



SOUTHERN CALIFORNIA  
ASSOCIATION OF GOVERNMENTS  
900 Wilshire Blvd., Ste. 1700  
Los Angeles, CA 90017  
T: (213) 236-1800  
www.scag.ca.gov

#### REGIONAL COUNCIL OFFICERS

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First Vice President  
Jan C. Harnik, Riverside County  
Transportation Commission

Second Vice President  
Carmen Ramirez, County of Ventura

Immediate Past President  
Rex Richardson, Long Beach

#### COMMITTEE CHAIRS

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Clint Lorimore, Eastvale

Community, Economic &  
Human Development  
Jorge Marquez, Covina

Energy & Environment  
David Pollock, Moorpark

Transportation  
Sean Ashton, Downey

## REMOTE PARTICIPATION ONLY

# COMMUNITY, ECONOMIC AND HUMAN DEVELOPMENT COMMITTEE

**Thursday, June 3, 2021**  
**9:30 a.m. – 11:30 a.m.**

**To Participate on Your Computer:**  
**<https://scag.zoom.us/j/116153109>**

**To Participate by Phone:**  
**Call-in Number: 1-669-900-6833**  
**Meeting ID: 116 153 109**

***Please see next page for detailed  
instructions on how to participate in the meeting.***

### **PUBLIC ADVISORY**

Given recent public health directives limiting public gatherings due to the threat of COVID-19 and in compliance with the Governor's recent Executive Order N-29-20, the meeting will be held telephonically and electronically.

If members of the public wish to review the attachments or have any questions on any of the agenda items, please contact Maggie Aguilar at (213) 630-1420 or via email at [aguilarm@scag.ca.gov](mailto:aguilarm@scag.ca.gov). Agendas & Minutes are also available at: [www.scag.ca.gov/committees](http://www.scag.ca.gov/committees).

SCAG, in accordance with the Americans with Disabilities Act (ADA), will accommodate persons who require a modification of accommodation in order to participate in this meeting. SCAG is also committed to helping people with limited proficiency in the English language access the agency's essential public information and services. You can request such assistance by calling (213) 630-1420. We request at least 72 hours (three days) notice to provide reasonable accommodations and will make every effort to arrange for assistance as soon as possible.



## Instructions for Public Comments

*You may submit public comments in two (2) ways:*

1. **Submit written comments via email to: [CEHDPublicComment@scag.ca.gov](mailto:CEHDPublicComment@scag.ca.gov) by 5pm on Wednesday, June 2, 2021.**

All written comments received after 5pm on Wednesday, June 2, 2021 will be announced and included as part of the official record of the meeting.

2. **If participating via Zoom or phone, during the Public Comment Period, use the “raise hand” function on your computer or \*9 by phone and wait for SCAG staff to announce your name/phone number. SCAG staff will unmute your line when it is your turn to speak. Limit oral comments to 3 minutes, or as otherwise directed by the presiding officer.**

If unable to connect by Zoom or phone and you wish to make a comment, you may submit written comments via email to: [CEHDPublicComment@scag.ca.gov](mailto:CEHDPublicComment@scag.ca.gov).

***In accordance with SCAG’s Regional Council Policy, Article VI, Section H and California Government Code Section 54957.9, if a SCAG meeting is “willfully interrupted” and the “orderly conduct of the meeting” becomes unfeasible, the presiding officer or the Chair of the legislative body may order the removal of the individuals who are disrupting the meeting.***



## Instructions for Participating in the Meeting

SCAG is providing multiple options to view or participate in the meeting:

### To Participate and Provide Verbal Comments on Your Computer

1. Click the following link: <https://scag.zoom.us/j/116153109>
2. If Zoom is not already installed on your computer, click “Download & Run Zoom” on the launch page and press “Run” when prompted by your browser. If Zoom has previously been installed on your computer, please allow a few moments for the application to launch automatically.
3. Select “Join Audio via Computer.”
4. The virtual conference room will open. If you receive a message reading, “Please wait for the host to start this meeting,” simply remain in the room until the meeting begins.
5. During the Public Comment Period, use the “raise hand” function located in the participants’ window and wait for SCAG staff to announce your name. SCAG staff will unmute your line when it is your turn to speak. Limit oral comments to 3 minutes, or as otherwise directed by the presiding officer.

### To Listen and Provide Verbal Comments by Phone

1. Call **(669) 900-6833** to access the conference room. Given high call volumes recently experienced by Zoom, please continue dialing until you connect successfully.
2. Enter the **Meeting ID: 116 153 109**, followed by #.
3. Indicate that you are a participant by pressing # to continue.
4. You will hear audio of the meeting in progress. Remain on the line if the meeting has not yet started.
5. During the Public Comment Period, press \*9 to add yourself to the queue and wait for SCAG staff to announce your name/phone number. SCAG staff will unmute your line when it is your turn to speak. Limit oral comments to 3 minutes, or as otherwise directed by the presiding officer.



**CEHD - Community, Economic and Human Development Committee**  
***Members – June 2021***

- 1. Hon. Jorge Marquez**  
CEHD Chair, Covina, RC District 33
- 2. Hon. Frank A. Yokoyama**  
CEHD Vice Chair, Cerritos, RC District 23
- 3. Hon. Adele Andrade-Stadler**  
Alhambra, RC District 34
- 4. Hon. Al Austin**  
Long Beach, GCCOG
- 5. Hon. David Avila**  
Yucaipa, SBCTA
- 6. Hon. Megan Beaman-Jacinto**  
Coachella, RC District 66
- 7. Hon. Drew Boyles**  
El Segundo, RC District 40
- 8. Hon. Wendy Bucknum**  
Mission Viejo, RC District 13
- 9. Hon. Juan Carrillo**  
Palmdale, RC District 43
- 10. Hon. Michael Carroll**  
Irvine, RC District 14
- 11. Hon. Letitia Clark**  
Tustin, RC District 17
- 12. Hon. Paula Devine**  
Glendale, RC District 42
- 13. Hon. Steve DeRuse**  
La Mirada, RC District 31
- 14. Hon. Diane Dixon**  
Newport Beach, RC District 15
- 15. Hon. Rose Espinoza**  
La Habra, OCCOG

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**OUR MISSION**

*To foster innovative regional solutions that improve the lives of Southern Californians through inclusive collaboration, visionary planning, regional advocacy, information sharing, and promoting best practices.*

**OUR VISION**

*Southern California's Catalyst for a Brighter Future*

**OUR CORE VALUES**

*Be Open | Lead by Example | Make an Impact | Be Courageous*



## COMMUNITY, ECONOMIC AND HUMAN DEVELOPMENT COMMITTEE AGENDA

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- 16. Hon. Margaret Finlay**  
Duarte, RC District 35
- 17. Hon. Alex Fisch**  
Culver City, RC District 41
- 18. Hon. Mark Henderson**  
Gardena, RC District 28
- 19. Hon. Peggy Huang**  
TCA Representative
- 20. Hon. Cecilia Hupp**  
Brea, OCCOG
- 21. Hon. Kathleen Kelly**  
Palm Desert, RC District 2
- 22. Hon. Jed Leano**  
Claremont, SGVCOG
- 23. Hon. Patricia Lock Dawson**  
Riverside, RC District 68
- 24. Hon. Marisela Magana**  
Perris, RC District 69
- 25. Hon. Anni Marshall**  
Avalon, GCCOG
- 26. Hon. Andrew Masiel**  
Tribal Govt Regl Planning Board Representative
- 27. Hon. Lauren Meister**  
West Hollywood, WSCCOG
- 28. Hon. Bill Miranda**  
Santa Clarita, SFVCOG
- 29. Hon. John Mirisch**  
Beverly Hills, Pres. Appt. (Member at Large)
- 30. Sup. Holly Mitchell**  
Los Angeles County
- 31. George Nava**  
Brawley, ICTC

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## COMMUNITY, ECONOMIC AND HUMAN DEVELOPMENT COMMITTEE AGENDA

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- 32. Hon. Kim Nguyen**  
Garden Grove, RC District 18
- 33. Hon. Trevor O'Neil**  
Anaheim, RC District 19
- 34. Hon. Ed Paget**  
Needles, SBCTA
- 35. Hon. Sunny Park**  
Buena Park, OCCOG
- 36. Hon. Ariel Pe**  
Lakewood, GCCOG
- 37. Hon. Michael Posey**  
Huntington Beach, RC District 64
- 38. Hon. Misty Perez**  
Port Hueneme, Pres. Appt. (Member at Large)
- 39. Hon. Jan Pye**  
Desert Hot Springs, CVAG
- 40. Hon. Nithya Raman**  
Los Angeles, RC District 51
- 41. Hon. Rex Richardson**  
Imm. Past President, Long Beach, RC District 29
- 42. Hon. Sonny Santa Ines**  
Bellflower, GCCOG
- 43. Hon. Nicholas Schultz**  
Burbank, AVCJPA
- 44. Hon. David J. Shapiro**  
Calabasas, RC District 44
- 45. Hon. Becky Shevlin**  
Monrovia, SGVCOG
- 46. Hon. Andy Sobel**  
Santa Paula, VCOG
- 47. Hon. Wes Speake**  
Corona, WRCOG

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## COMMUNITY, ECONOMIC AND HUMAN DEVELOPMENT COMMITTEE AGENDA

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- 48. Hon. Mark Waronek**  
Lomita, SBCCOG
  
- 49. Hon. Acquanetta Warren**  
Fontana, SBCTA
  
- 50. Hon. Christi White**  
Murrieta, WRCOG
  
- 51. Hon. Tony Wu**  
West Covina, SGVCOG
  
- 52. Hon. Frank Zerunyan**  
Rolling Hills Estates, SBCCOG

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# COMMUNITY, ECONOMIC AND HUMAN DEVELOPMENT COMMITTEE AGENDA

Southern California Association of Governments  
Remote Participation Only  
**Thursday, June 3, 2021**  
**9:30 AM**

The Community, Economic and Human Development Committee may consider and act upon any of the items on the agenda regardless of whether they are listed as Information or Action items.

## **CALL TO ORDER AND PLEDGE OF ALLEGIANCE** *(The Honorable Jorge Marquez, Chair)*

### **PUBLIC COMMENT PERIOD**

Members of the public are encouraged to submit written comments by sending an email to: [CEHDPublicComment@scag.ca.gov](mailto:CEHDPublicComment@scag.ca.gov) by 5pm on Wednesday, June 2, 2021. Such comments will be transmitted to members of the legislative body and posted on SCAG’s website prior to the meeting. Written comments received after 5pm on Wednesday, June 2, 2021 will be announced and included as part of the official record of the meeting. Members of the public wishing to verbally address the Community, Economic and Human Development Committee will be allowed up to 3 minutes to speak, with the presiding officer retaining discretion to adjust time limits as necessary to ensure efficient and orderly conduct of the meeting. The presiding officer has the discretion to reduce the time limit based upon the number of comments received and may limit the total time for all public comments to twenty (20) minutes.

### **REVIEW AND PRIORITIZE AGENDA ITEMS**

#### **CONSENT CALENDAR**

##### Approval Item

1. Minutes of the April 1, 2021 Meeting
2. Transfer of Regional Housing Needs Assessment (RHNA) Units from County of Orange to City of Santa Ana

##### Receive and File

3. Climate Action Plan for Transportation Infrastructure (CAPTI) Comment Letter

#### **INFORMATION ITEMS**

- |  |          |
|--|----------|
| 4. Future of the Office After COVID-19<br><i>(Amber Schiada, Senior Director, Insight &amp; Advisory, JLL)</i> | 30 Mins. |
| 5. Census 2020 Apportionment Counts and State Estimates Released<br><i>(Kevin Kane, Program Manager)</i>       | 10 Mins. |

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## COMMUNITY, ECONOMIC AND HUMAN DEVELOPMENT COMMITTEE AGENDA

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6. Catalyst Housing Group (Catalyst)/California Community Housing Agency (CalCHA) Middle Income Housing Financing Program 20 Mins.  
*(Jordan Moss, CEO, Catalyst Housing Group)*

### **CHAIR'S REPORT**

*(The Honorable Jorge Marquez, Chair)*

### **STAFF REPORT**

*(Jonathan Hughes, SCAG Staff)*

### **FUTURE AGENDA ITEMS**

### **ANNOUNCEMENTS**

### **ADJOURNMENT**

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Southern California Association of Governments  
Remote Participation Only  
June 3, 2021

**MINUTES OF THE REGULAR MEETING  
COMMUNITY, ECONOMIC AND HUMAN DEVELOPMENT COMMITTEE (CEHD)  
THURSDAY, April 1, 2021**

THE FOLLOWING MINUTES ARE A SUMMARY OF ACTIONS TAKEN BY THE COMMUNITY, ECONOMIC AND HUMAN DEVELOPMENT COMMITTEE (CEHD). A VIDEO AND AUDIO RECORDING OF THE FULL MEETING IS AVAILABLE AT: <http://scag.iqm2.com/Citizens/>

The Community, Economic and Human Development (CEHD) Committee of the Southern California Association of Governments (SCAG) held its regular meeting telephonically and electronically given public health directives limiting public gatherings due to COVID-19 and in compliance with the Governor’s recent Executive Order N-29-20. A quorum was present.

**Members Present:**

**Hon. Jorge Marquez, Chair**  
**Hon. Frank Yokoyama, Vice Chair**  
Hon. Al Austin, II  
Hon. David Avila  
Hon. Drew Boyles  
Hon. Wendy Bucknum  
Hon. Juan Carrillo  
Hon. Letitia Clark  
Hon. Steve De Ruse  
Hon. Paula Devine  
Hon. Margaret E. Finlay  
Hon. Alex Fisch  
Hon. Mark Henderson  
Hon. Peggy Huang  
Hon. Cecilia Hupp  
Hon. Kathleen Kelly  
Hon. Jed Leano  
Hon. Patricia Lock Dawson  
Hon. Marisela Magana  
Hon. Andrew Masiel, Sr.  
Hon. Lauren Meister

**Covina**  
**Cerritos**  
*Long Beach*  
*Yucaipa*  
*El Segundo*  
*Mission Viejo*  
*Palmdale*  
*Tustin*  
*La Mirada*  
*Glendale*  
*Duarte*  
*Culver City*  
*Gardena*  
  
*Brea*  
*Palm Desert*  
*Claremont*  
*Riverside*  
*Perris*  
*Tribal Gov’t Regl Planning*  
*West Hollywood*

**RC District 33**  
**RC District 23**  
GCCOG  
SBCTA  
District 40  
District 13  
District 43  
District 17  
GCCOG  
District 42  
District 35  
District 41  
District 28  
TCA  
OCCOG  
District 2  
SGVCOG  
District 68  
District 69  
WSSCOG



Hon. Bill Miranda	<i>Santa Clarita</i>	SFVCOG
Hon. John Mirisch	<i>Beverly Hills</i>	<i>Pres. Appt., Member-at-Large</i>
Hon. George Nava	<i>Brawley</i>	ICTC
Hon. Kim Nguyen	<i>Garden Grove</i>	District 18
Hon. Trevor O'Neil	<i>Anaheim</i>	District 19
Hon. Edward Paget	<i>Needles</i>	SBCTA
Hon. Sunny Park	<i>Buena Park</i>	OCCOG
Hon. Misty Perez	<i>Port Hueneme</i>	<i>Pres. Appt., Member-at-Large</i>
Hon. Jan Pye	<i>Desert Hot Springs</i>	CVAG
Hon. Rex Richardson	<i>Long Beach</i>	District 29
Hon. Sonny Santa Ines	<i>Bellflower</i>	GCCOG
Hon. Nicholas Schultz	<i>Burbank</i>	AVCJPA
Hon. David Shapiro	<i>Calabasas</i>	District 44
Hon. Becky Shevlin	<i>Monrovia</i>	SGVCOG
Hon. Andy Sobel	<i>Santa Paula</i>	VCOG
Hon. Wes Speake	<i>Corona</i>	WRCOG
Hon. Mark Waronek	<i>Lomita</i>	SBCCOG
Hon. Acquanetta Warren	<i>Fontana</i>	SBCTA
Hon. Christi White	<i>Murrieta</i>	WRCOG
Hon. Tony Wu	<i>West Covina</i>	SGVCOG
Hon. Frank Zerunyan	<i>Rolling Hills Estates</i>	SBCCOG

**Members Not Present**

Hon. Adele Andrade-Stadler	<i>Alhambra</i>	District 34
Hon. Megan Beaman Jacinto	<i>Coachella</i>	District 66
Hon. Michael C. Carroll	<i>Irvine</i>	District 14
Hon. Diane Dixon	<i>Newport Beach</i>	District 15
Hon. Anni Marshall	<i>Avalon</i>	GCCOG
Hon. Holly Mitchell		Los Angeles County
Hon. Michael Posey	<i>Huntington Beach</i>	District 64
Hon. Nithya Raman	<i>Los Angeles</i>	District 51

**CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

The Honorable Jorge Marquez, called the meeting to order at 9:31 a.m. and asked Councilmember Mark Waronek, City of Lomita, to lead in the Pledge of Allegiance.

