 County may enter the Premises and/or review Tenant's records at any reasonable time during normal business hours to ensure that activities conducted on the Premises comply with the requirements of this Section. Tenant may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this 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 County, which approval may be withheld in the sole and absolute discretion of the County, 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 County 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 termination of this Lease for any reason whatsoever in accordance with the terms of the Lease, Tenant shall execute, acknowledge, and deliver to County, within five (5) business days, a good and sufficient deed, in a form as approved by the County, whereby all right, title, and interest of Tenant in the Premises is quitclaimed back to County ("**Tenant/County Quitclaim Deed**"). The Tenant/County Quitclaim Deed shall then be recorded by County to remove any cloud on title created by this Lease. In the event that the



Tenant fails to provide such Tenant/County Quitclaim Deed within five (5) additional business days after written demand by the County, the Parties agree that the County will be damaged and entitled to compensation for those damages. Such actual damages will, however, be extremely difficult to ascertain. Therefore, if the Tenant does not provide the required Tenant/County Quitclaim Deed after such notice and cure period, in addition to any other remedy provided by law or equity, the Tenant shall pay the County \$2,000 per day for every day that passes until a Tenant/County Quitclaim Deed is delivered, which amount shall be deemed to constitute a reasonable estimate of County's damages and not a penalty. Such amount shall become due and payable by Tenant to County for each calendar day that passes beyond the cure period. Notwithstanding the foregoing, if the Tenant has disputed the termination of the Lease by County, upon a final determination by a court of competent jurisdiction that the Lease has not been terminated, Tenant shall not be subject to payment of the foregoing damages.

**19.5 Public Records.** Tenant acknowledges that any written information submitted to and/or obtained by County 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 County determines that the records must be turned over, the County 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 County from turning over such financial statements and records.

**19.6 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.

**19.7 Payment Card Compliance.** Should Tenant conduct credit/debit card transactions in conjunction with Tenant's business with the County, on behalf of the County, 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 County 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 County, Tenant shall provide to County written certification of Tenant's PCI/DSS and/or PA/DSS compliance.

### 19.8 Right to Work and Minimum Wage Laws.

19.8.1. 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.

19.8.2. 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.

19.8.3. Tenant shall comply and verify that its general contractor complies 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.

**19.9 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.

**19.10 Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of California and the City. Tenants understands and agrees that funding for this project has been provided pursuant to the State of California under the Homekey Program and that Tenant must comply with the California Department of Housing and Community Development's Notice of Funding Availability for this program and Assembly Bill No. 83 (2019-2020 Reg. Sess.) which created the statutory basis for the Homekey Program.

**19.11 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.

19.12 **Headings and Titles.** The captions of the Articles or Sections of this Lease are only to assist the Parties in reading this Lease and shall have no effect upon the construction or interpretation of any part hereof.

19.13 **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 County, the term “**County**” shall include County’s agents, employees, contractors, invitees, successors or others using the Premises with County’s expressed or implied permission.

19.14 **Ambiguities.** Each 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 shall not be applicable in the construction and interpretation of this Lease or any exhibits hereto.

19.15 **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 hereto and their respective heirs, personal representatives, successors and assigns. All rights herein granted to any Leasehold Mortgagee of Tenant shall also apply to any Leasehold Mortgagee of any successor or assign of Tenant.

19.16 **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.

19.17 **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.

19.18 **Integration.** This Lease, along with any exhibits, attachments or other documents affixed hereto or referred to herein and related permits, constitute the entire agreement between County, 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 County and Tenant. County 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.

19.19 **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 County: County of Orange  
c/o CEO Real Estate  
333 W. Santa Ana Blvd, 3rd Floor  
Santa, Ana, CA 92702  
Attn: Chief Real Estate Officer

With a copy to: Office of County Counsel  
Hall of Administration  
333 W. Santa Ana Blvd., 4th Floor  
Santa Ana, California 92701  
Attn: Michael Haubert, Senior Deputy  
Fax: (714) 834-2359

If to Tenant: JHC-KATELLA LLC  
c/o Jamboree Housing Corporation  
17701 Cowan Avenue, Suite 200  
Irvine, CA 92614  
Attention: Michael Massie

With a copy to: Rutan & Tucker, LLP  
18575 Jamboree Road, 9<sup>th</sup> Floor  
Costa Mesa, CA 92626  
Attention: Patrick D. McCalla

With a copy to: BF Stanton Apartments LLLP,  
c/o Boston Financial Investment Management, LP  
101 Arch Street, 13<sup>th</sup> Floor  
Boston, MA 02110  
Attention: Asset Management – Stanton Apartment homes

With a copy to: Holland & Knight LLP  
10 St. James Avenue  
Boston, MA 02116  
Attention: Kristen M. Cassetta, Esq.

**19.20 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 all Parties.

**19.21 Limited Partner Cure Rights.** In the event the Tenant is a partnership, the County 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.

**19.22 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 County's option, be deemed to have been transferred to County. County 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 County's option, County may provide Tenant with an invoice for such costs, which invoice Tenant agrees to pay within fifteen (15) days of receipt.

**19.23 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 County 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 County 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 County 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 Party hereto shall be a third-party beneficiary of this Lease

**19.24 No Partnership.** This Lease shall not be construed to constitute any form of partnership or joint venture between County and Tenant. County and Tenant mutually acknowledge that no business or financial relationship exists between them other than as County and Tenant, and that County is not responsible in any way for the debts of Tenant or any other Party.

19.25 **Authorization.** County 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, the Tenant shall deliver to the County 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.

19.26 **Recording.** This Lease itself shall not be recorded, but an amended and restated memorandum of lease substantially in the form attached hereto as Exhibit D shall be executed concurrently with this Lease and thereafter recorded in the Official Records of the County Recorder on the Effective Date of this Lease (the “**Memorandum**”). 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.

19.27 **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: Project Description and Work to be Completed

Exhibit C: Best Management Practices Fact Sheets

Exhibit D: Form of Memorandum of Lease

19.28 **Consent/Duty to Act Reasonably.** Except as otherwise expressly provided herein, whenever this Lease grants County and/or Tenant the right to take any action, grant any approval or consent, or exercise any discretion, County and/or Tenant shall act reasonably and in good faith and take no action which might result in the frustration of the other Party’s reasonable expectations concerning the benefits to be enjoyed under this Lease.

19.29 **Counterparts.** For the convenience of the Parties 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.

19.30. **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.

19.31 **Cooperation of County.** County hereby agrees to work cooperatively and expeditiously to provide written consent (or written refusal to provide consent) to Tenant, the Leasehold Mortgagees and Limited Partner hereunder.

19.32 **Amendment and Restatement of Original Lease.** This Lease amends and restates, in its entirety, the Original Lease.

[Signatures On Following Pages]

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

	<p><b><u>TENANT</u></b></p> <p>KATELLA HOUSING PARTNERS LP, a California limited partnership</p> <p>By: JHC-Katella MGP, LLC, a California limited liability company, its Managing General Partner</p> <p>By: Jamboree Housing Corporation, a California non-profit public benefit corporation, its Managing Member</p> <p>By: _____ Name: Michael Massie Title: Chief Development Officer</p>
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<p>APPROVED AS TO FORM: COUNTY COUNSEL</p> <p>By: _____ Deputy</p> <p>Date <u>April 5, 2022</u></p>	<p><b><u>COUNTY</u></b></p> <p>COUNTY OF ORANGE, a political subdivision of the State of California</p> <p>_____ Thomas A. Miller, Chief Real Estate Officer Orange County, California</p>
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**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

The land referred to is situated in the County of Orange, City of Stanton, State of California, and is described as follows:

The land referred to herein is situated in the State of California, County of Orange, City of Stanton and described as follows:

That portion of Section 23, Township 4 South, Range 11 West, in the City of Station, County of Orange, State of California, in the Ranchos Los Coyotes and Los Alamitos, as shown in Book 51, Page 12 of Miscellaneous Maps, in the Office of Orange County, described as follows:

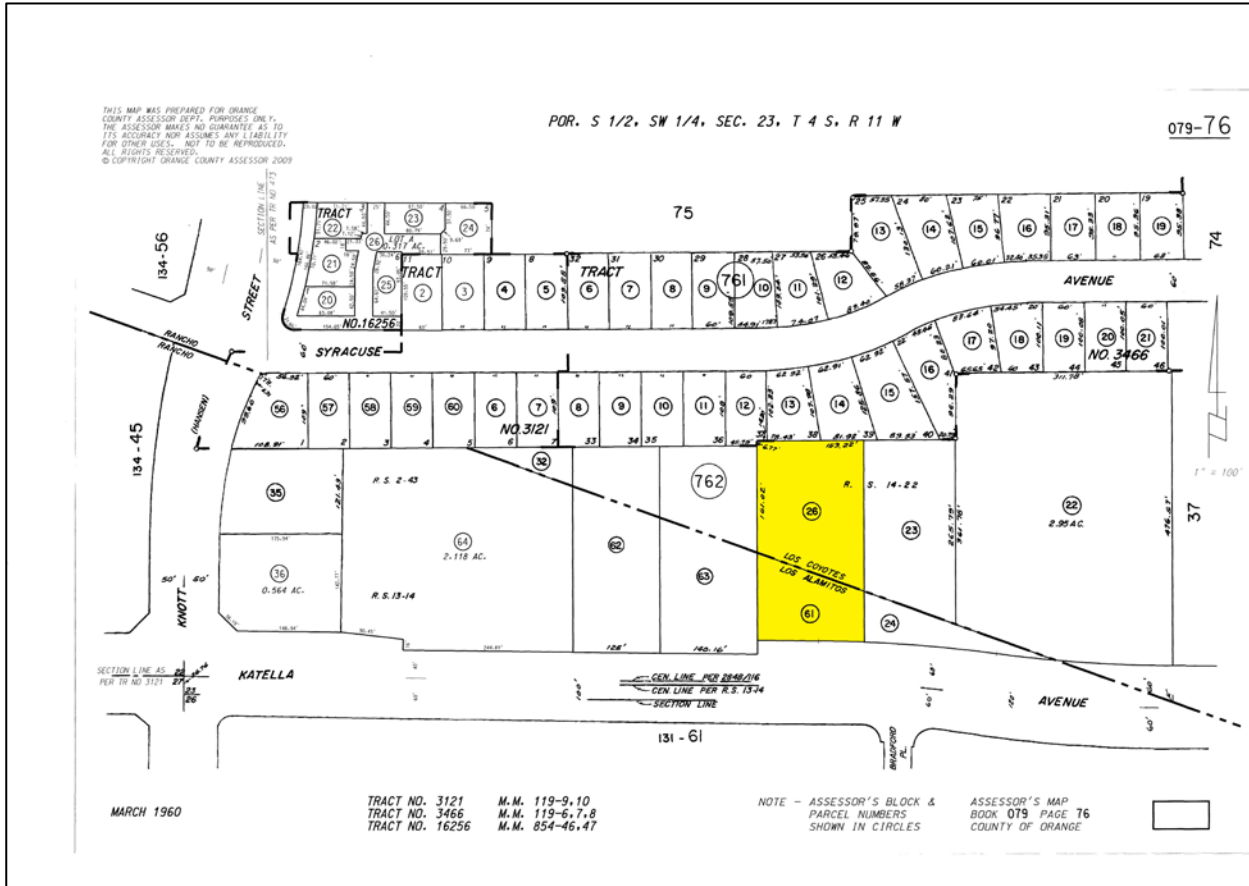
Commencing at the intersection of the compromise boundary line between said Ranchos with the Northerly boundary line of Katella Avenue, as shown on a Map of Survey recorded in Book 13, Page 14, records of Surveys, in the Office of the County Recorder of said County; thence North 88° 45' West along said Northerly line 525.09 feet to the true point of beginning; thence North 0° 48' 30" West 333.58 feet; thence North 89° 02' 30" East 153.22 feet; thence South 0° 48' 30" West 339.44 feet to said North line of Katella Avenue; thence North 88° 46' West 153.28 feet to the true point of beginning.

Except therefrom that portion of the Southwest quarter of fractional Section 23, Township 4 South, Range 11 West, in the Rancho Los Alamitos, shown on map no, attached to the final decree of partition of said Rancho, a certified copy of which was recorded February 2, 1891, in Book 14, Page 31 of Deeds, in the Office of the County Recorder of said County, as described in the deed to Tony Fiamengo, recorded June 19, 1958, in Book 4322, Page 284, Official Records, in the Office of the County Recorder of said County Recorder of said County, that lies Southerly of a line that is parallel and concentric with and 60.00 feet Northerly from the center line of Katella Avenue as shown on the Map of said Tract No. 7294, recorded in Book 272, Page(s) 17 through 20 of Miscellaneous Maps, in the Office of the County Recorder of said County.

APN: 079-762-61 and 079-762-26

(End of Legal Description)

**EXHIBIT A-1**  
**RENDERING OF THE PROPERTY**



**EXHIBIT B**  
**PROJECT DESCRIPTION AND WORK TO BE PERFORMED**

The Premises are developed with an existing two-story hotel (Stanton Inn) building with 72 units with approximately 46,884 sf. The Project includes the redevelopment of the Stanton Inn to include immediate necessary repairs to the two buildings that comprise the motel so they can be rapidly occupied (within 30-days of acquisition) and operated as interim housing (for a maximum of a five-year period) until tax credits and project-based voucher can be secured to further improve the property and convert it into permanent supportive housing.

The Project will be 100% affordable to households earning no more than 30 percent of Area Median Income (AMI) for Orange County of which, following the subsequent comprehensive rehabilitation, all 72 units will be set-aside for Permanent Supportive Housing (PSH). The unit mix and rent restrictions are as follows, provided, however, the rent and income restrictions applicable to the Project shall be set forth in and subject to the terms of the Regulatory Agreement:

<b>Bedroom Size</b>	<b>30% AMI (PSH)</b>	<b>30% AMI</b>	<b>Manager's Unit</b>	<b>Total Units</b>
Studios	70		2	72
One-Bedroom				0
Two-Bedroom			0	0
Three-Bedroom				0
Four-Bedroom				0
<b>TOTAL</b>	<b>70</b>		<b>2</b>	<b>72</b>

1. It is anticipated that during the "Qualified Project Period" (as defined in the Regulatory Agreement) all of the 70 restricted units will be supported by Project-Based Section 8 rental subsidy payments (the "Rental Subsidy"), as outlined in Exhibit "B" of the Regulatory Agreement. As further set forth in, and pursuant to the terms of, the Regulatory Agreement, if, during the Qualified Project Period, any change in federal law or regulations occurs, or any action (or inaction) by Congress or any federal or State agency occurs, which results in a reduction, termination or nonrenewal of the Rental Subsidy through no fault of Tenant, such that the Rental Subsidy shown on the Financing Plan (as defined in the Loan Agreement) is no longer available (or available in a lesser amount), Tenant may request approval of the County to (a) allow households with adjusted incomes that do not exceed fifty percent (50%) of AMI, adjusted for actual household size, to occupy the restricted units, and (b) increase the rent on one or more of the restricted units, to rents that are

affordable to households with an adjusted income that does not exceed fifty percent (50%) of AMI, adjusted for actual household size.