**PUBLIC COMMENT PERIOD**



Chair Marquez opened the public comment period and asked anyone on their computers to speak by using the “raised hands” function on the computer and/or wait for SCAG staff to announce their name or phone number. Additionally, public comments received via email to [CEHDPublicComment@scag.ca.gov](mailto:CEHDPublicComment@scag.ca.gov) after 5pm on March 31, 2021, would be announced and included as part of the official record of the meeting.

SCAG Staff noted there were no public comments received before the 5pm deadline on March 31, 2021 or via hands raised.

Chair Marquez closed the public comment period.

**REVIEW AND PRIORITIZE AGENDA ITEMS**

No reprioritizations were made.

**ELECTION OF CEHD CHAIR AND VICE CHAIR**

Michael Houston, Chief Counsel, announced that there was one nominee for the CEHD Chair position and three nominees for the position of Vice Chair. He recited SCAG’s election rules for voting from the floor and asked the Committee to proceed with those nominations.

A NOMINATION was made (Finlay) to elect Hon. Jorge Marquez as the CEHD Chair. Motion passed by the following roll call votes:

**AYES:** AVILA, BOYLES, BUCKNUM, CARRILLO, CLARK, DE RUSE, FINLAY, FISCH, HENDERSON, HUANG, HUPP, KELLY, LEANO, LOCK DAWSON, MARQUEZ, MEISTER, MIRISCH, NAVA, NGUYEN, O’NEIL, PAGET, PARK, PEREZ, PYE, SANTA INES, SCHULTZ, SHAPIRO, SHEVLIN, SOBEL, SPEAKE, WARONEK, WHITE, WU, YOKOYAMA AND ZERUNYAN (35)

**NOES:** None (0)

**ABSTAIN:** None (0)

Nominees for the CEHD Vice Chair were announced as follows: Hon. Mark Henderson, Hon. Michael Posey and Hon. Frank Yokoyama. Each candidate, except for Hon. Michael Posey, due to being absent, provided a brief statement. Roll call votes for each Vice Chair nominee is noted as follows:

**HENDERSON:** BOYLES, CARRILLO, FISCH, HENDERSON, MIRANDA, NAVA, PEREZ, RICHARDSON, SPEAKE, WARONEK, AND ZERUNYAN (11)



**POSEY:** None (0)

**YOKOYAMA:** AVILA, BUCKNUM, CLARK, DE RUSE, DEVINE, FINLAY, HUANG, HUPP, KELLY, LEANO, LOCK DAWSON, MARQUEZ, MEISTER, MIRISCH, NGUYEN, O’NEIL, PAGET, PARK, PYE, SANTA INES, SCHULTZ, SHAPIRO, SHEVLIN, SOBEL, WHITE, WU, AND YOKOYAMA (27)

**NOES:** None (0)

**ABSTAIN:** None (0)

Chair Marquez congratulated Hon. Frank Yokoyama on the CEHD Vice Chair position.

**CONSENT CALENDAR**

Approval Item

1. Minutes of the February 23, 2021 Meeting

Receive and File

2. Quarterly Update on Climate Change Action Resolution Activities
3. Updated Regional Early Action Planning (REAP) Program Subregional Allocation Amounts Based on Final Regional Housing Needs Assessment (RHNA) Allocation

Item No. 3 was pulled for discussion. Regarding availability of the phase two REAP funding, staff was asked for an update. Jenna Hornstock, SCAG staff, provided an update noting that full approval from the Department of Housing and Community Development (HCD) has not yet been received. Ms. Hornstock noted that subregional partners may move forward on their approved eligible projects and apply for reimbursement once phase two funding becomes available. Ms. Hornstock commented that she would discuss and inquire with SCAG staff, if additional funding sources could be made available. SCAG staff will provide an update on this concern and on the REAP funding progress.

A MOTION was made (White) to approve the Consent Calendar. Motion was SECONDED (Waronek) and passed by the following roll call votes:

**AYES:** AVILA, BOYLES, BUCKNUM, CARRILLO, CLARK, DE RUSE, DEVINE, FINLAY, FISCH, HENDERSON, HUANG, HUPP, KELLY, LEANO, LOCK DAWSON, MARQUEZ, MEISTER,

MIRANDA, MIRISCH, NAVA, NGUYEN, O'NEIL, PAGET, PARK, PEREZ, PYE, RICHARDSON, SANTA INES, SCHULTZ, SHAPIRO, SHEVLIN, SOBEL, SPEAKE, WARONEK, WHITE, WU, YOKOYAMA AND ZERUNYAN (38)

**NOES:** None (0)

**ABSTAIN:** None (0)

#### **ACTION/DISCUSSION ITEMS**

#### 4. Sustainable Communities Program – Housing & Sustainable Development Applications

Chair Marquez introduced Lyle Janicek, SCAG staff, to present a brief presentation on the 26 applications received and the recommended projects for the 2020/2021 Sustainable Communities Program. Mr. Janicek provided background information and overview of the approved guidelines and scoring criteria for the three housing-related project categories. He asked the CEHD to recommend that the Regional Council approve the 2020/2021 Sustainable Communities Program (SCP) Housing and Sustainable Development (HSD) applications and authorize staff to initiate the projects.

The comprehensive staff report along with the PowerPoint Presentation - Housing and Sustainable Development Application Recommendations was included in the agenda packet.

A MOTION was made (Kelly) to approve staff's recommendation. Motion was SECONDED (Carrillo) and passed by the following roll call votes:

**AYES:** AVILA, BOYLES, BUCKNUM, CARRILLO, CLARK, DE RUSE, DEVINE, FINLAY, FISCH, HENDERSON, HUANG, HUPP, KELLY, LEANO, LOCK DAWSON, MARQUEZ, MASIEL, MEISTER, MIRANDA, MIRISCH, NAVA, NGUYEN, O'NEIL, PAGET, PARK, PYE, RICHARDSON, SANTA INES, SCHULTZ, SHEVLIN, SOBEL, WARONEK, WHITE, WU, YOKOYAMA AND ZERUNYAN (36)

**NOES:** None (0)

**ABSTAIN:** None (0)

#### **INFORMATION ITEMS**

#### 5. 2024 Regional Transportation Plan/Sustainable Communities Strategy Framework

Chair Marquez introduced Sarah Dominguez, SCAG staff, to provide an overview of the proposed 2024 Regional Transportation Plan/Sustainable Communities Strategy Framework (RTP/SCS) process. Ms. Dominguez’s presentation included major milestones, updated and new strategies and timelines of the preparation of the RTP/SCS 2024 plan, which will begin Spring 2021 with the final plan to be shared in Spring 2024. Highlights are noted below:

- Foundation & Frameworks
- Data Collection and Policy Development
- Outreach and Analysis
- Draft Plan and Adoption
- Final Connect SoCal 2024 Transportation Conformity Determination, and PEIR

Ms. Dominguez concluded with a summary highlighting the 2024 RTP/SCS Stakeholder Outlook, that detailed planned public stakeholder outreach activities and workshops.

Committee members asked for the plan to also focus on a regional approach to economic development and broadband access for all. Staff concurred.

The comprehensive staff report and presentations was included in the agenda packet.

#### 6. Inclusive Economic Recovery Strategy (IERS) – Work Plan Progress Report

Chair Marquez introduced Jenna Hornstock, Deputy Director for Planning, Special Initiatives, to provide an overview of the IERS work program, framework, and the progress to-date. Ms. Hornstock’s presentation included the following highlights:

- Overview of the SCAG Region’s Economic Performance
- Equity Indicators - Baseline Data for the SCAG region
- Overview of the Guiding Principles and Framework
- Overview of the IERS Focus Areas
- IERS strategies under development – Preliminary Findings
- Stakeholder Outreach and presentation of the Draft Plan to the Regional Council

Discussion ensued. Councilmembers expressed their support for the IERS strategies, and the focused areas outlined in the presentation. The councilmembers asked that the IERS also focus on homeownership for traditionally disadvantaged groups, to work with school districts as a resource for the digital divide working groups, provide more information on wage disparities, work on bringing jobs to the community, provide more resources for economic development and provide

access to post-secondary education to underserved communities. Additional comments focused on the need for the state to provide resources and real solutions, in addition to regional officials and stakeholders working collaboratively to find concrete solutions on how to uplift specific communities.

The Committee thanked staff for the strong presentation.

#### 7. Supporting Development of Accessory Dwelling Units (ADUs)

Chair Marquez announced that two speakers would discuss SCAG's REAP support and best practices for Accessory Dwelling Units (ADUs). Ms. Linda Wheaton, a retiree from HCD serving as SCAG's Senior Housing Policy Advisor and Ms. Dori Ganetsos of UC Berkeley's Center for Community Innovation, described their evaluation of ADU ordinances. Ms. Wheaton's presentation focused on the growing role of housing and local demand for ADUs. Additional topics covered included, but were not limited to, the following:

- Local Government Requirements and SCAG ADU Ordinance Compliance
- Overview of State ADU Legislation
- Supportive Housing Policies and Practices
- Housing Element Parcel/Web Mapping Tool
- SCAG ADU Affordability Analysis for Housing Elements

Ms. Wheaton and Ms. Ganetsos responded to comments and requests expressed by the Councilmembers, including questions regarding 3D printing of ADUs, rent stabilization, measures to prevent overcrowding of junior ADU units, consideration for Homeowner Associations (HOAs), and parking allotment and enforcement requirements. Additional comments and discussion focused on the need for state legislation to properly manage, oversee and incentivize ADU policies and procedures to increase affordable housing stock in the SCAG region.

The comprehensive staff report and presentations were included in the agenda packet.

#### **CHAIR'S REPORT**

A Chair's Report was not given.

#### **STAFF REPORT**

Jonathan Hughes, SCAG staff, announced that SCAG's annual General Assembly and business meeting would take place virtually on Thursday, May 6, 2021, along with a Regional Council meeting.



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Kevin Kane, SCAG staff, announced that the 32<sup>nd</sup> Annual Demographic workshop will be held virtually on June 8 and 15, 2021. He reminded everyone to register for the event. More details may be found on SCAG's website.

**FUTURE AGENGA ITEM**

A presentation on "Broadband Access for All" was requested for a future meeting.

**ADJOURNMENT**

There being no further business, Chair Marquez adjourned the CEHD Committee meeting at 11:33 a.m.

Respectfully submitted by:

Carmen Summers

Community, Economic and Human Development Committee Clerk

[MINUTES ARE UNOFFICIAL UNTIL APPROVED BY THE CEHD COMMITTEE]

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CEHD Members																
2020-2021																
MEMBERS	CITY	Representing	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	23-Feb	MAR	APR	MAY	Total Mtgs Attended To Date
Andrade-Stadler, Adele	Alhambra	District 34									1					1
Austin, Al	Long Beach	GCCOG												1		1
Avila, David	Yucaipa	SBCTA						1		1	1			1		4
Beaman Jacinto, Megan	Coachella	District 66		1		1		1		1	1					5
Boyles, Drew	El Segundo	District 40					1	1			1	1		1		5
Bucknum, Wendy	Mission Viejo	District 13		1		1	1	1		1	1	1		1		8
Carrillo, Juan	Palmdale	District 43					1	1		1	1	1		1		6
Carroll, Michael, C.	Irvine	District 14				1		1		1	1					4
Clark, Letitia	Tustin	District 17									1	1		1		3
DeRuse, Steve	La Mirada	District 31		1		1	1	1		1	1	1		1		8
Devine, Paula	Glendale	District 42		1		1					1	1	1	1		5
Dixon, Diane	Newport Beach	District 15									1	1				2
Finlay, Margaret	Duarte	District 35		1		1	1	1		1	1	1		1		8
Fisch, Alex	Culver City	District 41								1	1	1		1		4
Henderson, Mark	Gardena	District 28		1		1	1			1	1	1		1		7
Huang, Peggy	Yorba Linda	TCA		1		1	1	1		1	1	1		1		8
Hupp, Cecilia	Brea	OCCOG		1		1	1	1		1	1	1		1		8
Kelly, Kathleen	Palm Desert	District 2		1		1	1	1		1	1	1		1		8
Leano, Jed	Claremont	SGVCOG		1		1	1	1		1	1	1		1		8
Lock Dawson, Patricia	Riverside	District 68									1	1	1	1		3
Magana, Marisela	Perris	District 69					1			1				1		4
Marquez, Jorge, Chair	Covina	District 33		1		1	1	1		1	1	1		1		8
Marshall, Anni	Avalon	GCCOG				1	1	1		1		1				5
Masiel, Andrew		Tribal Govt Regl Planning Rep		1						1	1			1		4
Meister, Lauren	West Hollywood	WSCCOG		1		1	1	1		1	1	1		1		8
Miranda, Bill	Santa Clarita	SFVCOG		1		1	1	1		1	1	1		1		8
Mirisch, John	Beverly Hills	President's Appointment		1		1	1	1		1	1	1		1		8
Mitchell, Holly		Los Angeles County														
Nava, George	Brawley	ICTC								1	1	1		1		4
Nguyen, Kim	Garden Grove	District 18		1		1	1	1		1	1	1		1		8
O'Neil, Trevor	Anaheim	District 19		1		1	1	1		1	1			1		7
Paget, Ed	Needles	SBCTA					1	1			1	1		1		5
Park, Sunny	Buena Park	OCCOG		1		1						1		1		4
Perez, Misty	Port Hueneme	President's Appointment									1	1		1		3
Posey, Michael	Huntington Beach	District 64						1			1	1				3
Pye, Jan	Desert Hot Springs	CVAG		1		1	1	1		1	1	1		1		8
Raman, Nithya	Los Angeles	District 51								1						1
Richardson, Rex	Long Beach	District 29		1		1	1	1						1		5
Santa Ines, Sonny	Bellflower	GCCOG				1	1	1		1	1	1		1		7
Schultz, Nicholas	Burbank	AVCJPA											1	1		2
Shapiro, David	Calabasas	District 44		1		1	1	1		1	1	1		1		8
Shevlin, Becky	Monrovia	SGVCOG				1	1	1		1	1	1		1		7
Sobel, Andy	Santa Paula	VCOG									1	1		1		3
Speake, Wes	Corona	WRCOG									1	1		1		3
Waronek, Mark	Lomita	SBCCOG		1		1	1	1		1	1	1		1		8
Warren, Acquanetta	Fontana	SBCTA		1		1	1	1			1	1		1		7
Christi White	Murrieta	WRCOG								1	1	1		1		4
Wu, Tony	West Covina	SGVCOG		1		1	1				1			1		5
Yokoyama, Frank, Vice Chair	Cerritos	District 23		1		1	1	1		1	1	1		1		8
Zerunyan, Frank	Rolling Hills Estates	SBCCOG		1		1	1	1		1	1	1		1		8

Attachment: CEHD Attendance 040121 (Minutes of the April 1, 2021 Meeting)



Southern California Association of Governments  
Remote Participation Only  
June 3, 2021

**To:** Community Economic & Human Development Committee (CEHD)  
Regional Council (RC)

**From:** Ma'Ayn Johnson, Regional Planner Specialist  
(213) 236-1975, johnson@scag.ca.gov

**Subject:** Transfer of Regional Housing Needs Assessment (RHNA) Units from  
County of Orange to City of Santa Ana

EXECUTIVE DIRECTOR'S  
APPROVAL

**RECOMMENDED ACTION FOR CEHD AND RC:**

Approve the transfer of Regional Housing Needs Assessment (RHNA) units from the County of Orange to the City of Santa Ana pursuant to and in compliance with Government Code section 65584.07(a).

**STRATEGIC PLAN:**

This item supports the following Strategic Plan Goal 2: Advance Southern California's policy interests and planning priorities through regional, statewide, and national engagement and advocacy.

**EXECUTIVE SUMMARY:**

*Government Code Section 65584.07(a) permits a transfer of allocated Regional Housing Needs Assessment (RHNA) housing units from an unincorporated county to a city or cities within the county between the adoption of the Final RHNA Allocation and the housing element due date. Certain requirements of this transfer must be met. The County of Orange has submitted a request to reduce their RHNA allocation by 20 very low income units and 22 moderate income units (total of 42 units), while the City of Santa Ana has agreed to increase its very low income and moderate income units by 20 and 22 units, respectively. Staff has analyzed this request and determined that the conditions enumerated in Government Code Section 65584.07(a) have been met. Pending action by the Regional Council, SCAG will adjust the Final RHNA Allocation of the two jurisdictions accordingly and submit its decision to the California Department of Housing and Community Development (HCD), as required by statute.*

**BACKGROUND:**

Government Code Section 65584.07(a) permits an unincorporated county's Final RHNA Allocation to be reduced between the time of the Final RHNA Allocation adoption and the housing element due date, provided certain conditions are met. As provided by subsection (1) through (3) of Government Code section 65584.07(a), these conditions are:

- (1) One or more cities within the county agree to increase its share or their shares in an amount equivalent to the reduction.
- (2) The transfer of shares shall only occur between a county and cities within that county.
- (3) The county's share of low-income and very low income housing shall be reduced only in proportion to the amount by which the county's share of moderate- and above moderate-income housing is reduced.

Additionally, the county and city or cities proposing the transfer are required to submit an analysis of the factors and circumstances, with all supporting data, justifying the revision to the council of governments. Once a decision is made by the council of governments, the council of governments must submit a copy of its decision regarding the proposed reduction to HCD.