2. The rent increase is subject to the following requirements: concurrently with the request, Tenant shall provide the County with (a) evidence of the anticipated reduction, termination, or nonrenewal of the Rental Subsidy, (b) a Management Plan (as defined in Section 1.19 of the Loan Agreement) for the Project for the County's approval (such approval not to be unreasonably withheld or delayed) pursuant to Sections 4.1 and 7.8 of the Loan Agreement, showing the impact of the loss or reduction of the Rental Subsidy, (c) a proposed operating budget reflecting the rent increases (the "Operating Budget"), and (d) a description of efforts to obtain alternate sources of rent and if the foregoing requirements are completed to the County's reasonable satisfaction, subject to the limitations set forth in the immediately succeeding sentence, the County shall approve Tenant's request to increase the income limits and rent restrictions applicable to the restricted units. . The number of restricted units subject to the rent increase and the amount of the proposed increase may not be greater than (i) the number or amount required to ensure that the Project generates sufficient income to cover its operating costs, required deposits to replacement reserves, and debt service payments on approved financing as shown on the Operating Budget, and (ii) such amount as is necessary for the Project to maintain a Debt Service Coverage Ratio of at least 1.15 to 1.00. As used herein, "Debt Service Coverage Ratio" means, for any period, the ratio of (a) net operating income for such period to (b) all principal and interest payments due and payable during such period, regardless of whether the Project is generating sufficient cash flow. In addition, upon a reduction, termination or nonrenewal of the rental subsidy as described above, Tenant hereby agrees to the following:

3. Borrower shall use good faith commercially reasonable efforts to obtain alternative sources of rental subsidies and shall provide the County with annual progress reports on efforts to obtain alternative sources of rental subsidies that would allow the rents to be reduced. Upon receipt of any alternative rental subsidies, Borrower shall reduce the rents back to the original restrictions found in Exhibit "B" of the Regulatory Agreement to the extent that the alternative rental subsidies provide sufficient income to cover the operating costs, required replacement reserves and debt service of the Project as shown on the Operating Budget.

A. Tenant shall provide "Qualified Tenants" (as defined in the Regulatory Agreement) in the restricted units with notice of any rent increase pursuant to Section 3(C), below, and shall notify the Qualified Tenant that if they have received a tenant-based voucher from the Orange County Housing Authority they may use the tenant-based voucher for their restricted unit.

B. All rent increases are subject to County approval pursuant to the terms of Section 2(g) of the Regulatory Agreement. No later than sixty (60) days prior to the proposed implementation of any rent increase, Tenant shall submit to the County a schedule of any proposed increase in the rent. The County will disapprove a rent increase if it does not comply with the restrictions set forth in Section 2(g) (1) and (2) of the Regulatory Agreement. Notwithstanding the foregoing, rent increases for the restricted units shall be subject to review and approval of the County (such approval not to be unreasonably withheld or delayed) as described above.

C. Tenant shall give Qualified Tenants of all restricted units written notice at least sixty (60) days prior to any rent increase.

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

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

BMPs apply to the TENANT's defined Premises and BMPs also apply to the TENANT's Contractor therefore TENANT shall cause Contractor to be responsible for implementing and complying with all BMP Fact Sheet requirements that apply to construction activity with respect to the Improvements, 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. 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. Suggested BMPs Fact Sheets may include, but may not be limited to, the following list shown below and can be found at:

<http://www.ocwatersheds.com/documents/bmp/industrialcommercialbusinessesactivities> (which website may change from time to time):

IC3 Building Maintenance

IC4 Carpet Cleaning

IC6 Contaminated or Erodible Surface Areas

IC7 Landscape Maintenance

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

IC15 Parking & Storage Area Maintenance

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**  
FORM OF MEMORANDUM OF LEASE

AMENDED AND RESTATED MEMORANDUM OF LEASE

This is an Amended and Restated Memorandum of Lease (“**Memorandum**”) made and entered into as of this \_\_\_\_\_ day of April, 2022 (the “**Effective Date**”), by and between the County of Orange, a political subdivision of the State of California (the “**County**”) and Katella Housing Partners LP, a California limited partnership (“**Tenant**”), residing at (see below), upon the following terms:

1. **Lease.** The provisions set forth in a written Amended and Restated Lease between the parties hereto dated as of the Effective Date (“**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. **Effective Date of Lease.** The Lease shall be deemed to have commenced on the Effective Date as set forth within the terms of the Lease.
4. **Term.** The term of the Lease shall commence on the Effective Date as stated in the written Lease and terminate Sixty-Five (65) years from the Commencement Date. The term of the Lease may be extended for one (1) additional term of up to ten (10) years, if the additional term is approved by the County in accordance with the terms of the Lease.
5. **Duplicate Copies** of the originals of the Lease are in the possession of the County 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 County and Tenant are as follows:

If to County:	County of Orange c/o CEO/Corporate Real Estate 333 W. Santa Ana Blvd, 3rd Floor Santa, Ana, CA 92702 Attn: Chief Real Estate Officer
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With a copy to:

Office of County Counsel  
Hall of Administration  
333 W. Santa Ana Blvd., 4th Floor  
Santa Ana, California 92701  
Attn: Michael Haubert, Senior Deputy  
Fax: (714) 834-2359

If to Tenant:

Katella Housing Partners LP  
c/o Jamboree Housing Corporation  
17701 Cowan Avenue, Suite 200  
Irvine, CA 92614  
Attention: Michael Massie

With copies to:

Rutan & Tucker, LLP  
18575 Jamboree Road, 9<sup>th</sup> Floor  
Irvine, CA 92612  
Attention: Patrick D. McCalla

BF Stanton Apartments LLLP  
c/o Boston Financial Investment Management, LP 101 Arch Street,  
13th Floor  
Boston, Massachusetts 02110  
Attention: Asset Management – Stanton Apartment homes

Holland & Knight LLP  
10 St. James Avenue  
Boston, Massachusetts 02116  
Attention: Kristen M. Cassetta, Esq

**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 County 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.

**COUNTY:**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT:**

KATELLA HOUSING PARTNERS LP,  
a California limited partnership

By: JHC-Katella MGP, LLC,  
a California limited liability company,  
its Managing General Partner

By: Jamboree Housing Corporation,  
a California non-profit public benefit  
corporation,  
its Managing Member

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

Name: Michael Massie\_

Title: Chief Development Officer

Free recording in accordance with  
California Government Code  
Section 27383

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

California Tax Credit Allocation Committee  
915 Capitol Mall, Rm 485  
Sacramento, CA 95814

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**CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE**

**LEASE RIDER  
AGREEMENT (TAX CREDITS)  
Ground Lease**

TCAC NUMBER CA-  
[PROJECT NAME]

**THIS LEASE RIDER AGREEMENT** (the "Lease Rider Agreement") is dated this day of \_\_\_\_\_, \_\_\_\_\_, and is made and entered into for reference purposes only, by and among the County of Orange, a political subdivision of the State of California (the "Lessor"), \_\_\_\_\_ (the "Lessee"), and the California Tax Credit Allocation Committee, a public agency of the State of California established under Section 50199.8 of the Health and Safety Code ("TCAC") in consideration of the following facts and circumstances:

A. Lessor is the fee simple owner of that certain real property described in Exhibit A attached hereto and incorporated herein (the "Property");

B. Lessor and Lessee entered into the following ground lease of the Property: that certain ground lease, which is on file with the Lessor as a public record (the "Lease") and a memorandum of which was recorded in the official records of Orange County, California, as Instrument No. \_\_\_\_\_ (the "Memorandum of Lease");

C. Pursuant to the Lease, Lessee has agreed to acquire a leasehold in the Property for a term described below in Paragraph 2.f. which is at least as long as the TCAC Regulatory Agreement and to develop, construct, rehabilitate], own, operate and manage a rental housing development on the Property consisting of not less than residential rental units. During the term of the Lease, Lessee is the owner of all of those certain buildings, improvements and fixtures now or hereafter erected on the Property described in the Lease, and all appurtenances thereto now or hereafter affixed to, placed upon or used in connection with such real property and owned by Lessee or in which Lessee has an interest, together with all additions to, substitutions for, changes in and replacements of the whole or any part of said articles of property (collectively, the "Improvements"). Collectively, the Lessee's leasehold interest in the Property and its

interest in the Improvements constructed pursuant to the Lease are hereinafter sometimes referred to as the Development (the "Development");

D. TCAC has authorized an allocation of federal low-income housing tax credits by a Reservation Letter dated \_\_\_\_\_ (the "Allocation") to Lessee to finance, in part, the Development, pursuant to the Low Income Housing Tax Credit Program ("Program"). The Allocation is subject to numerous terms and conditions, including without limitation, the execution and delivery of this Lease Rider Agreement and the TCAC Regulatory Agreement which sets forth certain use restrictions affecting the Development, which TCAC Regulatory Agreement is to be recorded in Orange County, as required by Section 42 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (collectively, "Section 42");

E. As a further condition of the Allocation and pursuant to the requirements of the Program, Lessee and TCAC will enter into a Regulatory Agreement, including any amendments thereto (the "Regulatory Agreement"), securing performance related to the Allocation, and governing the use, occupancy, operation, management and ownership of the Development. Consistent with the provisions of Section 17 hereof, Lessor and Lessee have agreed to waive any such provisions of the Lease in conflict with or which would frustrate Lessee's compliance with the Regulatory Agreement in favor of the terms of the Regulatory Agreement;

F. In order to induce TCAC to make the Allocation, Lessor and Lessee have agreed to enter into and record this Lease Rider Agreement for the benefit of TCAC, its successors, and assigns; and

G. It is the intent of TCAC that, except in unique circumstances, it will exercise its rights and remedies under this Lease Rider Agreement only after written notice of any Lease defaults have been provided to Lessor, any Senior Lender, the Tax Credit Partner, and any other party known by TCAC to have either an ownership or other equitable interest in the Development. In addition, it is the intent of TCAC that the exercise of its rights and remedies under this Lease Rider Agreement generally shall be undertaken as part of a judicial action in a court of competent jurisdiction unless Lessor and any Senior Lenders otherwise agree.

**NOW THEREFORE**, in consideration of the foregoing recitals and the mutual covenants hereinafter contained, TCAC, Lessee and Lessor hereby agree as follows:

1. Definitions and Lease Rider Term.

a. As used herein, "Leasehold" means all of Lessee's leasehold interest in the Property described in Exhibit A, in the Development, in the Improvements now or hereafter located on the Property, all options contained in the Lease or granted in connection with the Lease, all other rights of Lessee under the Lease, and all subleases entered into in connection with the Lease (the "Subleases").

b. For the purposes of this Lease Rider Agreement, if Lessor is a corporate or governmental entity, the obligation to assert facts related to the “Lessor’s knowledge” shall include a duty for the Chief Real Estate Officer to perform or otherwise be responsible for pursuit of reasonably diligent efforts to ascertain the existence or nonexistence of the facts asserted, contemporaneous to the assertion. This duty may be fulfilled by use of an estoppel agreement executed by the Lessee.

c. For the purposes of this Lease Rider Agreement, the holders of all mortgage liens set forth in the Report and any other lenders approved by TCAC and all successors and assigns thereof including the holders of any mortgage lien against the Improvements or Lessee’s interest in the Leasehold are collectively referred to as “Senior Lenders.”

d. Lease Rider Agreement Term. This Lease Rider Agreement becomes effective on the date the TCAC Regulatory Agreement is recorded and remains in effect for at least the term of the Regulatory Agreement. Upon the expiration or sooner termination of the TCAC Regulatory Agreement, this Lease Rider Agreement shall terminate and be of no further force or effect.

2. Representations and Warranties of Lessor and Lessee. Lessor and Lessee hereby represent and warrant to TCAC as of the date of this Lease Rider Agreement as follows:

a. Title. (1) By Lessor: Lessor warrants and represents to TCAC that, to the best of Lessor’s knowledge, Lessor’s fee interest in the Property is free and clear of all liens, encumbrances, covenants, easements, licenses, judgments, or other matters of record except those shown as affecting the fee interest of the Property in that certain Preliminary Report regarding the Property issued on \_\_\_\_\_ by \_\_\_\_\_, Order # \_\_\_\_\_, Policy No. \_\_\_\_\_ (the “Report”). Lessor has not required or permitted, and has no knowledge of any other matters of record to be recorded that are not contained in the Report.

(2) By Lessee: Lessee has entered into one or more loan agreements (the “Agreement(s)”) which will be secured as more fully described in the Agreement(s). Lessee warrants and represents that it will provide a true and correct copy of said Agreement(s) to TCAC as part of TCAC’s placed in service review, for which the issuance of the IRS Form 8609 shall constitute approval.

b. Priority. Lessor warrants and represents to TCAC that except as otherwise referenced in the Report, the Lease is superior to any and all mortgage liens on the Property and nothing encumbers fee title of the Property which would interfere with Lessee’s ability to construct and operate the Development on the Property.

c. Transfers by Lessor. Lessor warrants and represents to the best of Lessor’s knowledge that it has not assigned, mortgaged, or otherwise hypothecated or transferred, or agreed to assign, mortgage or otherwise hypothecate or transfer, its interest in the Property in whole or in part, except as referenced in the Report

and except as security for any loans or any other liens, conditions, covenants, or restrictions on the Property identified in the Report and approved in writing by TCAC.

d. Status of Lease. Lessor warrants and represents that:

(1) Lessor is the current Lessor under the Lease. To the best of Lessor's knowledge, the Lease is in full force, the Lease is not void, voidable or terminable as of the date hereof without an uncured default by Lessee except pursuant to Section 5 at the option of any party thereto or of any other person or entity claiming an interest in or to such Lease or the Development, and to the best of Lessor's knowledge, there has been no default thereunder on the part of Lessee nor has any event occurred which, with the giving of notice or the passage of time, or both, would be an event of default thereunder. Lessor has not given notice of any violation under the Lease to Lessee. Lessor has not been informed of and has not otherwise received notice from Lessee or from any other person or entity concerning any alleged default on the part of Lessor under the Lease. To the best of Lessor's knowledge, there exist no defenses or offsets to enforcement of the Lease by Lessee.

(2) Any consent or approval of any third party (including any lender or government agency) that is required in order for Lessor to deliver this Lease Rider Agreement has been obtained.