Since an increase in allocated RHNA units of an equivalent amount is required for one or more jurisdictions, this is effectively a "transfer" of RHNA units though this term does not formally exist in RHNA law. For the 6<sup>th</sup> cycle RHNA process, the Final RHNA Allocation was adopted by the Regional Council on March 4, 2021. The corresponding 6<sup>th</sup> cycle Housing Element is due to HCD by October 15, 2021.

Prior to the passage of AB 1771 (2017) a trade and transfer option existed in State housing law, which provided an opportunity for one or more jurisdictions (cities and unincorporated counties) to transfer RHNA units prior to the adoption of the Final RHNA Allocation Plan. There were no specific conditions outlined in State housing law for this type of transfer, though the amount of units transferred could not reduce the regional RHNA allocation by income category, implying that the reduction and increases agreed upon would need to equal zero after the transfer. In addition, as part of its Appeals and Transfers Guidelines for the 5<sup>th</sup> RHNA cycle, SCAG required that transfers within the region had to be between geographically contiguous jurisdictions and preferably within the same county. The purpose of these conditions was to ensure that housing would still be planned for in areas where they were needed and that the income thresholds would remain equivalent since a county median income is the primary threshold for determining the unit's affordability.

On May 11, 2021, the County of Orange (County) and the City of Santa Ana (City) submitted to SCAG an allocation transfer request for the Crossroads at Washington project to be applied towards this upcoming 6th Cycle Housing Element pursuant to Government Code Section 65584.07. According to the information provided in the letter and its attachments, the City's Housing Authority and the County own the two adjacent parcels comprising the project. The project will consist of eighty-six (86) rental units, all of which except for the manager's unit will have the rent set at 30 percent of county median income. Of these units, forty-three (43) rental units will be set aside for formerly homeless households.

On February 18, 2020, the City Council of Santa Ana authorized the Executive Director of the Santa Ana Housing Authority to enter a Joints Power Authority (JPA) and Memorandum of Agreement (MOA) with the County for joint ownership of the properties to develop the affordable housing project and also grant consent to the Orange County Housing Authority to administer project-based vouchers in the City for the affordable housing development. The JPA sets forth that both parties will cooperate in good faith to submit a RHNA allocation share transfer to SCAG for the 6<sup>th</sup> Cycle Housing Element, which will reduce the County's RHNA fair share allocation for housing built within the City's boundaries. When preparing annual progress reports (APR) on permitted units to meet RHNA goals, jurisdictions may only report ("take credit") for units within their boundaries where they have local land use and permitting authority. Since the project is located within Santa Ana city boundaries, only the City may report these units in their submitted APR for units permitted within this project.

The County and the City separately own the two adjacent parcels, and each jurisdiction is also contributing funds towards the project. The City is contributing a residual receipts loan (land value) in the amount of \$4,108,136 and an additional loan in the amount of \$3,971,440. The County is also providing a permanent loan in the amount of \$2,280,701, a land loan in the amount of \$2,341,864 and forty-three (43) Project-Based Housing Choice Vouchers (HCVs) to be made available to the project after completion of construction and issuance of a Certificate of Occupancy.

If approved by SCAG, the proposed transfer agreed upon by the County and City would reduce the County's RHNA allocation of very-low income units by twenty (20) units and increase the City's RHNA share of very-low income units by twenty (20) units. Additionally, the County's RHNA allocation of moderate-income units would be reduced by twenty-two (22) units and the City's RHNA share of the moderate-income units would increase by twenty-two (22) units. The reduction of the lower income units is in proportion to the reduction of the moderate and above moderate income units and is in accordance with the proportion requirement of GC 65584.07(a)(3).

SCAG staff reviewed the analysis and circumstances and attachments submitted by the County of Orange and City of Santa Ana and has determined that it meets the conditions required by Government Code 65584.07(a). Pending approval by the Regional Council, the revised 6<sup>th</sup> cycle RHNA allocation for the County and City would be as follows:



	Very low	Low	Moderate	Above moderate
County of Orange RHNA (total 10,406 units)	3,139	1,866	2,040	3,361
Adjustment	-20	0	-22	0
Revised 6 <sup>th</sup> cycle RHNA, pending RC action (total 10,364 units)	3,119	1,866	2,018	3,361
City of Santa Ana RHNA (3,095 units)	586	362	523	1,624
Adjustment	+20	0	+22	0
Revised 6 <sup>th</sup> cycle RHNA, pending RC action (total 3,137 units)	606	362	545	1,624

Subsequent to Regional Council action, SCAG will revise the 6<sup>th</sup> cycle Final RHNA Allocation and submit its decision to HCD.

**FISCAL IMPACT:**

Work associated with this item is included in the current FY 2020-21 Overall Work Program (300-4872Y0.02: Regional Housing Needs Assessment).

**ATTACHMENT(S):**

1. Letter on RHNA Transfer 051121
2. Minute Order and City of Santa Ana staff report
3. Minute Order and County of Orange staff report
4. Memorandum of Agreement



County Administration South  
601 North Ross Street  
Santa Ana, CA 92701

P.O. Box 4048  
Santa Ana, CA 92702

(714) 667-8800

info@ocpw.ocgov.com

OCPublicWorks.com



May 11, 2021

Ma'Ayn Johnson, Housing Program Manager  
Southern California Association of Governments  
900 Wilshire Blvd, Suite 1700  
Los Angeles, CA 90017

Subject: RHNA Transfer Request

Dear Ms. Johnson:

The County of Orange (County) and the City of Santa Ana (City) are submitting this Regional Housing Needs Assessment (RHNA) allocation transfer request for the Crossroads at Washington project to be applied towards this upcoming 6<sup>th</sup> Cycle Housing Element (2021-2029) pursuant to Government Code Section 65584.07.

**Background:** The property underlying the Crossroads at Washington project is comprised of two adjacent parcels, one owned by the Housing Authority of the City of Santa Ana (Authority) and the other owned by the County. The site is within walking distance from the Santa Ana Regional Transportation Center, a key transit hub for not only Orange County, but all of Southern California.

The Project site includes two (2) contiguous, irregular, and undeveloped parcels totaling 2.286 acres and is located at 1126 and 1146 East Washington Avenue within the City (APNs 398-092-13 and 398-092-14). The Authority owns the 1.456-acre property that fronts East Washington Avenue on the northern half of the site, and the County owns the 0.83-acre property directly south of the other parcel. The five (5) original buildings located on the site were demolished in the 1990s as part of the I-5 freeway widening project and purchased by the City and County from Caltrans.

On July 16, 2019, the Orange County Board of Supervisors (Board) selected The Related Companies of California, LLC (Developer) for the development of the Crossroads at Washington project, and authorized the Chief Real Estate Officer to negotiate an Option Agreement and 65-year Ground Lease with the Developer, as well as a Joint Powers Agreement (JPA) and transfer agreement of the RHNA allocations between the City and County.

The project is a new construction four-story apartment community consisting of eighty-six (86) rental units, and forty-three (43) rental units will be set aside for formerly homeless households (Project). The Project includes sixteen (16) studio units, twenty-six (26) one-bedroom units, twenty-one (21) two-bedroom units, seventeen (17) three-bedroom units,

Attachment: Letter on RHNA Transfer 051121 (Transfer of RHNA Units from County of Orange to City of Santa Ana)

five (5) four-bedroom units and (1) one two-bedroom manager's unit. Rents for all the units with exception to the unrestricted manager's unit will be set at 30 percent of Area Median Income (AMI) for Orange County.

On February 18, 2020, the City Council authorized the Executive Director of the Santa Ana Housing Authority to enter a JPA with the County for joint ownership of the properties in order to develop the affordable housing project; execute an Option Agreement and Ground Lease with the limited partnership for the development; and grant consent to the Orange County Housing Authority to administer project-based vouchers in the City for the affordable housing development. Additionally, the City Council has authorized their City Manager to execute a Memorandum of Understanding with the County regarding the RHNA for future Housing Element cycles pertaining to the Crossroads at Washington development. See Attachment A.

On February 25, 2020, the Board approved the Option Agreement and Ground Lease with the limited partnership, JPA and Memorandum of Agreement (MOA) between the County and City, and approved a loan commitment and the utilization of project-based housing choice vouchers for the development (see Attachment B).

The JPA allows the City and County to develop the adjacent properties under joint ownership. Consolidating ownership of the site retains integrity of the site plan and expedites and streamlines the development, permitting and lending process. The JPA sets forth that both parties will cooperate in good faith to submit a RHNA allocation share transfer to Southern California Association of Governments (SCAG) for this upcoming 6<sup>th</sup> Cycle Housing Element (2021-2029), which will reduce the County's RHNA fair share allocation for housing built within the City's boundaries.

The MOA provides for the transfer of RHNA allocation shares between the County and City and authorizes the Directors to execute the MOA upon the final release of the RHNA by SCAG. On March 4, 2021, the SCAG Regional Council adopted the 6th Cycle Final RHNA Allocation Plan, which assigns housing need for all jurisdictions in the SCAG region. The County's RHNA is 10,406 units, and the City of Santa Ana's RHNA is 3,095 units for the 2021-2029 planning period.

**Analysis of Factors and Circumstances:** The City has local land use authority and is legally entitled to receive RHNA credit for all the units within the project; however, the City has agreed to absorb a number of agreed upon RHNA units from the County's RHNA unit allocation, as evidenced through the City and County approved MOA (see Attachment C).

The County and the City separately own the two adjacent parcels, and each jurisdiction is also contributing funds towards the project. The City is contributing a residual receipts loan (land value) in the amount of \$4,108,136 and an additional loan in the amount of \$3,971,440. The County is also providing a permanent loan in the amount of \$2,280,701, a land loan in the amount of \$2,341,864 and forty-three (43) Project-Based Housing Choice Vouchers (HCVs) to be made available to the project after completion of construction and issuance of a Certificate of Occupancy. The value of the forty-three (43)

Attachment: Letter on RHNA Transfer 051121 (Transfer of RHNA Units from County of Orange to City of Santa Ana)

HCVs for the 15-year period is estimated to be \$11,940,660 based on the current Orange County Housing Authority Voucher Payment Standard and anticipated Utility Allowance.

The Crossroads at Washington project is a prime example of a mutually beneficial intraregional public-private partnership aligning resources to end homelessness by providing supportive housing to formerly homeless households and creating housing stability and security for households with extremely low income in Orange County.

**Proportional Units:** The Project is a new construction multifamily rental development consisting of eighty-six (86) units, including the manager’s unit, and the City intends to transfer credit for forty-two (42) total RHNA units to the County as shown in Table 1 below.

The City and County mutually approved the MOA to provide for the RHNA transfer. The MOA is conditioned upon approval by SCAG. If approved by SCAG, the MOA would reduce the County's RHNA allocation of very-low income units by twenty (20) units and increase the City's RHNA share of very-low income units by twenty (20) units. Additionally, the County's RHNA allocation of moderate-income units would be reduced by twenty-two (22) units and the City's RHNA share of the moderate-income units would increase proportionally by twenty-two (22) units in accordance with state law. SCAG’s approval will beneficially impact the County’s RHNA allocations established by SCAG.

Table 1: Transfer Summary

	RHNA Income Limits			
	Very Low	Low	Moderate	Above Moderate
County of Orange RHNA (10,406 units)	3,139 units	1,866 units	2,040 units	3,361 units
Adjustment	-20 units	0	-22 units	0
RHNA upon approval by SCAG and State HCD	3,119 units	1,866 units	2,018 units	3,361 units
City of Santa Ana RHNA (3,095 units)	586 units	362 units	523 units	1,624 units
Adjustment	+20 units	0	+22 units	0
RHNA upon approval by SCAG and State HCD	606 units	362 units	545 units	1,624 units

In summary, the County of Orange respectfully requests approval of the RHNA allocation transfer related to the Crossroads at Washington project to be applied towards the current 6<sup>th</sup> Cycle Housing Element (2021-2029) pursuant to Government Code Section 65584.07. In the meantime, please feel free to contact Joanna Chang at (714) 667-8815 for any questions.

Attachment: Letter on RHNA Transfer 051121 (Transfer of RHNA Units from County of Orange to City of Santa Ana)

Sincerely,



---

Amanda Carr, Interim Deputy Director  
OC Public Works/Development Services

**Attachments**

- Attachment A: Minute Order and City of Santa Ana staff report dated February 18, 2020
- Attachment B: Minute Order and County of Orange Board of Supervisors staff report dated February 25, 2020
- Attachment C: Memorandum of Agreement

- CC: Nicole Walsh, Senior Assistant County Counsel, Office of County Counsel  
Jaqueline Guzman, Senior Deputy County Counsel, Office of County Counsel  
Brian Bauer, Land Development Manager, CEO Real Estate  
Richard Vuong, Planning Division Manager, OC Public Works  
Joanna Chang, Land Use Manger, OC Public Works  
Judson Brown, Housing Division Manager, City of Santa Ana  
Melanie McCann, Principal Planner, City of Santa Ana

Attachment: Letter on RHNA Transfer 051121 (Transfer of RHNA Units from County of Orange to City of Santa Ana)

# REQUEST FOR COUNCIL/ HOUSING AUTHORITY ACTION



CITY COUNCIL MEETING DATE:

FEBRUARY 18, 2020

TITLE:

**PUBLIC HEARING - APPROVE A JOINT POWERS AGREEMENT WITH THE COUNTY OF ORANGE; APPROVE AN OPTION AGREEMENT AND SIXTY-FIVE YEAR GROUND LEASE WITH WASHINGTON SANTA ANA HOUSING PARTNERS, L.P. FOR THE DEVELOPMENT OF THE CROSSROADS AT WASHINGTON PROJECT LOCATED AT 1126 AND 1146 E WASHINGTON AVENUE (APNS 398-092-13 AND 398-092-14); ADOPT A RESOLUTION AUTHORIZING THE ORANGE COUNTY HOUSING AUTHORITY TO ADMINISTER PROJECT-BASED VOUCHERS IN SANTA ANA; APPROVE A REGIONAL HOUSING NEEDS ALLOCATION AGREEMENT WITH THE COUNTY OF ORANGE; APPROVE A SUBSTANTIAL AMENDMENT TO THE NEIGHBORHOOD STABILIZATION PROGRAM ANNUAL ACTION PLAN**

/s/ Kristine Ridge

CITY MANAGER

EXECUTIVE DIRECTOR

CLERK OF COUNCIL USE ONLY:

APPROVED

- As Recommended
- As Amended
- Ordinance on 1<sup>st</sup> Reading
- Ordinance on 2<sup>nd</sup> Reading
- Implementing Resolution
- Set Public Hearing For \_\_\_\_\_

CONTINUED TO \_\_\_\_\_

FILE NUMBER \_\_\_\_\_

## RECOMMENDED ACTION HOUSING AUTHORITY

1. Authorize the Executive Director of the Housing Authority to enter into a Joint Powers Agreement with the County of Orange for the joint ownership of the adjacent properties located at 1126 and 1146 E Washington Avenue, Santa Ana, CA 92701 (APNs 398-092-13 and 398-092-14) in order to develop the Crossroads at Washington affordable housing project, subject to approval by the County of Orange Board of Supervisors and Orange County Housing Authority, and subject to non-substantive changes approved by the Executive Director of the Housing Authority and Housing Authority General Counsel.
2. Authorize the Executive Director of the Housing Authority to execute an Option Agreement with Washington Santa Ana Housing Partners, L.P., a California limited partnership formed by The Related Companies of California LLC and A Community of Friends for the development of the Crossroads at Washington affordable housing project located at 1126 and 1146 E Washington Avenue, Santa Ana, CA 92701, (APNs 398-092-13 and 398-092-14), subject to approval by the

County of Orange Board of Supervisors, and subject to non-substantive changes approved by the Executive Director of the Housing Authority and Housing Authority General Counsel.

3. Authorize the Executive Director of the Housing Authority to execute a joint sixty-five (65) year Ground Lease with Washington Santa Ana Housing Partners, L.P., a California limited partnership formed by The Related Companies of California, LLC and A Community of Friends, for the development of the Crossroads at Washington affordable housing project located at 1126 and 1146 E Washington Avenue, Santa Ana, CA 92701, (APNs 398-092-13 and 398-092-14), subject to approval by the County of Orange Board of Supervisors, and subject to non-substantive changes approved by the Executive Director of the Housing Authority and Housing Authority General Counsel.
4. Adopt a resolution granting consent to the Orange County Housing Authority to administer project-based vouchers in the City of Santa Ana for the development of the Crossroads at Washington affordable housing project located at 1126 and 1146 E Washington Avenue, Santa Ana, CA 92701, (APNs 398-092-13 and 398-092-14).

#### **CITY COUNCIL**

1. Authorize the City Manager to execute a Memorandum of Understanding with the County of Orange regarding the County's and City's Regional Housing Needs Allocation for future Housing Element planning periods pertaining to development of the Crossroads at Washington affordable housing project located at 1126 and 1146 E Washington Avenue, Santa Ana, CA 92701, (APNs 398-092-13 and 398-092-14), subject to approval by the County of Orange Board of Supervisors, and subject to non-substantive changes approved by the City Manager and City Attorney.
2. Approve a Substantial Amendment to the Neighborhood Stabilization Program Annual Action Plan in order to reallocate \$963,951 in Neighborhood Stabilization Program I, II and III grant funds to the Crossroads at Washington affordable housing project and authorize its submission to the United States Department of Housing and Urban Development.