(3) To the best of Lessor's knowledge, no alterations, improvements or additions now exist on the Property that have not been approved by the Lessor.

e. Other Agreements. All terms and conditions of the Lessee's tenancy under the Lease are set forth in the Lease and Lessor and Lessee each certify to the best of its knowledge that there have been no other agreements and no further or other supplements, amendments, modifications or extensions thereof except those submitted to and approved by TCAC.

f. Lease Term. The date of the commencement of the Lease term is and will end on \_\_\_\_\_ unless terminated sooner pursuant to its terms and consistent with this Lease Rider Agreement. All conditions precedent to the effectiveness of the Lease or the exercise of any of Lessee's rights thereunder at the effective date of the Lease have been fully satisfied.

g. Development. To the best of Lessor's knowledge, the Improvements constructed, or to be constructed, by Lessee on the Property satisfy or are expected to satisfy all requirements affecting the design, use or characteristics of such Improvements imposed by Lessor under the Lease or otherwise, including a requirement by Lessor for Lessee to comply with any and all applicable provisions of federal, state and local laws, and all agreements with any public entities concerning the Development, as amended from time to time.

h. Insurance. All notices, certificates, binders, endorsements, copies of policies, and receipts required under the Lease have been delivered to and approved by Lessor.

3. Cancellation, Transfer of Interest.

a. Subject to matters of record referenced in the Report, the rights of Senior Lenders and the Tax Credit Partner and the matters of record on the Lessee's Leasehold interest and only to the extent necessary or appropriate pursuant to such matters of record, Lessor and Lessee agree that so long as TCAC, its successor or assigns holds the Regulatory Agreement encumbering the Development, no termination of the Lease or efforts by Lessor to terminate the Lease except a termination consistent with Section 5, and no subordination, cancellation, surrender, amendment or modification of the Lease shall be effective without the prior written consent of TCAC, which consent shall be in TCAC's reasonable discretion and may be conditioned upon the satisfaction of such terms and conditions as TCAC may reasonably prescribe. TCAC shall have 30 days after its receipt of such a notice and any clarifications thereof requested by TCAC to consent to or deny any such variation from those obligations. Failure by TCAC to act within such a 30-day period shall constitute consent to such a variation. Any attempt by Lessor to take such action shall be void without TCAC's prior written consent or implied consent as provided for in this Section 3.a.

b. Subject to matters of record referenced in the Report, the rights of Senior Lenders and the Tax Credit Partner, and the matters of record on the Lessee's Leasehold interest and only to the extent necessary or appropriate pursuant to such matters of record, Lessor agrees that it shall not transfer, convey, sell, hypothecate, assign, encumber or permit any liens against its interest, or any portion thereof, in the Property or the Development unless Lessor requires, and any purchaser, assignee, or transferee agrees, that the purchaser, assignee, or transferee will expressly assume all obligations of Lessor under the Lease and this Lease Rider Agreement by a written instrument recordable in the Official Records. Any variation from those obligations shall require prior written approval of TCAC, which consent shall be in TCAC's reasonable discretion, and may be conditioned upon the satisfaction of such terms and conditions as TCAC may reasonably prescribe. If Lessor or Lessor's successor is seeking a variation from these obligations, Lessor or Lessor's successors and assigns shall provide TCAC with copies of all documents related to the transfer, conveyance, sale, hypothecation, assignment, encumbrance or lien at least 30 days prior to the effective date of that transaction and TCAC shall have 30 days after its receipt to reasonably consent or deny any such variation from those obligations. Failure by TCAC to act within such a 30-day period shall constitute consent to such a variation.

c. Foreclosure. Nothing contained in this Lease Rider Agreement shall prevent a Senior Lender from foreclosing on its security interest or accepting a conveyance in lieu of foreclosure.

d. No Merger. There shall be no merger of the Lease or any interest in the Lease, nor of the Leasehold interest, with the fee estate in the Property if the Lease or such interest therein, or such Leasehold interest may be directly or indirectly held by or for the account of any person who shall hold the fee estate in the Property, or any interest in such fee estate, nor shall there be such a merger by reason of the fact that all or any part of the Leasehold interest created thereby may be conveyed or mortgaged in a leasehold mortgage, deed of trust, or other security instrument to a leasehold mortgagee that shall hold the fee estate in the Property or any interest of the Lessor under the Lease.

4. Consent to Assignment, Payment of Rent.

a. Subject to any matters of record as referenced in the Report, the rights of Senior Lenders, and the matters of record on the Lessee's Leasehold interest and only to the extent necessary or appropriate pursuant to such matters of record, Lessor hereby consents to and approves the following to the extent such consents or approvals are required under the Lease:

(1) Lessee's encumbering the Lease, the Leasehold and the Development by the Regulatory Agreement; possession of the Leasehold and any Development thereon by TCAC or by a receiver under the Regulatory Agreement; and sale of the Leasehold and the Development pursuant to a court order or other agreement enforcing the Regulatory Agreement;

(2) Assignments to TCAC or its designee of any subleases and any and all rents from such subleases; and

(3) Sale or assignment of all or any part of any interest in the Leasehold to any purchaser or transferee pursuant to a court order or other agreement enforcing the Regulatory Agreement (such purchaser or transferee, including TCAC, is collectively referred to as the "Transferee"), and to any subsequent transfers (all such assignments, transfers, and subsequent transfers referred to in this Lease Rider Agreement as the "Transfer").

b. Nothing in this Lease Rider Agreement, in the Regulatory Agreement or in the Lease shall impose on TCAC the obligations of Lessee under the Lease or require TCAC to assume the Lease unless TCAC takes possession or ownership of the Development pursuant to a court order or other agreement under the Regulatory Agreement, or becomes the lessee under the Lease or a New Lease (defined in Section 6, below).

5. Notice of Defaults; Termination Notice.



a. Notice and Cure. Lessor shall provide concurrently to TCAC a written copy of all notices and demands, including, without limitation, notices of default or breach which Lessor gives, delivers, or sends to Lessee under the Lease. No notice or demand under the Lease shall be effective as to TCAC unless and until a copy of such notice is provided to TCAC as provided herein. Any notice of default under the Lease or this Lease Rider Agreement shall describe the default(s) with reasonable detail. TCAC shall have the right, but not the obligation, to cure any breach or default within the time period given in the Lease; provided that, if such notice to TCAC is not given or is delayed for any reason, the period of time within which TCAC may cure any such breach or default shall commence upon receipt by TCAC of such notice. Lessor and Lessee authorize TCAC to enter the Property and Improvements after reasonable prior written notice or pursuant to a court order for the purpose of mitigating defaults or exercising its right to cure and any other powers given TCAC under the Regulatory Agreement, this Lease Rider Agreement or the Lease.

b. Termination Notice. After the expiration of the grace period given Lessee under the Lease to cure a default, Lessor shall not terminate the Lease on account of such default but shall give TCAC a written notice (the "Termination Notice") that Lessee has failed to cure the default within the grace period and that, on account thereof, Lessor intends to terminate the Lease, which notice shall set a termination date not earlier than ninety (90) days after TCAC's receipt of the Termination Notice, provided that Lessor agrees to extend such termination date for a reasonable period if TCAC reasonably requires additional time to accommodate TCAC's taking possession of the Development where possession is necessary to cure Lessee's default, all of which is subject to any Senior Lender's security instruments. In the event the default results in the existence of an immediate or imminent serious health and safety threat to the residents or the public, Lessor may request TCAC to approve a shorter termination date which shall not be unreasonably denied. In addition, TCAC may waive its right to the 90-day period to cure under the Termination Notice after its receipt of the Termination Notice if TCAC determines that it will not take action to effect a cure for the default. No Termination Notice shall become effective to terminate the Lease if:

(1) Except as provided in Section 5.c., within ninety (90) days after receipt of the Termination Notice, TCAC cures all defaults which can be cured by payment or expenditure of money or without possession of the Development; or provides reasonable assurance and undertakings for the cure of such default. To effect a cure of Lessee's default, TCAC may, subject to the rights of all Senior Lenders, make any repair or improvement, do any other act or thing required of Lessee under the Lease, or do any act or thing which may be necessary or proper to prevent termination of the Lease. TCAC and its agents and contractors, subject to the rights of all Senior Lenders, shall have full access to the Property and Improvements for purposes of accomplishing the curing of defaults under the Lease. Any of the foregoing done by TCAC

shall be as effective to prevent a termination of the Lease as the same would have been if done by Lessee; or

(2) TCAC commences and diligently pursues judicial and/or administrative proceedings commenced under the Regulatory Agreement to cure a default.

(3) If TCAC has not cured a default upon the expiration of such Termination Notice pursuant to Subsection (1) above or fails to commence and diligently pursue a cure pursuant to Subsection (2) above, and subject to compliance with other provisions of this Section 5.b. and any limitations on termination in the Lease, Lessor may terminate the Lease and pursue such other remedies as are available under the terms of the Lease.

c. Defaults Not Susceptible to TCAC Cure. TCAC shall not be required to perform any act which is not susceptible to performance by TCAC, such as to cure a filing or condition of bankruptcy or insolvency or to cure or commence the cure of any default which is Lessee's failure to pay or comply with any lien, charge or encumbrance which is junior in priority to the Regulatory Agreement, or to pay any amount owed under an indemnity of Lessor by Lessee based on an event occurring prior to TCAC's possession of the Development. If any such act not susceptible to performance by TCAC constitutes a breach under the Lease, Lessor may resort to any and all of its remedies for such breach under the Lease.

d. Reimbursement of Lessor's Payment of Arrears. Lessor agrees that if Lessor cures Lessee's failure to make any payment due under the Lease or any loan identified in Section 2.a., it shall seek reimbursement of amounts so paid solely from Lessee and TCAC shall have no obligation to pay such amounts to Lessor.

e. Waiver of Breach or Default. Subject to the rights of Senior Lenders, on transfer of the Leasehold interest pursuant to a court order or other agreement enforcing the Regulatory Agreement, all violations, defaults and breaches by Lessee under the Lease occurring prior to such transfer, including, without limitation, nonpayment of rent or other amounts payable under the Lease, shall be deemed personal obligations of Lessee, and TCAC or other Transferee shall be entitled to the New Lease as described in Section 6 below without incurring or assuming any liability or obligation of, or claim against, Lessee under the Lease. However, upon transfer of the Leasehold interest, TCAC or the Transferee, as applicable, shall be responsible for correcting all defaults in existence at the time of the transfer; Lessor may exercise its rights under Section 5.b. if TCAC or the Transferee fails to correct any such default within a reasonable time. Nothing in this section shall be deemed a waiver of any claim by Lessor, TCAC, or other Transferee against Lessee under the Lease.

f. Enforcement Not a Breach. Any action taken by TCAC to enforce its rights under this Lease Rider Agreement with respect to Lessee with respect to any of the documents governing the Allocation including, without limitation, any actions taken to collect any amounts due and owing to TCAC or any action to appoint a

receiver for the Development or to otherwise ensure compliance with the Regulatory Agreement, shall not constitute or result in a breach or violation of the Lease.

g. Status Quo Ante. Any default by Lessee shall not prejudice TCAC if TCAC chooses to cure such default within the applicable grace period specified by this Lease Rider Agreement or the Lease, and Lessor acknowledges and agrees that upon TCAC's cure of any such default, the Lease shall be restored status quo ante.

6. New Lease.

a. Conditions. Section 5 hereof notwithstanding, and subject to the rights of Senior Lenders as provided in their security instruments, Lessor agrees to comply with the requirements of Section 6.b. if the following conditions specified in this Section 6.a. apply:

(1) The Lessee's Lease or a Transferee's New Lease is terminated for any reason whatsoever and TCAC or a subsequent Transferee acquires possession or ownership of the Development as a result of TCAC enforcing its remedies authorized by the Regulatory Agreement; and

(2) TCAC or other Transferee, whether or not such party has assumed the Lease, requests Lessor in writing pursuant to Section 6.b. to enter into a new lease (the "New Lease") of the Property within ninety (90) days after TCAC or the Transferee takes possession or ownership of the Development either as a result of a court order or other agreement under the Regulatory Agreement. The New Lease shall be at the rent of, and consistent with, the terms, provisions, covenants, options and agreements contained in the terminated Lease, as amended, or granted by the Lessor in connection with the Lease, all as modified or supplemented by this Lease Rider Agreement unless Lessor agrees to lower rent or less restrictive terms and conditions.

b. Obligations. If the conditions specified in Section 6.a. have been satisfied, and subject to the provisions of matters of record as referenced in the Report and the rights of Senior Lenders in their security instruments, Lessor shall:

(1) upon receipt of the request for New Lease described in Section 6.a.(2) above, enter into a New Lease of the Property with TCAC, its nominee, or its successor-in-interest or other Transferee, for the remainder of the term of the Lease, effective as of the date of the termination of the Leasehold or conveyance of the Development pursuant to a court order or other agreement under the Regulatory Agreement;

(2) convey to TCAC, its nominee or its successor-in-interest or other Transferee, all title and interest of the Lessee to the Improvements and Leasehold encumbered by the Regulatory Agreement, if any, which may

become or have become vested in Lessor as a result of any termination of the Lease or conveyance by court order or other agreement under the Regulatory Agreement, so long as the New Lease contains provisions that require TCAC, its nominee, or its successor-in-interest or other Transferee to reconvey all title and interest conveyed by Lessor's grant deed in the Improvements at the termination of the term of the New Lease; and

(3) assign to TCAC, its nominee, or its successor-in-interest or other Transferee, all of Lessor's interest as landlord, if any, in all existing Subleases of all or any part of the Development and all attornments given by the sublessees under such Subleases, provided that TCAC, its nominee, or its successor-in-interest shall reconvey all such title and interest conveyed by Lessor in all existing Subleases in all or any part of the Development at the termination of the New Lease.

c. Priority. The Leasehold interest and any other interest (if any) in the Development granted to TCAC, its nominee or its successor-in-interest or other Transferee under this Section 6 shall be prior to any mortgage or other lien, charge or encumbrance on the Development created by Lessor or Lessee, except for the liens of Senior Lenders or as approved in writing by TCAC or as referenced in the Report.

7. Successors to TCAC. Subject to Section 4 hereof, if the Leasehold is transferred pursuant to a court order or other agreement enforcing the Regulatory Agreement, Lessor shall recognize the Transferee as the tenant under the Lease, subject to the liens of Senior Lenders. Anything in the Lease notwithstanding, the rights and benefits of TCAC under this Lease Rider Agreement shall benefit and may be exercised by any Transferee. The holder of any mortgage or deed of trust which may be given to secure a portion of the purchase price in any sale by TCAC or its successor(s) after TCAC acquires the Leasehold interest or enters into a New Lease under this Lease Rider Agreement shall be entitled to rely on continuation of the same rights and benefits of TCAC under this Lease Rider Agreement.

8. Diligence of TCAC. So long as TCAC is prevented by any process or injunction issued by any court or by any statutory stay, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessor or Lessee, from commencing or prosecuting its remedies under the Regulatory Agreement or other appropriate proceedings in the nature thereof, or undertaking or completing any of TCAC's rights or remedies under the Lease or this Lease Rider Agreement, TCAC shall not be deemed for that reason to have failed to commence such proceedings or to have failed to prosecute diligently such proceedings, provided, however, that TCAC shall use reasonable efforts to contest and appeal the issuance or continuance of any such process, stay or injunction.