#### **EXECUTIVE SUMMARY**

On June 19, 2018, the City Council authorized the Community Development Agency (CDA) to release a FY 2018-2019 Request for Proposals (RFP # 18-056) to develop affordable rental and ownership project(s) in the City of Santa Ana. Following this competitive selection process, on July 2, 2019 the City Council authorized the City Manager to execute a pre-commitment letter with The Related Companies of California ("Related") and A Community of Friends ("ACOF"), collectively referred to as the "Developer", for \$3,971,440 in affordable housing funds for the development of the Crossroads at Washington affordable housing project located at 1126 and 1146 E Washington Avenue, Santa Ana, CA 92701 (APNs 398-092-13 and 398-092-14) (the "Project") (Exhibit 1). At the same meeting, the City Council also authorized the Executive Director of the Housing Authority to enter into negotiations for the following: 1) a Joint Powers Agreement with the County of Orange for the County and Housing Authority-owned properties to be joined together as tenants in common; 2) a sixty-five (65) year ground-lease of the Housing Authority-owned parcel at 1126 E Washington Avenue that is adjacent to the County-owned parcel; and 3) any other required actions necessary for the adjacent properties to be merged and then leased to a California limited

partnership formed by the Developer to develop the Project. Following those approvals, staff began working with the County of Orange and the Developer to negotiate, draft and finalize a Joint Powers Agreement, a 65-year Ground Lease, an Option Agreement, as well as a Regional Housing Needs Allocation agreement, and a resolution granting consent to the Orange County Housing Authority to administer project-based vouchers in the City of Santa Ana.

In general, this action will authorize staff to enter into an agreement with the County of Orange to join the adjacent properties (Joint Powers Agreement) and then lease the joint property to a California limited partnership formed by the Developer to develop the Crossroads at Washington (Option Agreement and 65-year Ground Lease). The action also includes an agreement between the County and the City to equitably share the number of affordable housing units built in this Project to meet each agency's mutually respective RHNA requirements. It also includes required actions involving two sources of financing needed for the Project's capital stack: project-based vouchers from the Orange County Housing Authority and Neighborhood Stabilization Program funds remaining from the American Recovery and Reinvestment Act. Together, all of these actions will fulfill the commitment made by the City Council in the pre-commitment letter to develop the Project.

**PROJECT DESCRIPTION**

The Crossroads at Washington will be 100% affordable to households earning no more than 30 percent of Area Median Income (AMI) of which 43 units will be set aside for permanent supportive housing, with one exempt 2-bedroom manager's unit. The large bedroom units align with the City's priorities and needs, while the permanent supportive housing units meets the County's priorities. The unit mix and rent restrictions are as follows:

Bedroom Size	30% AMI (PSH)	30% AMI	Manager's Unit	Total Units
Studios	16			16
One-Bedroom	26			26
Two-Bedroom	1	20	1	22
Three-Bedroom		17		17
Four-Bedroom		5		5
<b>TOTAL</b>	<b>43</b>	<b>42</b>	<b>1</b>	<b>86</b>

Related has partnered with ACOF as its non-profit partner for the Project to provide the services and expertise for serving the permanent supportive housing units. [Any future reference to "Developer" refers to Washington Santa Ana Housing Partners, L.P., a California limited partnership formed together by the Developer.] ACOF is one of the most experienced developers of permanent supportive housing in Los Angeles County and Southern California, with a long track record of delivering high quality supportive housing for people who were formerly homeless. ACOF has completed 50 housing developments with supportive housing for homeless individuals and families.

The Crossroads at Washington will be a new transit-oriented affordable housing community on 2.286 acres located at 1126 and 1146 Washington Avenue, Santa Ana, CA 92701. The site is currently vacant, and positioned within walking distance from the Santa Ana Regional

Transportation Center – a key transit hub for not only Orange County, but all of Southern California. The Project is located on two (2) contiguous undeveloped parcels, one fronting E Washington Avenue on the northern half of the site (Housing Authority-owned parcel) and one parcel directly south of the Housing Authority-owned parcel (County-owned parcel). The five original buildings located on the site were demolished in the 1990s by Caltrans during a freeway-widening project. As a vacant and undeveloped site, there is an opportunity to create a newly designed site that will truly meet the needs of the local community. The entire site is designated District Center (DC) in the City of Santa Ana's 1998 General Plan and zoned Transit Village (TV) in the Transit Zoning Code.

The Project includes the development of two residential buildings, of which one building will be subdivided into two (2) residential portions, with 86 units surrounding two interior, landscaped courtyard/amenity spaces. Developed at an overall density of 37.7 units per acre, there will be 16 studios, 26 one-bedroom units, 22 two-bedroom units, 17 three-bedroom units, and 5 four-bedroom units. All units will be flat apartments located on the first, second, third, and fourth floors. Currently, the buildings have been designed to buffer courtyards, open green areas, and the pool area from highway noise and visual pollution. In addition, a proposed sound wall is being positioned along the eastern property line adjacent to the US Interstate 5 ramp. Approximately 5,800 square foot of interior community amenities and leasing offices is designed to accommodate supportive and management services. The Project also includes approximately 1,060 square feet of community service retail/commercial space. One vehicular entry point to the site is provided off E Washington Avenue. The entry point has a small driveway roundabout with deliberate urban greening features, to reduce vehicle speeds and create a welcoming and aesthetically pleasing entrance and pickup/drop-off area for pedestrians, bike riders, and motor vehicles alike. Careful consideration for the character and scale of the surrounding neighborhood and buildings were taken into account, to ensure that the Project's architecture and massing blends-in with the existing surrounding uses.

The Project proposes a Mission Revival architectural style to complement adjoining neighborhoods and buildings. In particular, the design is envisioned to complement nearby buildings, similar to the Santa Ana Regional Transportation Center and the Triada at the Station District Apartments (developed by Related), which are part of Santa Ana's extensive history of prominent architecture. Overall, the layout of the buildings and common areas are designed to create several unique areas to best utilize outdoor space. Outdoor amenities include a pool, tot-lot, dog wash, and a BBQ and picnic area.

The proposed Site Plan includes approximately 120 surface parking spaces, of which 38 spaces would be tandem spaces, which will be assigned to the three-bedroom and four-bedroom apartments, along with some two-bedroom apartments. Residents will not be charged for parking. As a transit-oriented development, the Project is at the start of the OC Streetcar and directly across the street from the Santa Ana Regional Transportation Center. A total of 120 parking spaces will be sufficient for this type of transit-oriented development.

### **Joint Powers Agreement**

The Joint Powers Agreement is between the County of Orange ("County") and the Housing Authority ("Agency") (Exhibit 2). In its simplest form, the Joint Powers Agreement allows the Agency and the County to develop their adjacent properties under joint ownership. Consolidating

ownership of the site retains the integrity of the site plan and does not require a redesign or complicate the development, permitting or lending processes. The Joint Powers Agreement authorizes each landowner (the Agency and the County) to execute a "grant deed" (Quitclaim) to merge the ownership of the parcels into one joint ownership held by the Agency and County together. The Agreement also conveys an interest in the respective parcels into a jointly held "tenants in common" ownership structure, with title for the joint property to be held as Tenants in Common (TIC).

This TIC structure is comprised of an ownership arrangement in which the two jurisdictions jointly own a single parcel formed from APN Nos. 398-092-13 and 398-092-14, and title will be held individually to the extent of each party's proportional interest in the combined two parcels. This TIC ownership structure will simplify the joint 65-year Ground Lease to develop a jointly held property. The percentage ownership for each landowner is based on the percentage of the current acreage between the two parcels. Specifically, the Agency's parcel is 1.456 acres and therefore the Agency will retain a 63.69% undivided interest. The County's parcel is .83 acres and therefore the County will retain a 36.31% undivided interest. One 65-year Ground Lease agreement with both landowners can then be entered into with the Developer for the development of the Crossroads at Washington.

The following is a list of key items agreed upon in the Joint Powers Agreement:

- Term: the Agreement shall continue in full force and effect until the latter occurrence of the following events: the termination of the Ground Lease, either through expiration of the Ground Lease term or rescission of the Lease by the Parties (e.g., termination of Lease due to default); or Mutual agreement in writing by both the County and Agency.
- Upon satisfaction of the terms and conditions set forth in the Option Agreement, the County shall quitclaim the County-owned Property to both the County and the Agency to hold the County-owned Property as tenants-in-common, with the County owning 36.3% undivided interest and the Agency owning 63.69% undivided interest in the joint property. The Agency shall also quitclaim the Agency-owned Property to both the Agency and the County to hold the Agency-owned Property as tenants-in-common with the same ownership interests above (63.69% and 36.31%).
- The Agency shall serve as the lead agency for all planning-related administration of the merger and formation of the joint property.
- Once the joint property is formed, both the County and the Agency waive the right to partition until the Ground Lease with the Developer terminates.
- The Agency and County shall execute a 65-year Ground Lease with the Developer for the purposes of completing the Crossroads at Washington.
- The Agency and County agree to cooperate in good faith to submit for approval to the Southern California Association of Governments ("SCAG"), and to thereafter implement, a regional housing needs assessment allocation share transfer to reduce the County's RHNA share for housing built within the City's boundaries.
- Upon termination of the Joint Powers Agreement, the County-owned Property shall be conveyed back to the County as the sole owner of the County-owned Property and the Agency-owned Property shall be conveyed back to the Agency as the sole owner of the Agency-owned Property. The combined parcel will also be subdivided again back to the

original acreage and proportional interests with the County owning 36.3% undivided interest and the Agency owning 63.69% undivided interest.

- The approval of both the Agency and County shall be required for decisions regarding management and disposition of the joint property.

The Joint Powers Agreement has been signed by the County to acknowledge their acceptance of the terms. The Agreement is not considered final until the Agency and County Board of Supervisors have reviewed and approved the Agreement and the Agreement is executed by all parties. The approval of the Option Agreement and 65-year Ground Lease is contingent on approval of the Joint Powers Agreement.

### **Option Agreement**

The Option Agreement is between the County of Orange ("County") and the Housing Authority ("Agency") together as the "Optionor" and Washington Santa Ana Housing Partners, L.P. as the "Optionee" (Exhibit 3). In its simplest form, the Option Agreement allows the Agency and the County to enter into the 65-year Ground Lease with the Developer after they meet several conditions listed in the Option Agreement. The purpose of the Option Agreement is to protect the County and City from entering into a 65-year Ground Lease with a developer who is not ready and able to develop the Project. It requires the Developer to meet specific terms and conditions before their "Option" to enter into the Ground Lease can be exercised.

The following is a list of key items agreed upon in the Option Agreement:

- Term: thirty-six (36) calendar months commencing on February 25, 2020.
- If at any point during the Term the Optionee has failed to act diligently and in good faith to obtain funding or to plan and permit the Project, the Optionor may terminate the Option Agreement with fifteen (15) days written notice to Optionee.
- The price of the Option is \$36, which shall be paid to Optionor prior to the effective date.
- The Option may not be exercised until the following terms and conditions shall have been met:
  - The Optionee shall submit preliminary plans for the development and use of the site for the Project for Optionor's approval including a detailed site plan, cost estimate and construction schedule.
  - The California Environmental Quality Act has been fully satisfied.
  - The Project is entitled by the City of Santa Ana.
  - The Optionee shall submit construction contract documents and cost estimates for development of the site including complete architectural, landscape and engineering working drawings; outline unit specifications; construction contract; and construction schedule.
  - The Optionee has received their grading permit from the City.
  - The Optionee shall submit satisfactory evidence of Optionee's ability to finance the cost of the development, assurances of construction completion, and evidence of insurance coverage.
- Optionee has the right to enter the premises to meet the conditions in the Agreement and is indemnified from liability.
- At any time during the Term that Optionee shall have performed all conditions as set forth in the Option Agreement, Optionee may exercise the Option by giving Optionor written

notice of election to do so, accompanied by properly executed copies of the Lease in triplicate.

- Failure of Optionee to fully and satisfactorily meet the terms and conditions of the Option Agreement within the time limits stated shall terminate Optionee's rights.
- Upon execution of this Option Agreement, the Optionee shall execute, acknowledge, and deliver to Old Republic Title Company (the "Escrow Holder") a quitclaim deed, quitclaiming all right to title and interest created by the Option Agreement back to the Optionor ("Quitclaim Deed"). The Quitclaim Deed shall be retained by the Escrow Holder for the duration of the Option Agreement and Optionor shall be entitled to instruct the Escrow Holder to record the Quitclaim Deed provided however, that Optionor shall first deliver to Optionee at least five (5) days' prior to written notice of its intention to authorize Escrow Holder to record the Quitclaim Deed.

The Option Agreement has been signed by the Developer to acknowledge their acceptance of the terms. The Agreement is not considered final until the Agency and County Board of Supervisors have reviewed and approved the Agreement and the Agreement is executed by all parties. The approval of the Option Agreement is contingent on approval of the Joint Powers Agreement.

#### **Sixty-Five (65) Year Ground Lease**

The sixty-five (65) year Ground Lease is between the County of Orange ("County") and the Housing Authority ("Agency") together as the "Lessor" and the Developer as the "Tenant" (Exhibit 4). In its simplest form, the Ground Lease binds the Agency and the County into a 65-year Ground Lease with the Developer to develop the Crossroads at Washington on the jointly owned parcel at 1126 and 1146 E. Washington Ave. The purpose of the Ground Lease is to ground lease the jointly owned parcel by the County and Agency to the Developer for no more than 65 years from the date they receive their Certificate of Occupancy. At that point, the base rent described in the Agreement shall become due and payable.

The following is a list of key items agreed upon in the 65-year Ground Lease:

- Term: sixty-five (65) years, commencing on the Effective Date of the lease, and shall expire at 12:00 midnight Pacific Standard Time on the 62nd anniversary of the Commencement Date. The Effective Date is the date when the Tenant takes possession of the property and starts construction. No more than three years from that date, the Commencement Date is the date when the Tenant receives their Certificate of Occupancy.
- Tenant accepts the parcel "as-is".
- Tenant shall pay to the County and Agency a base rent in the form of residual receipts in the Project's cash flow waterfall. The County will receive 33.4% of the available residual receipts and the Agency will receive 33.3% (the .01% difference is due to the larger subsidy provided by the County for the entire Project). The total base rent payable to the Agency is calculated per the proportional value allocation below. The base rent will accumulate 3% simple interest beginning on the Effective Date of the Lease:

Address	APN	Size (Acres)	Size (SF)	Land Percentage	Value Allocation
Agency Owned Site	398-092-14	1.456	63,423	63.69%	\$4,108,136
County Owned Site	398-092-13	0.83	36,155	36.31%	\$2,341,864
<b>Total</b>		<b>2.286</b>	<b>99,578</b>	<b>100.00%</b>	<b>\$6,450,000</b>

- Net refinancing proceeds shall be used to pay any unpaid base rent, net of regular and reasonable costs and other loans on the Project.
- Triple net rent is required with all costs and expenses of every kind and nature payable by the tenant.
- Tenant shall pay directly to the taxing authorities all taxes required and utility costs.
- Tenant shall construct and during the entire Term operate, maintain, replace and repair the improvements upon the property for only the following required uses:
  - multifamily affordable housing, and appurtenant improvements, including, without limitation, parking;
  - permanent supportive housing units and related services; and
  - related commercial and community-serving uses, as approved by the Lessor.
- The County, Agency and their authorized representatives may enter the premises upon two (2) business days' prior written notice to Tenant in order to determine whether Tenant is complying with Tenant's obligations or to enforce any rights given to County or Agency under the Lease.
- No work for development of the improvements on the site shall be commenced, and no building or other materials shall be delivered to the premises, until the conditions in the Option Agreement have been met.
- On a monthly basis, the Tenant shall maintain a reserve fund to pay for the costs of major replacements, renovations or significant upgrades of or to the Project. The Tenant shall contribute to a Capital Improvement Fund one percent (1%) of the total rent collected by Tenant from sub-tenants from the previous month. The Capital Improvement Fund can be satisfied by capital improvement reserves (or replacement reserves) required by Tenant's Leasehold Mortgagees or Limited Partner.
- Throughout the Term of the 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.
- 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 the 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.
- Tenant will purchase all required insurance at Tenant's expense and provide active certificates of insurance, including all endorsements required by both the County and Agency.
- Other terms and conditions binding the Tenant in regards to Condemnation, Subletting, Default and Remedies under the lease, Holding Over the lease term (\$25,000 or \$50,000

per month charge depending on unit income restrictions), Leasehold Mortgages, and Best Management Practices.

The 65-Year Ground Lease has been signed by the Developer to acknowledge their acceptance of the terms. The Lease is not considered final until the Agency and County Board of Supervisors have reviewed and approved the Agreement, the Optionee exercises their option to enter into the Lease under the Option Agreement, and the Ground Lease is executed by all parties. The approval of the 65-year Ground Lease is contingent on approval of the Option Agreement and the Joint Powers Agreement.