9. Certificates.

(a) Certificate by Lessor. Within fifteen (15) calendar days after written request made by TCAC, Lessor shall execute and deliver to TCAC, or to any proposed purchaser, transferee, or encumbrancer of Lessee's Leasehold interest, a certificate declaring, to the best of Lessor's knowledge, (i) the existence and validity of the Lease, or New Lease as the case may be, and amendments thereto, if any, and that such Lease or New Lease remains in full force and effect; (ii) that all conditions under the Lease, or New Lease, have been satisfied, and that there are no defaults under the Lease or New Lease, or if there has been a default under the Lease or New Lease, a description of the nature of such default; (iii) any other information relating to the condition of the Property reasonably requested by TCAC; and iv) that Lessor understands the recipient will rely on the certificate and that the Lessor will describe in reasonable detail any exceptions to the foregoing statements.

(b) Certificate by Lessee. Within fifteen (15) calendar days after written request made by TCAC, Lessee shall execute and deliver to TCAC, or to any proposed purchaser, transferee, or encumbrancer of Lessee's Leasehold interest, a certificate declaring to the best of Lessee's knowledge (i) the existence and validity of the Lease, or New Lease as the case may be, and amendments thereto, if any, and that such Lease or New Lease remains in full force and effect; (ii) that all conditions under the Lease, or New Lease, have been satisfied, and that there are no defaults under the Lease or New Lease, or if there has been a default under the Lease or New Lease, a description of the nature of such default; (iii) any other information relating to the condition of the Property, Leasehold or the Development reasonably requested by TCAC; and (iv) that Lessee understands the recipient will rely on the certificate and that the Lessee will describe in reasonable detail any exceptions to the foregoing statements.

10. Notices. Notices and other communications required by this Lease Rider Agreement shall be delivered by messenger to the addresses provided below or sent by U.S Postal Service certified mail, return receipt requested, postage prepaid, addressed as follows:

To TCAC: California Tax Credit Allocation Committee  
915 Capitol Mall, Room 485  
Sacramento, CA 95814  
Attn. Executive Director

To Lessor: County of Orange  
c/o CEO Real Estate  
333 W. Santa Ana Blvd., 3<sup>rd</sup> Floor  
Santa Ana, CA 92702  
Attn: Thomas A. Miller, Chief Real Estate Officer

To Lessee:

These addresses may be changed by a written notice given by any party hereto to the other parties in the same manner provided in this Section. Notices shall be effective on receipt.

11. TCAC's Rights Against Lessee. Nothing in this Lease Rider Agreement shall limit or restrict TCAC's rights and remedies under the Regulatory Agreement, or any other agreement between TCAC and Lessee.

12. Successors and Assigns. This Lease Rider Agreement shall inure to the benefit of and bind the successors and assigns of TCAC, Lessor and Lessee.

13. Uninsured Hazard. Lessor agrees that neither TCAC nor any person acquiring the Development, or a portion of the Leasehold pursuant to a court order or other agreement enforcing the Regulatory Agreement, nor the lessee under a New Lease pursuant to Section 6 hereof, nor any successive owner of a portion of the Development after such transfer or New Lease shall have any obligation hereunder or under the Lease or New Lease to repair or reconstruct any damage or loss to the Development which occurred prior to such transfer or New Lease and which is due to a hazard not required to be covered by insurance under the Lease or New Lease. However, if the damage or loss is not corrected and constitutes a breach of the Lease or New Lease, Lessor may exercise its rights under Section 5.

14. Duty to Repair. Lessor agrees that if TCAC, its nominee, or its successor-in-interest succeeds to Lessee's Leasehold interest in the Property and if the Development shall have been or becomes materially damaged before or after the date of such acquisition, TCAC's, its nominee's, or its successor-in-interest's obligation, if any, to repair, replace or reconstruct the Development shall in any such event be limited to the greater of: i) the amount of the net insurance proceeds received by TCAC, its nominee, or its successor-in-interest by reason of that damage or ii) the amount TCAC, its nominee, or its successor-in-interest would be entitled to if in compliance with the minimum insurance requirements of Lessee under the Lease. However, if the damage or loss is not corrected and constitutes a breach of the Lease or New Lease, Lessor may exercise its rights under Section 5.

15. Options. Lessor and Lessee agree that TCAC or its successor-in-interest or other Transferee, after its acquisition of the Leasehold, may exercise any option to extend the term of the Lease or New Lease or to purchase any interest in the Property which is granted to Lessee under or in connection with the Lease or the New Lease.

16. Limitation on Liability. If TCAC agrees to be bound by the terms of the Lease, or in the event of any Transfer to a Transferee, then unless so ordered by a court or as agreed to by TCAC, any Transferee, and any secured creditors, neither TCAC nor Transferee shall have any obligation under the Lease or the New Lease with respect to any liabilities, obligations, losses, damages, fines, penalties, claims, demands, suits, actions, causes of actions, charges, judgments, costs, and expenses (including

architects' and attorneys' fees and court costs) arising out of or resulting from acts, omissions, circumstances or events occurring before or existing at the time of such Transfer or TCAC's agreement to be bound by the Lease or the New Lease except for matters of record identified in the Report at the time of execution of this Lease Rider Agreement or any breach in existence at the time of acquisition of the Leasehold. Nothing in this Lease Rider Agreement or in the Lease or New Lease shall impose on TCAC any liability to perform the obligations of Lessee under the Lease or New Lease or require TCAC to assume the Lease or New Lease unless and until TCAC acquires the Development pursuant to a court order or other agreement enforcing the Regulatory Agreement. After acquiring the Development in such a manner, TCAC shall be liable to perform Lessee's obligations only until TCAC assigns or transfers the Leasehold. TCAC shall not, however, be required to cure Lessee's defaults occurring before TCAC's acquisition of the Development in such a manner except that TCAC or the Transferee must cure any defaults in existence at the time of transfer within a reasonable period of time.

17. Conflict With Lease. The provisions herein are intended to be supplementary to, and not in derogation of, the parties' rights and obligations contained in the Lease (including all of TCAC's rights under the Lease as a party with a recorded encumbrance). In the event of any conflict or inconsistency between the terms of the Lease and the terms of this Lease Rider Agreement, except for any term expressly excluded or modified by Section 21, the terms of this Lease Rider Agreement shall govern and control, and the Lease shall be deemed to be modified hereby. Notwithstanding the foregoing, nothing contained herein shall affect the rights of Senior Lenders or the Tax Credit Partner, nor shall anything contained herein subordinate the lien of any Senior Lender to any rights of TCAC hereunder.

18. Regulatory Agreement Remedies. Nothing in this Lease Rider Agreement is intended to create enforcement rights under the Regulatory Agreement that do not otherwise exist in the Regulatory Agreement.

19. Enforcement. Notwithstanding anything to the contrary in the Lease and notwithstanding the fact that the Lease Rider Agreement is recorded against the Leasehold interest in the Property, Lessor hereby expressly agrees that during the term of the Regulatory Agreement, any violation of the Lease Rider Agreement, including but not limited to any termination, subordination, cancellation, surrender, amendment or modification of the Lease in violation of Section 3 of this Lease Rider Agreement, shall be deemed ineffective. Lessor further agrees, that during the term of the Regulatory Agreement, TCAC shall have standing to enforce and preserve TCAC's rights under the terms of this Lease Rider Agreement and the Regulatory Agreement.

20. Subordination. Notwithstanding anything to the contrary contained elsewhere herein, the parties hereto hereby agree that this Lease Rider Agreement (and all amendments, modifications and supplements hereto) is hereby irrevocably and unconditionally made subject and subordinate in all respects to (a) all existing and future deeds of trust and mortgages approved by TCAC now or hereafter encumbering all or any part of the Lessee's right, title and interest under the Lease (and to all

amendments, modifications and supplements thereto), and (b) all rights granted to any holder of any such deed of trust or mortgage under any term or provision of the Lease. Each existing and future holder of any such deed of trust or mortgage (all of whom shall also constitute "Senior Lenders" for all purposes of this Lease Rider Agreement) is hereby made an express third-party beneficiary of the foregoing sentence.