### **Resolution Granting Consent for Project-Based Vouchers**

The Orange County Housing Authority ("OCHA") is recommending an award of forty-three (43) project-based vouchers the Developer for the development of the Crossroads at Washington. However, in order for OCHA to administer project-based vouchers in the City of Santa Ana, they must receive approval from our jurisdiction in the form of a resolution (Exhibit 5). This is because the OCHA serves the entire County as their jurisdiction and our Housing Authority only serves the City of Santa Ana as our jurisdiction. Therefore, the resolution grants consent to the OCHA to administer project-based vouchers in our jurisdiction for the development of the Project.

### **Regional Housing Needs Allocation Agreement**

The Regional Housing Needs Allocation Agreement is between the County of Orange ("County") and the City (Exhibit 6). In its simplest form, the Agreement gives the County credit for the 43 extremely low-income affordable housing units that they will be financing on their County-owned parcel. The Agreement is in the form of a Memorandum of Understanding (MOU) regarding the County's and City's Regional Housing Needs Allocation for future Housing Element planning periods. The MOU allows for the transfer to the City of Santa Ana of some share of the County's RHNA allocation obligation for the sixth housing element planning period from 2021-2029.

The following is a list of key items agreed upon in the MOU:

- The Orange County Board of Supervisors approved a loan for the Crossroads at Washington in the amount of \$2,280,701 on February 25, 2020, toward the completion of 43 units within the Project. The Orange County Board of Supervisors, acting as the Board of Commissioners to the Orange County Housing Authority, also approved the use of 43 Project-Based Housing Choice Vouchers on February 25, 2020, toward the completion of 43 units within the Project.
- Under the Housing Element Law, the City and County must revise the Housing Element of its general plan utilizing the latest RHNA allocation adopted by SCAG. The next required revision to the Housing Elements for the City and County is designated as the sixth required revision by Government Code Section 65588, and is identified by SCAG as the 2021-2029 Housing Element Planning Period.
- The City intends to issue, upon application, residential building permits for construction of affordable housing on 1126 and 1146 E. Washington Ave. during the 2021-29 Planning Period, while the housing remains in the City's jurisdiction, in order to satisfy the City's RHNA allocation obligation for the 2021-29 Planning Period.
  - This will give the City eighty-five (85) extremely low-income housing units to meet the City's RHNA allocation obligation.

- Starting with the 2021-29 Planning Period (or as that planning period may be adjusted by SCAG, the Department of Housing and Community Development, or statute), upon SCAG's adoption of a final RHNA, the County and City shall jointly apply to SCAG to reduce the County's RHNA allocation of very-low income units by 20 units and to increase the City's RHNA share of very-low income units by 20 units of the County's original RHNA allocation, as provided for and in conformance with the requirements of Government Code section 65584.07.
  - This will reduce the County's RHNA allocation obligation by twenty (20) very low-income housing units.
- Accordingly, upon SCAG's approval, the City's share of its RHNA allocation of very-low income units will increase by 20 units of the County's original allocation and the County's RHNA allocation of very-low income units shall decrease by 20 units of the County's original allocation, as allowed under Government Code section 65584.07.
  - This will reduce the City's eighty-five (85) extremely low-income housing units that we would have received toward the City's RHNA allocation obligation by twenty (20) units. The City would be left with a net of sixty-five (65) extremely low-income housing units used to meet the City's RHNA allocation obligation.
- In addition, the County and City shall also jointly apply to SCAG to reduce the County's RHNA allocation of moderate-income units by 22 units and to increase the City's RHNA share of moderate-income units by 22 units of the County's original RHNA allocation, as provided for and in conformance with the requirements of Government Code section 65584.07. This is proportional adjustment is necessary to conform with the requirements of Government Code section 65584.07; specifically, the County must reduce their moderate income unit obligation proportional to their very-low income unit reduction.
  - This will reduce the County's RHNA allocation obligation by twenty-two (22) moderate-income housing units.
- Upon SCAG's approval, the City's share of its RHNA allocation of moderate-income units will increase by 22 units of the County's original allocation and the County's RHNA allocation of moderate-income units shall decrease by 22 units of the County's original allocation, as allowed under Government Code section 65584.07.
  - This will increase the City's RHNA allocation obligation for moderate-income units by twenty-two (22) units. The City will still have a net of 65 extremely low-income housing units that were used to meet the City's RHNA allocation obligation as mentioned above, but the City's moderate-income unit obligation will increase by twenty-two (22) units.

Although this appears to be an unusual arrangement on its face, it is important to remember that the County and the City are working together to develop a joint parcel for the two adjacent land parcels owned by each governmental entity. Each governmental entity on its own would not be able to build the total number of extremely low-income units that will be built on the combined site by Related. Therefore, working together the County and the City are able to build more units on the combined site and reduce the proportionate share of affordable housing units in their respective RHNA allocation obligations.

**Substantial Amendment to the Neighborhood Stabilization Program Action Plan**

The City first applied for Neighborhood Stabilization Program ("NSP") funds during the Great Recession following the approval of the American Recovery and Reinvestment Act by Congress. With funds remaining from that program, on July 2, 2019 City Council authorized the City Manager to execute a pre-commitment letter with Related and ACOF for \$3,971,440 in affordable housing funds for the development of the Crossroads at Washington consisting of \$963,951 in NSP funds and \$3,007,489 in HOME Investment Partnerships Program funds. In order for the City to commit and draw down the \$963,951 in NSP funds, the United States Department of Housing and Urban Development ("HUD") requires an amendment to the NSP Annual Action Plan that was most recently amended by City Council in 2013. The proposed Substantial Amendment applies to NSP I, II and III and will reallocate funds to a new activity for all three grant sources (Exhibit 7). Specifically, the City is proposing to: 1) add the Crossroads at Washington affordable housing project as a new NSP Activity; and 2) reallocate \$963,951 in NSP I, II and III funds to the Crossroads at Washington.

The proposed use of NSP I, II and III funds will allow the City to increase the housing stock and provide suitable housing for low and moderate-income residents. In particular, the funds will be used to complete the development of the Crossroads at Washington affordable housing project. Due to the Project's development costs, the Project requires funding from the NSP Program that was committed by City Council on July 2. The reallocation and obligation of NSP I, II, and III dollars to this Project will allow the developer to secure their remaining financing, including Low-Income Housing Tax Credits, needed to complete the Project.

**Next Steps**

The Developer is planning to submit a 9% Low-Income Housing Tax Credit application on March 9, 2020 for the development of the Project. Staff are projecting that the Project will be the most competitive in Orange County. This funding is critical for the Project financing and is a key part of the Project's path forward. If the Recommended Actions are not approved, the Developer will not be able to move forward with their application and the Project will not be able to proceed as planned. After the Developer has secured all of their remaining financing, staff will return to City Council to request approval of the two sets of loan documents (Loan Agreement, Promissory Note, Affordability Restrictions and Deed of Trust) for the City's investment of \$963,951 in NSP funds and \$3,007,489 in HOME Investment Partnerships Program funds.

**STRATEGIC PLAN ALIGNMENT**

Approval of this item supports the City's efforts to meet Goal # 5 - Community Health, Livability, Engagement & Sustainability, Objective # 3 (facilitate diverse housing opportunities and support efforts to preserve and improve the livability of Santa Ana neighborhoods), Strategy C (provide that Santa Ana residents, employees, artists and veterans receive priority for affordable housing created under the City's Housing Opportunity Ordinance or with City funding to the extent allowed under state law).

**FISCAL IMPACT**

Based on the current financing and Project assumptions provided by the Developer (e.g. rents, operating expenses, hard debt, vacancies, etc.), the expected amount of the repayment of the

\$4,108,136 Agency's Land Loan repayable through residual receipts over the 65-year Ground Lease period is \$10,886,560 including principal and interest accruing at 3%.

Pursuant to the Ground Lease Section 3.1.2, the Agency Land Loan must be paid back after payment on the two loans from the City (NSP and HOME). Under the current assumptions, payment on the Agency's Land Loan will start in Year 45 after the City's two loans are paid back in full. Note that these projections are subject to change based on actual rents, operating expenses, hard debt, vacancies, etc.

APPROVED AS TO FUNDS AND ACCOUNTS:

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Steven A. Mendoza  
Executive Director  
Community Development Agency

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Kathryn Downs, CPA  
Executive Director  
Finance and Management Services Agency

- Exhibits:
1. Pre-Commitment Letter with Related and ACOF
  2. Joint Powers Agreement
  3. Option Agreement
  4. 65-Year Ground Lease
  5. Resolution Granting Consent for Project-Based Vouchers
  6. Regional Housing Needs Allocation Agreement
  7. Substantial Amendment to the NSP Annual Action Plan

INSURANCE NOT REQUIRED  
WORK MAY PROCEED  
CLERK OF COUNCIL  
DATE JUL 22 2019

MAYOR  
Miguel A. Pulido  
MAYOR PRO TEM  
Juan Villegas  
COUNCILMEMBERS  
Cecilia Iglesias  
David Penaloza  
Vicente Sarmiento  
Jose Solorio



CITY MANAGER  
Kristine Ridge  
CITY ATTORNEY  
Sonia R. Carvalho  
ACTING CLERK OF THE COUNCIL  
Norma Mitre-Ramirez

**CITY OF SANTA ANA**  
**COMMUNITY DEVELOPMENT AGENCY**

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July 2, 2019

Liane Takano  
Southern California Director  
The Related Companies of California  
18201 Von Karman Avenue, Suite 900  
Irvine, CA 92612

Dora Leong Gallo  
Chief Executive Officer  
A Community of Friends  
3701 Wilshire Blvd., Suite 700  
Los Angeles, CA 90010

Re: Crossroads at Washington  
1126 and 1146 E. Washington Avenue, Santa Ana, CA 92701  
Pre-Commitment Letter for: NSP Loan, HOME Loan, and Lease Agreement

Dear Ms. Takano and Ms. Gallo,

The Related Companies of California and A Community of Friends (collectively referred to as the "Developer") requested financial assistance in connection with the proposed development of an eighty-six (86) unit affordable housing complex, with eighty-five (85) units restricted to extremely-low income households, to be located at 1126 and 1146 E. Washington Avenue, Santa Ana, CA 92701 (APNs 398-092-13 and 398-092-14) ("Project").

The site consists of two adjacent parcels. The Housing Authority of the City of Santa Ana ("Housing Authority") owns one parcel at 1126 E. Washington Ave. (APN 398-092-14) totaling approximately 1.43 acres of land area ("Housing Authority Parcel"). The County of Orange ("County") owns an adjacent parcel (APN 398-092-13) totaling approximately .85 acres of land area ("County Parcel"). The Housing Authority and County will work together to merge their respective parcels with joint ownership for purposes of master leasing the parcels to the Developer to construct the Project over a single parcel ("Property").

SANTA ANA CITY COUNCIL

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Vacant  
Ward 4

Cecilia Iglesias

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

# EXHIBIT 1

The City of Santa Ana ("City") and the Housing Authority have reviewed the Developer's request for assistance, and at the City Council/Housing Authority meeting on July 2, 2019, the City Council and Housing Authority Board authorized and approved issuance of this pre-commitment letter evidencing the preliminary award of (collectively, the "City Assistance"):

- A loan in the maximum amount of \$963,951.00 from the Neighborhood Stabilization Program ("NSP") held by the City for the Project ("NSP Loan");
- A loan in the maximum amount of \$3,007,489.00 from the HOME Investment Partnerships Program ("HOME") held by the City for the Project ("HOME Loan"); and,
- A 62-year ground lease for the Housing Authority portion of the Property located at 1126 and 1146 E. Washington Avenue, Santa Ana, CA 92701 (APNs: 398-092-13 and 398-092-14); to be used for development of an eighty-six (86) unit affordable housing complex, with eighty-five (85) units restricted to extremely-low income households ("Ground Lease").

This letter shall evidence the City's pre-commitment of the City Assistance to the Developer for the Project subject to the conditions described below.

### NSP and HOME Loans:

The amount of the proposed NSP and HOME Loans has been determined based upon the City's review of the Developer's request for the receipt of the City Assistance and the development proforma and projected cash flows for the Project submitted by the Developer to the City ("Proforma"). The City Manager has authority to approve revised development proformas and projected cash flows for the Project; provided, however, that the City Assistance is not increased or extended.

The NSP and HOME Loans shall include the following terms:

- The NSP Loan shall be for a maximum principal amount of \$963,951.00, or as much thereof as is disbursed for hard and soft costs in constructing the Project, provided from NSP funds.
- The HOME Loan shall be for a maximum principal amount of \$3,007,489.00, or as much thereof as is disbursed for hard and soft costs in constructing the Project, provided from HOME funds.
- 3% simple interest per annum.
- Repayment from 33.3% of Residual Receipts (pro-rata with payments due in connection with other financing provided by other public agencies) (after payment of operating expenses including social services expenses and monitoring fees, debt service, any deferred developer fee, and partnership fees to be described in the

Agreement), with 33.4% to the County, and the remaining 33.3% to be disbursed to the Developer.

- Remaining principal and accrued interest due upon the 55th anniversary of the issuance of Certificate of Occupancy or earlier upon sale, refinancing or default. On that date, the City and Housing Authority agree to review the performance of the Property and consider in good faith any reasonable request by Developer to modify the terms or extend the term of the City Promissory Notes. Additionally, the City will receive 33.3% of the net proceeds received from any sale or refinancing of the Project in order to repay any outstanding principal or interest due on the City Promissory Notes, after payment of outstanding conventional debt and payment in full of any deferred developer fee and establishment of any reserves and transaction costs.
- Cost savings from the Project, if any, will be applied first to pay down the NSP and HOME Loans, subject to compliance with the Tax Credit Allocation Committee ("TCAC") Regulations and California Health and Safety Code, as applicable.
- After all other funding sources have been secured through enforceable funding commitments, a HOME Subsidy Layering Review is required in order to confirm the amount of HOME funds committed to the Project.

The HOME Loan shall also require specific HOME designated units in the Project. Based on a preliminary HOME Cost Allocation Analysis, the City must designate at least sixteen (16) units in the Project as HOME assisted-units per the following preliminary unit mix:

- Three (3) studio units;
- Five (5) one-bedroom units;
- Four (4) two-bedroom units;
- Three (3) three-bedroom units; and,
- One (1) four-bedroom unit.

As least 20% of the HOME designated units must be designated as Low HOME units. This equates to four (4) Low HOME units based on a sixteen (16) unit HOME requirement. The remainder of the HOME designated units can be restricted as High HOME units. This is subject to change based on a final HOME Cost Allocation Analysis to be completed after the HOME Subsidy Layering Review has been performed.

Ground Lease:

The Project will be located on the Property at 1126 and 1146 E. Washington Avenue, currently owned by the Housing Authority, as well as the adjacent parcel owned by the County (APNs: 398-092-13 and 398-092-14). The Housing Authority will be working with the County to draft and negotiate the necessary documents to join ownership so that the

Project may be constructed over the combined Property under a master lease with the Housing Authority and County, as joint owners.

The ground lease payment will be structured as capitalized ground rent payment based on the appraised fair market value of the Property. The Developer estimates the current value of the Property at \$5,580,000. This figure will need to be confirmed through an appraisal, but based on the Developer's assessment, the capitalized ground rent payments are estimated as follows:

- The capitalized ground rent payment for the County parcel is estimated at \$2,500,000; and,
- The capitalized ground rent payments for the Housing Authority parcel is estimated at \$3,080,000.

These amounts will be paid at closing with funds provided by loans made by the City and County which will be secured by promissory notes on the Property and be repaid through a share of the Project's Residual Receipts as noted above (i.e., 33.4% to the County and 33.3% to the Housing Authority). This will not be a cash transaction; the closing escrow statement will show a credit and debit of \$3,080,000.

Based on the above, the Housing Authority Board authorized a preliminary award of a 62-year lease of the Housing Authority portion of the Property to the Developer for the Project. After Developer secures a commitment from the County for a 62-year lease of the County portion of the Property, staff will return to the Housing Authority for consideration of a 62-year Ground Lease Agreement. There will only be one Ground Lease Agreement that will have all three parties: the County, City (as tenants in common) and the Developer. The Ground Lease Agreement will require the successful development of the Project by the Developer.

#### General Provisions:

The City's obligation to provide the City Assistance to the Project is subject to each of the following conditions:

- Developer must provide proof that it has secured all of its remaining financing for the development of the Project in the form of enforceable funding commitments, which may include 9% or 4% Federal Low Income Housing Tax Credits, State Housing Tax Credits, a loan of affordable housing funds from the County of Orange, Section 8 project-based vouchers from the Orange County Housing Authority, or any other funding sources necessary in the Project's capital stack to close on their financing, before staff will return to the City Council for consideration of the NSP and HOME Loan Agreements.
- Developer must provide proof that the County has approved or committed to approve a 62-year ground lease for the County portion of the Property located at 1126 and 1146 E. Washington Avenue, Santa Ana, CA 92701 (APNs: 398-092-13 and 398-

092-14) before staff will return to the Housing Authority for consideration of the Ground Lease Agreement.

- All of the affordable units (less 1 manager's unit) in the Project will be restricted to extremely low-income households.
- The rent standards for the Project must be in compliance with the strictest of the standards imposed by TCAC and HOME Program regulations, or other funding sources contributed to the Project, as applicable.
- All provided funding and Project requirements shall conform to the City's adopted Affordable Housing Funds Policies and Procedures, unless alternative requirements are expressly provided in the executed NSP and HOME Loan Agreements, Ground Lease Agreement, or any other documents related to the development of the Project.
- Approval of all required entitlements and discretionary actions, to allow the construction of an 86-unit affordable housing complex to be located at 1126 and 1146 E. Washington Avenue, Santa Ana, CA 92701.
- The City's obligation to provide the NSP Loan and HOME Loan is and shall remain subject to all covenants, conditions, and restrictions set forth in the Loan Agreements, and in particular City's analysis of the available funding sources and development and operating costs of the Project and the overall economic feasibility of the Project.
- Review and approval of the documents evidencing the NSP Loan and HOME Loan by the City Council.
- Review and approval of the documents evidencing the Ground Lease by the Housing Authority and the County.
- Project funding is contingent on the successful execution of a 62-year Ground Lease Agreement by the Developer with the Housing Authority and County.
- Compliance with California Health and Safety Code and applicable regulations set forth in Section 34176.

Developer, at its sole cost and expense, will be responsible for securing any and all permits and discretionary approvals that may be required for the Project by the City, Housing Authority, County, or any other federal, state, or local governmental entity having or claiming jurisdiction over the Property or Project. Notably, this pre-commitment letter shall not obligate the City or any department thereof to approve any application or request for or take any other action in connection with any planning approval, permit or other action necessary for the construction, rehabilitation, installation or operation of the Project.

This pre-commitment letter for the Project will expire on July 2, 2022.

If you have any questions or require any additional information regarding this pre-commitment letter, please contact Judson Brown, Housing Division Manager, by telephone at (714) 667-2241 or by e-mail at [jbrown@santa-ana.org](mailto:jbrown@santa-ana.org).

Sincerely,

*On behalf of the City of Santa Ana:*

  
\_\_\_\_\_  
Kristine Ridge  
City Manager

Attest:

  
\_\_\_\_\_  
Norma Mitre  
Acting Clerk of the Council



*On behalf of the Housing Authority of the City of Santa Ana:*

  
\_\_\_\_\_  
Steven A. Mendoza  
Housing Authority Executive Director

Attest:

\_\_\_\_\_  
Norma Mitre  
Acting Recording Secretary

**CROSSROADS AT WASHINGTON – JOINT POWERS  
AGREEMENT BY AND BETWEEN THE COUNTY OF  
ORANGE AND THE HOUSING AUTHORITY OF THE CITY  
OF SANTA ANA**

This **JOINT POWERS AGREEMENT** ("Agreement") is entered into by and between the County of Orange, a political subdivision of the State of California ("**County**"), and the Housing Authority of the City of Santa Ana, a public body, corporate and politic ("**Agency**"), as of \_\_\_\_\_, 2020, and is made on the basis of the following facts, intentions and understandings. County and Agency are at times individually referred to as "**Party**" and collectively as "**Parties**" herein.

**RECITALS**

- A. County and Agency are owners of contiguous parcels of land totaling approximately 2.28 acres located in Santa Ana, California, comprised of the two following lots: Assessor's Parcel Number 398-092-14 ("**Agency Property**"), more particularly described in **Exhibit A**; and Assessor's Parcel Number 398-092-13 ("**County Property**"), more particularly described in **Exhibit B**. The Agency and County desire to merge these two parcels for the purpose of executing an option agreement ("**Option Agreement**") and ground lease ("**Lease**") for the combined property to a developer, \_\_\_\_\_, L.P., a California limited partnership ("**Partnership**"), to create an affordable housing project ("**Project**"). These properties are collectively depicted in **Exhibit C** (Pre-Grant Assessor's Parcel Map) and are referred to collectively as the "Joint Property," which is further defined, below.
- B. All development and use of the Joint Property for the Project shall be subject to and in conformance with restrictions on the use of the "Joint Property," as that term is defined by this Agreement.
- C. The Parties agree that the development of this Project will promote affordable housing development that will benefit the public and constitute a significant benefit to both County and Agency in that the facility is available for use by members of the general public that meet the affordability income qualifications established for this Project and the special needs qualifications for the permanent supportive housing component of the Project.
- D. The Parties deem it to be to the mutual advantage of the Parties hereto and in the public interest to treat the above-described County Property and Agency Property as a single parcel to assist with development of the Project.
- E. In order to facilitate development of the Project, the Parties agree to deed their respective properties entirely into a jointly owned parcel ("**Joint Property**"), as described on **Exhibit D**, attached hereto, to be held as tenants-in-common with respective interests as follows:

County of Orange, 36.3%, undivided interest

Housing Authority of the City of Santa Ana, 63.7%, undivided interest

The Parties agree that these percentages represent the proportional ownership interests of each party prior to this grant as set forth in **Exhibit C** (Pre-Grant Assessor's Parcel Map), which is attached hereto and incorporated herein by reference.

**NOW, THEREFORE**, in consideration of mutual interests to facilitate the development of the Project referenced herein, County and Agency incorporate the Recitals, above, into this Agreement and further agree as follows:

1. Upon satisfaction of the terms and conditions set forth in the Option Agreement by the Partnership, the County shall quitclaim the County Property to the County and the Agency to hold the County Property as tenants-in-common, with the County owning 36.3% undivided interest and the Agency owning 63.7% undivided interest in the Joint Property. The quitclaim deed for the County Property is attached hereto as **Exhibit E**.

2. Upon satisfaction of the terms and conditions set forth in the Option Agreement by the Partnership, the Agency shall quitclaim the Agency Property to the Agency and the County to hold the Agency Property as tenants-in-common, with the County owning 36.3% undivided interest and the Agency owning 63.7% undivided interest in the Joint Property. The quitclaim deed for the Agency Property is attached hereto as **Exhibit F**. The deeds shall be recorded concurrently. Thereafter, the Housing Authority of the City of Santa Ana shall merge the Agency Property and County Property to form the Joint Property, in accordance with this Agreement.

3. The Agency shall serve as the lead agency for all planning related administration of the merger and formation of the Joint Property. The County shall coordinate and provide all necessary information it possesses to assist the Agency with the merger process. The Agency agrees to process and file for record with the County Recorder the merger of the County Property and Agency Property in compliance with Article XI of Chapter 34 of the Santa Ana Municipal Code at no cost to the Parties. The Agency Property and County Property shall merge, resulting in the formation of the Joint Property, with the County and Agency as tenants-in-common with the County owning a 36.3% undivided interest and the Agency owning a 63.7% undivided interest in the Joint Property.

4. Once the Joint Property is formed, both Parties waive the right to partition until the Lease terminates. This Agreement shall serve as a valid written waiver of the Parties' right to seek any such partition in accordance with California Code of Civil Procedure section 872.710(b).

5. The Agency and County shall execute the Lease with the Partnership for the purposes of completing the Project. The Lease is attached hereto as **Exhibit G**. The Lease may authorize the Partnership to enter into one or more leasehold mortgage(s), which may be recorded against the Partnership's leasehold interest only. However, the Parties agree that the Lease shall not be recorded against the County Property, the Agency Property, or the Joint Property, though a memorandum of Lease may be recorded

as set forth in the Lease. The recording of any encumbrance on the Joint Property must be agreed upon, in writing, by both the Agency and the County. The recordation of any encumbrance on the Joint Property without the requisite written approval shall be null and void.

6. The Parties agree to cooperate in good faith to submit for approval to the Southern California Association of Governments ("SCAG"), and to thereafter implement, a regional housing needs assessment ("RHNA") allocation share transfer to reduce the County's RHNA share for housing built within Agency boundaries.

7. This Agreement shall continue in full force and effect until the latter occurrence of the following events:

(a) The termination of the Lease, either through expiration of the Lease term or rescission of the Lease by the Parties (e.g., termination of Lease due to default); or

(b) Mutual agreement in writing by both the County and Agency.

8. The Parties agree that they will exercise good faith in carrying out the purposes of this Agreement, including the adoption of any necessary modifications, amendments, or clarifying the Parties' rights and duties hereunder.

9. Upon termination of this Agreement, the County Property shall be conveyed to the County as the sole owner of the County Property and the Agency Property shall be conveyed to the Agency as the sole owner of the Agency Property. The Agency and County shall execute quitclaim deeds to effect these conveyances. The quitclaim deeds for these conveyances shall be in substantially the same form as those attached hereto as **Exhibits H** and **I**.

10. Any and all development, construction, operation, and maintenance of the Project shall be at no cost to Agency or County, provided that Agency staff shall be responsible for administering the operation of the Project to insure it is being used in conformance with this Agreement, use permit(s), and the Lease. The Agency shall serve as administrator of the Lease with the Partnership and coordinate with the County as necessary. Each Party shall separately administer their loans, grants or other support that might be provided to the Project and the Partnership.

11. Use of the Project and all its facilities shall be granted to all persons on an equal basis. No person shall, on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome or any condition related thereto, marital status, sex, sexual orientation or any other impermissible basis under the law, be excluded from participation in, be denied benefits of, or be subjected to discrimination under, any program or activity conducted by the Partnership or within facilities constructed on the Joint Property.

12. Agency shall, to the extent permitted by law, indemnify, defend, and hold harmless the County and its officers, agents, and employees, from and against any claim,

action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon the negligence or wrongful act or omission of Agency or its City Council, boards and commissions, officers, agents, volunteers, or employees, in approving the Lease, approving any final construction plans, specifications, and building inspections. The Lease shall contain a provision requiring the Partnership to name the County as an additional insured with respect to any and all operations or activities conducted by the Partnership from or at the leased premises.

County shall, to the extent permitted by law, indemnify, defend, and hold harmless the Agency and City of Santa Ana, and its officers, agents, and employees, from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorney's fees), resulting from, arising out of, or based upon the negligence or wrongful act or omission of County or its Board of Supervisors, committees and commissions, officers, agents, volunteers, employees, in approving the Lease. The Lease shall contain a provision requiring the Partnership to name the City of Santa Ana and/or the Agency as an additional insured with respect to any and all operations or activities conducted by the Partnership from or at the leased premises.

13. Except as specified in this section 13, all land and improvements on the Joint Property shall remain the joint property of County and Agency and shall be maintained and operated for Project purposes consistent with the terms of this Agreement and the Lease.

If the Joint Property or any portion thereof is taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively, "Condemnation"), then this JPA shall terminate as to the part taken only ("Condemned Property") as of the date the condemning authority takes title or possession, whichever first occurs. If the Condemnation results in termination of the Lease, then this JPA shall terminate in accordance with the terms contained herein. Any condemnation award for Condemned Property that is attributable to the Agency Property shall belong to the Agency and the condemnation award for Condemned Property that is attributable to the County Property shall belong to the County. If any of the Condemned Property includes Improvements, as that term is defined in the Lease, and the Lessor would be entitled to such condemnation award under the Lease, then the Parties shall divide the compensation award attributable to the Improvements evenly.

14. All notices pursuant to this Agreement shall be addressed as set forth below or as either Party may hereafter designate by written notice and shall be sent through First Class U.S. Mail:

To County: County of Orange  
Attn: County Executive Office, Real Estate  
333 W. Santa Ana Boulevard, 3<sup>rd</sup> Floor  
Santa Ana, CA 92701

To Agency: Housing Authority of the City of Santa Ana  
20 Civic Center Plaza (M-26)  
P.O. Box 1988

Santa Ana, California 92702  
 Attn: Housing Manager

With a copy to: Office of the City Attorney  
 City of Santa Ana  
 20 Civic Center Plaza, 7th Floor (M-29)  
 Santa Ana, California 92702

15. Standard Provisions.

15.1 Management. Except as otherwise provided in this Agreement, the approval of both the Agency and County shall be required for decisions regarding management and disposition of the Joint Property.

15.2 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the County and Agency and their respective heirs, personal representatives, successors and assigns. Neither Party shall have the right to assign this Agreement or any interest or right under this Agreement without the prior written consent of the other Party.

15.3 No Attorneys' Fees. In any action between the Parties to interpret, enforce, award, modify or rescind any of the terms or provisions of this Agreement, or any action otherwise commenced or taken in connection with this Agreement, both Parties shall be responsible for their respective litigation costs and attorneys' fees, except as provided in Section 12, above, regarding indemnity.

15.4 Jurisdiction and Venue. This Agreement shall be construed under the laws of the State of California in effect at the time of the signing of this Agreement. The Parties consent to the jurisdiction of the California courts with venue in County of Orange.

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

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

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

15.8 Modifications. Any alteration, change or modification of or to this Agreement, to become effective, shall be made in writing and in each instance signed on behalf of each Party.

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

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

15.11 Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all Parties, shall constitute a binding agreement.

15.12 Exhibits Incorporated by Reference. The following exhibits and attachments referred to and/or attached to this Agreement are incorporated in this Agreement by this reference:

- Exhibit A – Legal Description for Agency Property
- Exhibit B – Legal Description for County Property
- Exhibit C – Pre-Grant Assessor’s Parcel Map
- Exhibit D – Legal Description of Property (combined property)
- Exhibit E – Tenants-in-Common Deed from the County (Quitclaim)
- Exhibit F – Tenants-in-Common Deed from the Agency (Quitclaim)
- Exhibit G – Proposed Ground Lease
- Exhibit H – County Quitclaim
- Exhibit I – Agency Quitclaim

**[SIGNATURES ON NEXT PAGE]**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective governing bodies on the dates set forth opposite their signatures.

COUNTY:

COUNTY OF ORANGE, a political subdivision of the State of California

Dated: \_\_\_\_\_

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

Name: \_\_\_\_\_  
Title: Chairwoman, Board of Supervisors

APPROVED AS TO FORM:  
OFFICE OF COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

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

SIGNED AND CERTIFIED THAT A  
COPY OF THIS DOCUMENT HAS  
BEEN DELIVERED TO THE CHAIRWOMAN  
OF THE BOARD PER GC § 25103, RESO. 79-1535

Attest:

\_\_\_\_\_  
ROBIN STIELER  
Clerk of the Board of Supervisors  
of Orange County, California

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

**AGENCY:**

**HOUSING AUTHORITY OF THE CITY OF SANTA ANA ACTING AS THE HOUSING SUCCESSOR AGENCY**, a public body, corporate and politic

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Steven A. Mendoza, Executive Director

**APPROVED AS TO FORM:**  
AUTHORITY GENERAL COUNSEL

By: \_\_\_\_\_  
Ryan O. Hodge, Assistant City Attorney

**ATTEST:**

By: \_\_\_\_\_  
Daisy Gomez, Clerk of the Council

*Doc*  
*Reviewed and approved as to form by Ryan Hodge*  
*Daisy Gomez*  
*1/31/2020*

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

**EXHIBIT A  
LEGAL DESCRIPTION FOR AGENCY PROPERTY**

Agency Property:

THAT CERTAIN PARCEL OF LAND SITUATED IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, BEING THAT PORTION OF PARCEL 1 OF PARCEL 73035 DESCRIBED IN GRANT DEED RECORDED JULY 24, 1991 AS INSTRUMENT NO. 91-387576 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, TOGETHER WITH THAT PORTION OF PARCEL 73034 DESCRIBED IN GRANT DEED RECORDED NOVEMBER 15, 1991, AS INSTRUMENT NO. 91-626431 OF SAID OFFICIAL RECORDS, LYING SOUTHWESTERLY AND WESTERLY OF THOSE THREE (3) COURSE AND THE NORTHWESTERLY EXTENSION OF COURSE THREE (3) THEREOF, IN THE STATE RIGHT OF WAY AS SHOWN ON A MAP FILED IN BOOK 194, PAGES 28 THROUGH 36 INCLUSIVE OF RECORD OF SURVEYS IN SAID OFFICE AND SAID COUNTY RECORDER, SAID THREE (3) COURSES BEING SHOWN ON SHEET 2 OF SAID MAP AS:

- 1) N21°00'58"W 286.98';
- 2) N32°46'23" W 157.90';
- 3) N25°03'45"W 62.42'.

EXCEPTING THEREFROM THAT PORTION OF ABOVE SAID PARCEL 1, LYING WITHIN THE LIMITS OF THE WASHINGTON A VENUE CUL-DE-SAC AS SHOWN ON SAID SHEET 2 OF SAID MAP.

THERE SHALL BE NO ABUTTER'S RIGHTS OF ACCESS APPURTENANT TO THE ABOVE-DESCRIBED REAL PROPERTY IN AND TO THE ADJACENT STATE FREEWAY.

UNLESS OTHERWISE NOTED, ALL BEARINGS AND DISTANCES IN THIS DESCRIPTION ARE GRID BASED ON THE CALIFORNIA COORDINATE SYSTEM (CCS83), ZONE VI, 1983 NAD (1991.35 EPOCH OCS ADJUSTMENJ). TO OBTAIN GROUND-LEVEL DISTANCES, MULTIPLY DISTANCES HEREIN BY 1.00002055.