## 21. Additional Provisions.

Notwithstanding anything to the contrary in this Lease Rider Agreement, the Lessor, Lessee and TCAC agree to the following:

(a) As referenced in the Recitals, subpart E, consistent with the provisions of Section 17 hereof, Lessor acknowledges that Lessor and Lessee have agreed to modify any such provisions of the Lease in conflict with the Regulatory Agreement in favor of the terms of the Regulatory Agreement.

(b) Section 1.d. shall read: "Upon the expiration or sooner termination of the Regulatory Agreement, this Lease Rider Agreement shall terminate and be of no further force or effect without further action of any of the parties hereto."

(c) Section 3.a. shall read: "Subject to matters of record referenced in the Report, the rights of Senior Lenders and the Tax Credit Partner and the matters of record on the Lessee's Leasehold interest and only to the extent necessary or appropriate pursuant to such matters of record, Lessor and Lessee agree that so long as TCAC, its successor or assigns holds the Regulatory Agreement encumbering the Development, no termination of the Lease or efforts by Lessor to terminate the Lease except a termination consistent with Section 5, and no subordination, cancellation, surrender, amendment or modification of the Lease shall be effective without the prior written consent of TCAC, which consent shall be in TCAC's reasonable discretion and may be conditioned upon the satisfaction of such terms and conditions as TCAC may reasonably prescribe.

TCAC shall have 30 days after its receipt of such a notice and any clarifications thereof requested by TCAC to consent to or deny any such variation or termination from those obligations.

Failure by TCAC to act within such a 30-day period shall constitute consent to such a variation or termination. Any attempt by Lessor to take such action shall not be effective until TCAC's prior written consent or implied consent is received as provided for in this Section 3.a."

(d) Section 3.b. shall read, "Subject to matters of record referenced in the Report, the rights of Senior Lenders and the Tax Credit Partner, and the matters of record on the Lessee's Leasehold interest and only to the extent necessary or



appropriate pursuant to such matters of record, Lessor agrees that it shall not transfer, convey, sell, hypothecate, assign, encumber or permit any liens against its interest, or any portion thereof, in the Property or the Development which will affect or impact the Development and the Improvements during the term of the Regulatory Agreement unless Lessor requires, and any purchaser, assignee, or transferee agrees, that the purchaser, assignee, or transferee will expressly assume all obligations of Lessor under the Lease and this Lease Rider Agreement by a written instrument recordable in the Official Records. Any variation from those obligations shall require prior written approval of TCAC, which consent shall be in TCAC's reasonable discretion, and may be conditioned upon the satisfaction of such terms and conditions as TCAC may reasonably prescribe. If Lessor or Lessor's successor is seeking a variation from the Lease and the Regulatory Agreement, Lessor or Lessor's successors and assigns shall provide TCAC with copies of all documents related to the transfer, conveyance, sale, hypothecation, assignment, encumbrance or lien at least 30 days prior to the effective date of that transaction and TCAC shall have 30 days after its receipt to reasonably consent or deny any such variation from those obligations. Failure by TCAC to act within such a 30-day period shall constitute consent to such a variation."

(e) Section 3.c. shall read, "Foreclosure. Nothing contained in this Lease Rider Agreement shall prevent a Senior Lender from foreclosing on its security interest in the leasehold interest created by the Lease or accepting a conveyance in lieu of foreclosure."

(f) Section 4.a.(3) shall read, "(3) For each Sale or assignment of all or any part of any interest in the Leasehold to any purchaser or transferee pursuant to a court order or other agreement enforcing the Regulatory Agreement (such purchaser or transferee, including TCAC, is collectively referred to as the "Transferee"), and to one subsequent transfer (all such assignments, transfers, and subsequent transfers referred to in this Lease Rider Agreement as the "Transfer")."

(g) Section 5.b. shall read, "Termination Notice. After the expiration of the grace period given Lessee under the Lease to cure a default, Lessor shall not terminate the Lease on account of such default but shall give TCAC a written notice (the "Termination Notice") that Lessee has failed to cure the default within the grace period and that, on account thereof, Lessor intends to terminate the Lease, which notice shall set a termination date not earlier than ninety (90) days after TCAC's receipt of the Termination Notice, provided that Lessor agrees to extend such termination date for a reasonable period if TCAC reasonably requires additional time to accommodate TCAC's taking possession of the Development where possession is necessary to cure Lessee's default, all of which is subject to any Senior Lender's security instruments. In the event the default results in the existence of an immediate or imminent serious health and safety threat to the residents or the public, Lessor may request TCAC to approve a shorter termination date which shall not be unreasonably denied, withheld or delayed. In addition, TCAC may waive its right to the 90-day period to cure under the Termination

Notice after its receipt of the Termination Notice if TCAC determines that it will not take action to effect a cure for the default. No Termination Notice shall become effective to terminate the Lease if:"

22. Acknowledgment. Lessor and Lessee acknowledge that TCAC is relying on the foregoing representations, warranties, covenants and agreements of the undersigned in allocating the allocation of low income housing tax credits to Lessee, and warrants and affirms to and for the benefit of TCAC that each of their respective representations set forth herein is true, correct and complete as of this date.

**TCAC:**  
CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE, a public agency of the State  
of California

BY: \_\_\_\_\_

Executive Director

**LESSOR:**  
COUNTY OF ORANGE,  
a political subdivision of the State of California

By: \_\_\_\_\_  
Thomas A. Miller, Chief Real Estate Officer

Approval as to form, County of Orange:

**LESSEE:**

**EXHIBIT A**  
Legal Description

The Land referred to herein is situated in the State of California, County of Orange, City of Stanton, and described as follows:

That portion of Section 23, Township 4 South, Range 11 West, in the City of Stanton, County of Orange, State of California, in the Ranchos Los Coyotes and Los Alamitos, as shown in Book 51, Page 12 of Miscellaneous Maps, in the Office of Orange County, described as follows:

Commencing at the intersection of the compromise boundary line between said Ranchos with the Northerly boundary line of Katella Avenue, as shown on a Map of Survey recorded in Book 13, Page 14, records of Surveys, in the Office of the County Recorder of said County; thence North 88° 45' West along said Northerly line 525.09 feet to the true point of beginning; thence North 0° 48' 30" West 333.58 feet; thence North 89° 02' 30" East 153.22 feet; thence South 0° 48' 30" West 339.44 feet to said North line of Katella Avenue; thence North 88° 46' West 153.28 feet to the true point of beginning.

Except therefrom that portion of the Southwest quarter of fractional Section 23, Township 4 South, Range 11 West, in the Rancho Los Alamitos, shown on map no, attached to the final decree of partition of said Rancho, a certified copy of which was recorded February 2, 1891, in Book 14, Page 31 of Deeds, in the Office of the County Recorder of said County, as described in the deed to Tony Fiamengo, recorded June 19, 1958, in Book 4322, Page 284, Official Records, in the Office of the County Recorder of said County, that lies Southerly of a line that is parallel and concentric with and 60.00 feet Northerly from the center line of Katella Avenue as shown on the Map of said Tract No. 7294, recorded in Book 272, Page(s) 17 through 20 of Miscellaneous Maps, in the Office of the County Recorder of said County.

Assessor's Parcel Number: **079-762-61 and 079-762-26**