THIS REAL PROPERTY DESCRIPTION CONSISTS OF THIS LEGAL DESCRIPTION AND EXHIBIT "1", HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

(End of Legal Description)

**EXHIBIT B  
LEGAL DESCRIPTION FOR COUNTY PROPERTY**

County Property:

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

That portion of the land allotted to Maria Ygnacia Alvarado De Moreno, as described in the final decree of partition of the Rancho Santiago De Santa Ana, which was entered September 12, 1868 in Book "B" Page 410 of Judgments of the District Court of the 17th Judicial District, in and for Los Angeles County, California, described as follows:

Beginning at a point 1584.0 feet north and 301.05 feet west of an iron axle set at the intersection of the centerlines of Fourth Street and Grand Avenue; thence North 717.80 feet; thence West 606.90 feet; thence South 717.80 feet; thence East 606.90 feet to the point of beginning.

EXCEPTING THEREFROM: That portion lying southeasterly of the northwesterly line of that certain 104.00 foot strip of land described in Parcel A of Deed to the City of Santa Ana, recorded June 25, 1970 in Book 9327, page 72 of Official Records.

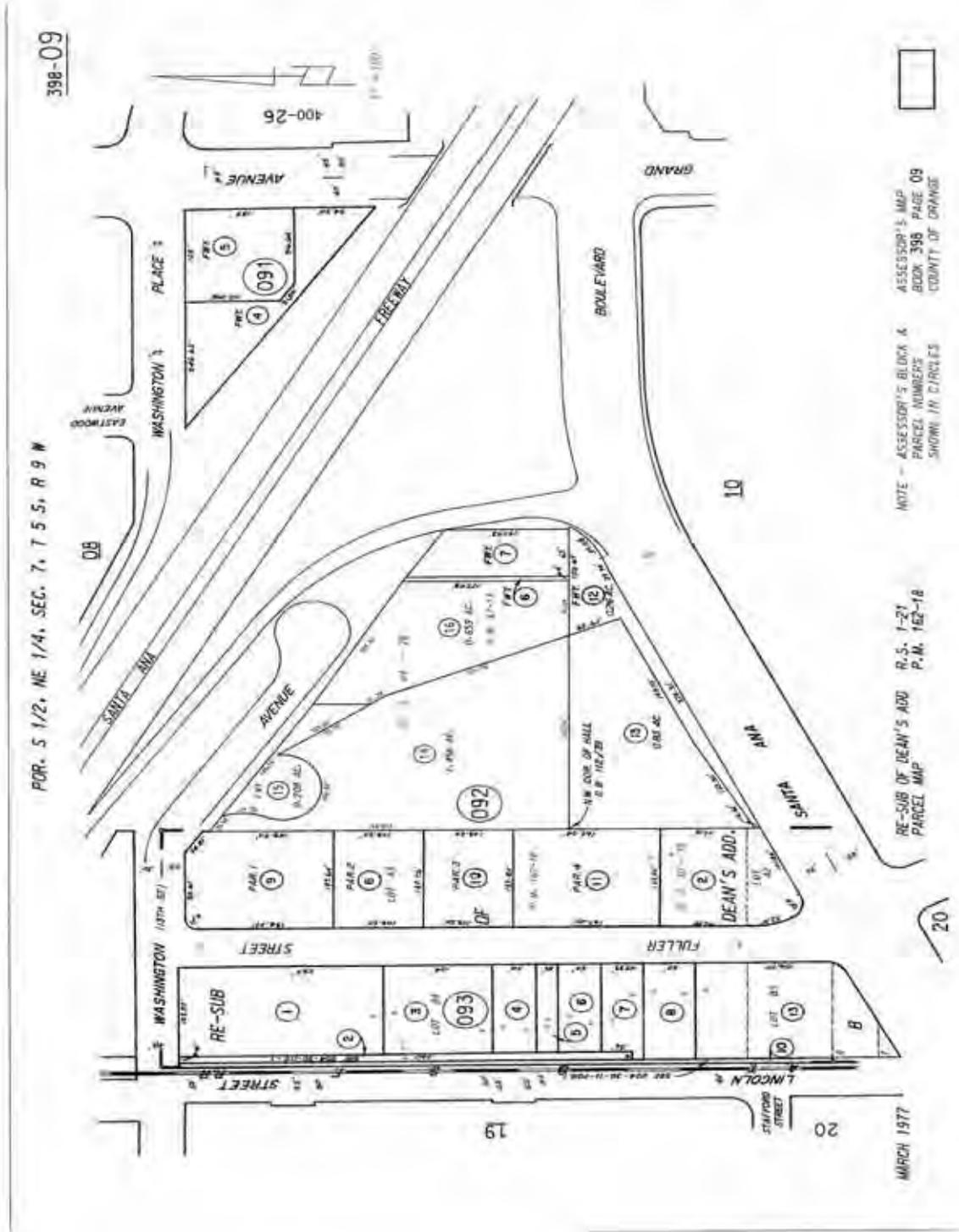
ALSO EXCEPTING THEREFROM: That portion described as Parcel C in said Deed to the City of Santa Ana.

ALSO EXCEPTING THEREFROM: That portion conveyed in the deed to the State of California recorded January 10, 1992, Instrument 92-15188 of Official Records.

APN: 398-092-13

(End of Legal Description)

EXHIBIT C  
PRE-GRANT ASSESSOR'S PARCEL MAP



Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

**EXHIBIT D  
LEGAL DESCRIPTION FOR JOINT PROPERTY**

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

That certain parcel of land situated in the City of Santa Ana, County of Orange, State of California, being that portion of Parcel 1 of Parcel 73035 described in the Grant Deed recorded July 24, 1991, Instrument No. 91-387576 of Official Records, together with that portion of Parcel 73034 described in the Grant Deed recorded November 15, 1991, Instrument No. 91-626431 of Official Records, lying southwesterly and westerly of those three (3) courses and the Northwesterly extension of course Three (3) thereof, in the State Right of Way as shown on a map filed in Book 194, pages 28 through 36 inclusive of Record of Surveys in said Office of said County Recorder, said Three (3) courses being shown on sheet 2 of said map as:

- 1) North 21° 00' 58" West 286.98';
- 2) North 32° 46' 23" West 157.90';
- 3) North 25° 03' 45" West 62.42'.

**EXCEPTING THEREFROM:** That portion of above said Parcel 1, lying within the limits of the Washington Avenue Cul-De-Sac as shown on said Sheet 2 of said Map.

APN: 398-092-14

That portion of the land allotted to Maria Ygnacia Alvarado De Moreno, as described in the final decree of partition of the Rancho Santiago De Santa Ana, which was entered September 12, 1868 in Book "B" Page 410 of Judgments of the District Court of the 17th Judicial District, in and for Los Angeles County, California, described as follows:

Beginning at a point 1584.0 feet north and 301.05 feet west of an iron axle set at the intersection of the centerlines of Fourth Street and Grand Avenue; thence North 717.80 feet; thence West 606.90 feet; thence South 717.80 feet; thence East 606.90 feet to the point of beginning.

**EXCEPTING THEREFROM:** That portion lying southeasterly of the northwesterly line of that certain 104.00 foot strip of land described in Parcel A of Deed to the City of Santa Ana, recorded June 25, 1970 in Book 9327, page 72 of Official Records.

**ALSO EXCEPTING THEREFROM:** That portion described as Parcel C in said Deed to the City of Santa Ana.

**ALSO EXCEPTING THEREFROM:** That portion conveyed in the deed to the State of California recorded January 10, 1992, Instrument 92-15188 of Official Records.

APN: 398-092-13

**EXHIBIT E  
TENANTS-IN-COMMON DEED FROM THE COUNTY**

(See Attached)

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

Recording requested by and  
when recorded, return to:  
City of Santa Ana  
Clerk of the Council  
20 Civic Center Plaza (M-30)  
P.O. Box 1988  
Santa Ana, CA 92702  
Attention: Clerk of the Council

And

County of Orange, Real Estate Services  
333 West Santa Ana Blvd, 3<sup>rd</sup> Floor  
Santa Ana, CA 92701

Recording Fee Exempt  
Per Govt. Code 27383

---

Facility: XXXXXX  
Facility No.: XXXXXX  
Parcel No.: XXXXXX  
A.P. No.: 398-092-13  
Location: Santa Ana, CA

THE UNDERSIGNED GRANTOR DECLARES THAT THIS IS A CONVEYANCE TO A  
GOVERNMENTAL ENTITY AND NO TRANSFER TAX IS DUE PER CAL. R&T CODE 11922

**QUITCLAIM DEED**

For valuable consideration, receipt of which is hereby acknowledged, the

COUNTY OF ORANGE,  
hereinafter referred to as "COUNTY",

does hereby remise, release and forever Quitclaim to

The Housing Authority of the City of Santa Ana,  
A public body, corporate and politic,  
hereinafter referred to as "AGENCY",

and

COUNTY

as Tenants in Common

all right, title and interest in and to the real property in the City of Santa Ana, County of Orange,  
State of California, described as:

See EXHIBIT A,  
attached and by reference made a part.

**80A-32**

GRANTOR:  
COUNTY OF ORANGE

Dated: \_\_\_\_\_

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

APPROVED AS TO FORM  
County Counsel

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

Date: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(here insert name and title of the officer)

personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the within deed or grant to the County of Orange, political subdivision of the State of California, is hereby accepted by order of the Board of Supervisors of the County of Orange, and the County of Orange consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

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

APPROVED AS TO FORM  
County Counsel

By: \_\_\_\_\_  
Deputy County Counsel  
Michael Haubert

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2019 before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (seal)  
\_\_\_\_\_

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the within deed or grant to the Housing Authority of the City of Santa Ana, a public body, corporate and politic, is hereby accepted by order of the City Council of the City of Santa Ana, and the Housing Authority of the City of Santa Ana consents to recordation thereof by its duly authorized officer.

HOUSING AUTHORITY OF THE CITY OF SANTA ANA ACTING AS THE HOUSING SUCCESSOR AGENCY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Steven A. Mendoza, Executive Director

APPROVED AS TO FORM  
Authority General Counsel

By: \_\_\_\_\_  
Ryan O. Hodge  
Assistant City Attorney

Date: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2019 before me, \_\_\_\_\_ Notary Public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (seal)  
\_\_\_\_\_

**EXHIBIT F  
TENANTS-IN-COMMON DEED FROM THE AGENCY**

(See Attached)

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

Recording requested by and  
when recorded, return to:  
City of Santa Ana  
Clerk of the Council  
20 Civic Center Plaza (M-30)  
P.O. Box 1988  
Santa Ana, CA 92702  
Attention: Clerk of the Council

And

County of Orange, Real Estate Services  
333 West Santa Ana Blvd, 3<sup>rd</sup> Floor  
Santa Ana, CA 92701

Recording Fee Exempt  
Per Govt. Code 27383

---

Facility: XXXXXX  
Facility No.: XXXXXX  
Parcel No.: XXXXXX  
A.P. No.: 398-092-14  
Location: Santa Ana, CA

THE UNDERSIGNED GRANTOR DECLARES THAT THIS IS A CONVEYANCE TO A  
GOVERNMENTAL ENTITY AND NO TRANSFER TAX IS DUE PER CAL. R&T CODE 11922

**QUITCLAIM DEED**

For valuable consideration, receipt of which is hereby acknowledged, the

The Housing Authority of the City of Santa Ana,  
A public body, corporate and politic,  
hereinafter referred to as "AGENCY",

does hereby remise, release and forever Quitclaim to

COUNTY OF ORANGE,  
hereinafter referred to as "COUNTY",

and

AGENCY

as Tenants in Common

all right, title and interest in and to the real property in the City of Santa Ana, County of Orange,  
State of California, described as:

See EXHIBIT A,  
attached and by reference made a part.

**80A-37**  
-1-

GRANTOR:

HOUSING AUTHORITY OF THE CITY OF  
SANTA ANA ACTING AS THE HOUSING  
SUCCESSOR AGENCY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Steven A. Mendoza, Executive Director

APPROVED AS TO FORM  
Authority General Counsel

By: \_\_\_\_\_  
Ryan O. Hodge  
Assistant City Attorney

Date: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California                    )  
County of \_\_\_\_\_                  )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(here insert name and title of the officer)

personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the within deed or grant to the County of Orange, political subdivision of the State of California, is hereby accepted by order of the Board of Supervisors of the County of Orange, and the County of Orange consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

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

Thomas A. Miller  
Chief Real Estate Officer

APPROVED AS TO FORM  
County Counsel

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

Deputy County Counsel  
Michael Haubert

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2019 before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (seal)

\_\_\_\_\_

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the within deed or grant to the Housing Authority of the City of Santa Ana, a public body, corporate and politic, is hereby accepted by order of the City Council of the City of Santa Ana, and the Housing Authority of the City of Santa Ana consents to recordation thereof by its duly authorized officer.

HOUSING AUTHORITY OF THE CITY OF SANTA ANA ACTING AS THE HOUSING SUCCESSOR AGENCY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Steven A. Mendoza, Executive Director

APPROVED AS TO FORM  
Authority General Counsel

By: \_\_\_\_\_  
Ryan O. Hodge  
Assistant City Attorney

Date: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2019 before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (seal)  
\_\_\_\_\_

**EXHIBIT G  
PROPOSED GROUND LEASE**

(See Attached)

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)



**GROUND LEASE**

THIS GROUND LEASE (“Lease”) is made and effective as of the \_\_\_ day of \_\_\_\_\_, 2020 (“**Effective Date**”) by and between the COUNTY OF ORANGE, a political subdivision of the State of California, the HOUSING AUTHORITY OF THE CITY OF SANTA ANA, a public body, corporate and politic, as tenants-in-common (respectively, the “**County**” and the “**Agency**”, and collectively “**Lessor**”) and WASHINGTON SANTA ANA HOUSING PARTNERS, L.P., a California limited partnership (hereinafter called “**Tenant**”) (also referred to hereinafter each as “**Party**” or collectively as the “**Parties**”).

**RECITALS**

A. County and Agency are tenants-in-common of a certain property that encompasses the Premises (as hereinafter defined).

B. County and Agency have executed a Joint Powers Agreement (“**Joint Powers Agreement**”), pursuant to which the County and Agency agreed to lease the Premises to the Tenant to develop, entitle and construct an 86-unit multifamily affordable housing project, as more fully described herein, upon the fulfillment of certain conditions precedent as set forth therein.

C. The Parties have executed an Option Agreement, dated \_\_\_\_\_, 2020 (“**Option Agreement**”), pursuant to which the Lessor had agreed to lease the Premises to the Tenant upon the fulfillment of certain conditions precedent.

D. The County and Agency acknowledge that the conditions precedent required by the Joint Powers Agreement and Option Agreement have been fulfilled and therefore the Parties desire that Tenant shall ground lease the Premises from Lessor on the terms set forth herein.

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

F. On July 2, 2019, the Agency authorized the Executive Director of the Agency and the Recording Secretary to execute a pre-commitment letter with the Tenant to enter into negotiations for a sixty-five (65) year ground-lease of 1126 E. Washington Ave for the development of the Crossroads at Washington affordable housing project located at 1126 and 1146 E. Washington Avenue, Santa Ana, CA 92701 (APNs 398-092-13 and 398-092-14).

G. On July 2, 2019, the City of Santa Ana authorized the City Manager and the Clerk of the Council to execute a pre-commitment letter with the Tenant for \$3,971,440 in affordable housing funds consisting of \$963,951 in Neighborhood Stabilization Program funds and \$3,007,489 in HOME Investment Partnerships Program funds, for the development of the Crossroads at Washington affordable housing project located at 1126 and 1146 E. Washington Avenue, Santa Ana, CA 92701 (APNs 398-092-13 and 398-092-14).

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, Agency 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. **"Agency"** shall mean the Housing Authority of the City of Santa Ana, acting as the Housing Successor Agency, a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the California Redevelopment Law. The principal office of the Agency is located at 20 Civic Center Plaza, Santa Ana, California 92702. "Agency" shall also refer to the City of Santa Ana where the context dictates, to the effect that the City of Santa Ana shall have all rights granted to the Agency hereunder.

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 the loans made by the Agency, City, and County, separately, for the Improvements and for so long as Base Rent remains unpaid and outstanding, as approved in writing by the Lessor. 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 Lessor, 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. Lessor 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 Lessor and Tenant prior to January 1 of such year, the annual operating budget from the previous year 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 a total of six million four hundred and fifty thousand dollars (\$6,450,000) due and owing and payable in full on the Commencement Date, but if not paid in full on the Commencement Date, then the Base Rent amount paid in accordance with this Lease, including pursuant to Article III, below, with four million, one hundred and eight thousand, one hundred and thirty-six dollars (\$4,108,136) being paid to the Agency pursuant to Section 3.1.2 and two million, three hundred and forty-one thousand, eight hundred and sixty-four dollars (\$2,341,864) being paid to the County pursuant to Section 3.1.1.

Address	APN	Size (Acres)	Size (SF)	Land Percentage	Value Allocation
City Owned Site	398-092-14	1.456	63,423	63.69%	\$4,108,136
County Owned Site	398-092-13	0.83	36,155	36.31%	\$2,341,864
<b>Total</b>		<b>2.286</b>	<b>99,578</b>	<b>100.00%</b>	<b>\$6,450,000</b>

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.

1.1.11. **“City”** shall mean the City of Santa Ana, California, a charter city and municipal corporation. “City” shall also refer to the Agency where the context dictates, to the effect that the Agency shall have all the rights granted to the City hereunder. **“City Council”** shall mean the City Council of the City of Santa Ana.

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

1.1.13. “**Commencement Date**” shall mean the date on which a Certificate of Occupancy is issued for the Project, and on which the Term shall commence and Base Rent shall become due and payable.

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

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, and shall be the date on which Tenant take possession of the Premises and is entitled to commence construction pursuant to Article V, below.

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

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

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

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

1.1.26. **"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 and Improvements.

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. "**Lessor's Interest**" shall mean all of County's and Agency's interests in the real property, the Premises, this Lease as tenants-in-common and their 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. "**Lessor Parties**" shall mean, collectively and individually, the County, the Agency and their 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. "**Net Refinancing Proceeds**" is defined in Section 3.2.

1.1.38. "**Net Syndication Proceeds**" is defined in Section 3.2.

1.1.39. "**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 \$5,000 (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 \$20,000 (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 2.28 acres of undeveloped land in the City, together with all easements, rights and privileges appurtenant thereto, to be leased to Tenant pursuant to this Lease and on which Tenant intends to construct the Improvements. The legal description of the Premises is attached hereto as **Exhibit A**. A rendering showing the approximate boundaries of the Premises is attached hereto as **Exhibit A-1**.

1.1.45. **“Project”** shall mean the Improvements, and all related appurtenances, constructed by Tenant on the Premises.

1.1.46. **“Rent”** shall mean and includes the County Base Rent, the Agency 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 Improvements approved in writing by the Lessor at the closing of the construction financing for the Improvements or as otherwise approved pursuant to Section 17.2, below, (C) payment obligations approved in writing by the Lessor at the closing of the construction financing for the Improvements, (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 Lessor, (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 Lessor, (G) deferred developer fee, and (H) scheduled deposits to reserves approved in writing by the Lessor at the closing of the construction financing for the Improvements (or such higher reserve deposits as may be reasonably required by 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 and the Risk Manager for the City of Santa Ana, 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 Group”** shall mean Tenant and Tenant’s Affiliates, agents, employees, members, officers, directors and attorneys.

1.1.53. **“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 Tenants Amended and Restated Agreement of Limited Partnership dated as of \_\_\_\_\_.

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 construction activity with respect to the Improvements, including permitted future changes, alterations and renovations thereto and also including, without limiting the generality of the foregoing, site preparation, landscaping, installation of utilities, street construction or improvement and grading or filling in or on the Premises.

## ARTICLE II LEASE OF PROPERTY

### 2.1 Lease of Premises.

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

2.1.2. **Warranty of Peaceful Possession.** Lessor 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 Lessor 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.** The “**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 62nd anniversary of the Commencement Date, unless sooner terminated as a result of Tenant’s non-compliance with any terms, conditions, covenants, restrictions or reservations of this Lease. Notwithstanding the foregoing, the Term shall not exceed sixty five (65) years from the Effective Date.

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

2.4 **Condition of the Premises.** **TENANT HEREBY ACCEPTS THE PREMISES “AS IS”, AND ACKNOWLEDGES THAT THE PREMISES IS IN SATISFACTORY CONDITION. COUNTY AND AGENCY MAKES NO WARRANTY, IMPLIED OR OTHERWISE, AS TO THE SUITABILITY OF THE PREMISES FOR TENANT’S PROPOSED USES. COUNTY AND AGENCY 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 OR AGENCY COVENANT OR WARRANT, IMPLIED OR OTHERWISE, AS TO THE SUITABILITY OF THE PREMISES FOR THE PROPOSED DEVELOPMENT, CONSTRUCTION OR USE BY TENANT. COUNTY AND AGENCY SHALL NOT BE RESPONSIBLE FOR ANY LAND SUBSIDENCE, SLIPPAGE, SOIL INSTABILITY OR DAMAGE RESULTING**

**THEREFROM. COUNTY AND AGENCY 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 Lessor, or any representation or warranty, either express or implied, relating to the nature or condition of the Premises or County's or Agency's interest therein.

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

### **ARTICLE III TOTAL RENT**

**3.1 Base Rent.** Throughout the Term of this Lease, regardless of an earlier termination date Tenant shall pay to the County and the Agency the Base Rent as set forth herein.

**3.1.1 County Base Rent.** Tenant shall make annual payments to County of thirty-three and four-tenths percent (33.4%) of the then available Residual Receipts (defined above), but only to the extent said Residual Receipts are available, until the amount of two million, three hundred and forty-one thousand, eight hundred and sixty-four dollars (\$2,341,864) is fully paid ("**County Base Rent**"). County Base Rent shall only become due after the Tenant has repaid that certain loan from the County awarded under the 2016 Permanent Supportive Housing Notice of Funding Availability, Addendum One, evidenced by a Loan Agreement, Promissory Note and Leasehold Deed of Trust, in the amount of \$2,280,701, which is also being paid out of the same thirty-three and four-tenths percent (33.4%) of the Residual Receipts. On the last day of the Term the then outstanding amount of the County Base Rent shall be paid in full if not already paid by that time. County Base Rent will bear interest commencing on the Commencement Date at the simple rate of three percent (3%) per year until paid in full. Once the County Base Rent has been paid in full with interest, Tenant shall have no further obligation for County Base Rent under this Lease.

**3.1.2 Agency Base Rent.** Tenant shall also make annual payments to Agency of thirty-three and one-third percent (33.3%) of the then available Residual Receipts (defined above), but only to the extent said Residual Receipts are available, until the amount of four million, one hundred and eight thousand, one hundred and thirty-six dollars (\$4,108,136) is fully paid ("**Agency Base Rent**"). Agency Base Rent shall only become due after the Tenant has repaid those two certain loans from the City, each evidenced by a Loan Agreement, Promissory Note, Deed of Trust, and Affordability Restrictions on Transfer of Property dated \_\_\_\_\_, 20\_\_, in the amount of \$3,007,489.00, and dated \_\_\_\_\_, 20\_\_, in the amount of \$963,951, which is also being paid out of the same thirty-three and one-third percent (33.3%) of the Residual Receipts. On

the last day of the Term the then outstanding amount of the Agency Base Rent shall be paid in full if not already paid by that time. Agency Base Rent will bear interest commencing on the Commencement Date at the simple rate of three percent (3%) per year until paid in full. Once the Agency Base Rent has been paid in full, Tenant shall have no further obligation for Agency Base Rent under this Lease.

**3.2 Net Refinancing Proceeds/Net Syndication Proceeds.** Any Net Refinancing Proceeds or Net Syndication Proceeds received by Tenant shall be used to pay any unpaid Base Rent. Additionally, the Tenant's right and obligation to use such net proceeds to pay Base Rent is subject to the rights of Leasehold Mortgagees to control the use of such proceeds pursuant to the terms of their respective loan documents, all of which have been reviewed and reasonably approved by the Lessor and is further subject to the consent of TCAC to the extent required under the applicable regulations or the extended use agreement. Without limiting application of those loan documents and TCAC regulations and requirements, in no case shall Tenant be permitted to retain Net Refinancing Proceeds or Net Syndication Proceeds without the prior written consent of the Lessor, until full satisfaction of the unpaid Base Rent. Notwithstanding the foregoing, this Section 3.2 shall not apply to (i) any Excluded Transfer or (ii) any financing described in Section 17.2.

"Net Refinancing Proceeds" shall be defined as the proceeds from the refinancing of any loan approved by Lessor hereunder, net of all of the following: the amount of the financing which is satisfied out of such proceeds, closing costs, costs to rehabilitate the Project, including the costs necessary to obtain refinancing proceeds (such as consultant, legal and other consultant costs), the soft costs related to the rehabilitation of the Project (such as architecture, engineering and other consultant costs, and all required relocation costs), and all hard costs of the rehabilitation, all of which have been reviewed and reasonably approved by the Lessor.

"Net Syndication Proceeds" shall be defined as syndication proceeds net of final Project hard and soft construction costs, including developer fee, based on a cost certification completed at the end of construction, and syndication costs all of which has been reviewed and reasonably approved by the Lessor.

**3.3 Triple Net Rent.** It is the intent of the Parties that all Rent shall be absolutely net to Lessor 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 or Agency 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.

**3.4 Insufficient Funds.** For purposes of this Section 3.4, 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 and Agency 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 and Agency 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

and Agency shall accept such check or payment without prejudice to County's and Agency's right to recover the balance of the Rent or other fees or pursue any other remedy available to the County or Agency in this Lease.

### 3.5 Reserved.

### 3.6 Additional Rent.

3.6.1. **Additional Rent.** During the Term, the Base Rent shall be absolutely net to County and Agency 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 3.6.3 and 3.6.6, below, Tenant has the right to pay under protest the foregoing Additional Rent, as applicable, and defend against the same. Any imposition rebates shall belong to Tenant.

3.6.2. **Taxes.** During the Term, Tenant shall pay directly to the taxing authorities all Taxes (as herein defined) at least ten (10) days prior to delinquency thereof. For purposes hereof, "**Taxes**" shall include any form of assessment, license fee, license tax, business license fee, commercial rental tax, levy, penalty, sewer use fee, real property tax, charge, possessory interest tax, tax or similar imposition (other than inheritance or estate taxes), imposed by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage, flood control, water pollution control, public transit or other special district thereof, as against any legal or equitable interest of County or Agency in the Premises or any payments in lieu of taxes required to be made by County or Agency, 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 Lessor that all such new and increased assessments, taxes, fees, levies, charges and similar impositions be included within the definition of "**Taxes**" for the purpose of this Lease.

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

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

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

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

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

**3.6.4. Payment by Lessor.** 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 3.6.3, and if such amount is not paid by Tenant within fifteen (15) days after receipt of Lessor's written notice advising Tenant of such nonpayment, County and/or Agency 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 or Agency reimburse County and/or Agency for the full amount paid by County and/or Agency in paying, discharging or adjusting such tax, assessment or other charge, together with interest at the Interest Rate from the date advanced until the date repaid.

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

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

**ARTICLE IV**  
**USE OF PREMISES**

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

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

**4.1.2. Ancillary Services and Uses.** Subject to the prior written approval of Lessor, which approval may be granted or withheld in the sole discretion of the Lessor, 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 Lessor 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 Lessor, which approval may be granted or withheld in the sole discretion of the Lessor.

**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 Lessor.

**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). Lessor may cooperate with Tenant in all reasonable respects in such contest, including joining with Tenant in any such contest if County and/or Agency's joinder is required in order to maintain such contest; provide, however, that any such contest shall be without cost to Lessor, and Tenant shall indemnify, defend (with attorneys acceptable to Lessor), and hold harmless the Lessor 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 and/or Agency acting in their 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 construction, 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 return the Premises to the condition existing prior to the introduction of such Hazardous Materials to the Premises and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of County or Agency 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 Lessor. 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 Lessor.

#### 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 Lessor) Lessor, 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 Lessor.

**4.5 Access by Lessor.** Lessor reserves the right for County, Agency and their 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 or Agency under this Lease. Lessor 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 Lessor 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. Lessor will take all necessary measures not to unreasonably interfere with Tenant's business at the Premises in exercising its rights under this Section.

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

**ARTICLE V**  
**CONSTRUCTION OF IMPROVEMENTS**

**5.1 Construction of Improvements.**

**5.1.1. Initial Improvements.** Upon the fulfillment of the Preconditions set forth in Section 5.1.2, below, and payment for and issuance of all permits required under the Laws (whether from County or City in their governmental capacity, or otherwise), Tenant shall construct the Initial Improvements.

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

(a) Lessor has provided approval in writing that all the conditions set forth in Section 5 of the Option Agreement have been satisfied;

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

(c) Tenant has given Lessor written notice of the proposed commencement of construction of the Premises or the delivery of construction materials in order to allow Lessor 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 Lessor 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 Lessor with assurances sufficient to construct the Initial Improvements in accordance with Section 5.3 below.

**5.1.3. Utilities.** To the extent not already constructed, Tenant, at no cost to Lessor, shall construct or cause to be constructed all 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 and/or Agency in conducting its operations, if any, on or about the Premises. Nothing contained in this Section is to be construed or implied to give Tenant the right or permission to install or to permit any utility poles or communication towers to be constructed or installed on the Premises.

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

allocation thereof, so long as the aggregate available funding continues to be sufficient to pay for Tenant's estimated remaining cost of constructing the Initial Improvements, provided that Tenant shall promptly notify Lessor of any such change.

**5.1.5. Compliance with Laws and Permits.** Tenant shall cause all Improvements made by Tenant to be constructed in substantial compliance with all applicable Laws, including all applicable grading permits, building permits, and other permits and approvals issued by governmental agencies and bodies having jurisdiction over the construction thereof. No permit, approval, or consent given hereunder by County and/or Agency, in their governmental capacity, shall affect or limit Tenant's obligations hereunder, nor shall any approvals or consents given by County and/or Agency, 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 construction of the Initial Improvements, Tenant shall provide Lessor with written construction status reports in the form of AIA No. G702 ("**Application and Certification for Payment**") or comparable form, augmented by oral reports if so requested by County or Agency.

**5.1.7. Certificate of Occupancy.** Tenant shall provide Lessor with a copy of the Certificate of Occupancy promptly following issuance thereof. The date of issuance of the Certificate of Occupancy shall be the Commencement Date hereunder.

**5.1.8. Insurance.** Tenant (or the Contractor, as applicable) shall deliver to Lessor both (i) certificates of insurance evidencing coverage for "builder's risk," as specified in Section 8.1, and (ii) evidence of worker's compensation insurance, which provide the requisite insurance levels in accordance with Article VIII, for all persons employed in connection with the construction of any Improvements upon the Premises and with respect to whom death or bodily injury claims could be asserted against County and/or Agency 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, Agency 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 Lessor, 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/or Agency and hold County and Agency harmless from all claims, losses, demands, damages, cost, expenses, or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Premises, and from the cost of defending against such claims, including reasonable attorneys' fees and costs, but excluding any liability resulting from the gross negligence or willful misconduct of Lessor, and excluding any liens resulting from the actions of, or work performed by, the Lessor.

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

(d) **Lessor'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, Lessor 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 and/or Agency, Tenant shall immediately upon receipt of written request therefor by County or Agency, reimburse County and/or Agency for all sums paid by County and/or Agency under this paragraph together with all County and/or Agency's reasonable attorney's fees and costs, plus interest at the Interest Rate from the date of payment until the date of reimbursement.

5.1.10. **No Responsibility.** Any approvals by County or Agency with respect to any Improvements shall not make County or Agency responsible for the Improvement with respect to which approval is given or the construction thereof. Tenant shall indemnify, defend and hold Lessor 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 resulting from the gross negligence or willful

misconduct of Lessor, and excluding any liens resulting from the actions of, or work performed by, the Lessor.

## 5.2 Construction Contracts.

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

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

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

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

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

5.3.3. Cash deposited with the County or Agency (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 and Agency from an Affiliate of The Related Companies of California, LLC, in a form reasonably acceptable to Lessor, coupled with a repayment guaranty in favor of the senior construction lender for its loan;

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 Lessor. All bonds and letters of credit shall be in a form acceptable to Lessor, County’s Risk Manager and City’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 the construction of improvements within the Premises.

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

#### 5.4 Ownership of Improvements.

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

5.4.2. **During Term.** Title to all Improvements constructed or placed on the Premises by Tenant and paid for by Tenant are and shall be vested in Tenant during the Term of this Lease, until the expiration or earlier termination thereof. 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 Lessor’s property free and clear of all claims to or against them by Tenant and free and clear of all Leasehold Mortgages and any other liens and claims arising from Tenant’s use and occupancy of the Premises, and with Taxes paid current as of the expiration or earlier termination date. Tenant shall upon the expiration or earlier termination of the Term deliver possession of the Premises and the Improvements to Lessor 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.

5.5 **“AS-BUILT” Plans.** Within sixty (60) days following completion of any substantial improvement within the Premises, Tenant shall furnish the Lessor 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 Lessor, to Lessor’s satisfaction, on Lessor’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 Lessor copy of the final construction costs for the construction of such improvements.

#### 5.6 Capital Improvement Fund.

5.6.1. Tenant shall establish and maintain a reserve fund (the “**Capital Improvement Fund**”) during the Term of this Lease (as “Term” is defined in Section 2.2) 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 Lessor agree and acknowledge that the purpose of the Capital Improvement Fund shall be to provide sufficient funds to pay for the costs of major replacements, renovations or significant upgrades of or to the Improvements, including without limitation building facade or structure and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural or roof) that significantly affect the

capacity, efficiency, useful life or economy of operation of the Improvements or their major systems, after the completion of the Initial Improvements (“Permitted Capital Expenditure(s)”).

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

5.6.4. All specific purposes and costs for which Tenant desires to utilize amounts from the Capital Improvement Fund shall be at Tenant’s reasonable discretion and subject to Lessor’s written approval as provided for in Section 5.6.9, below. Tenant shall furnish to the Lessor 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 Lessor, 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 Lessor 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 Lessor’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 a monthly deposit to the Capital Improvement Fund in an amount equal to one percent (1%) of total rent collected by Tenant from sub-tenants for the previous month. 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 Lessor’s prior approval of any Capital Improvement Fund disbursements, Tenant shall submit to the Lessor 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**). Lessor 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 Lessor (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 Lessor for the Lessor'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 Lessor and provide applicable documentation to the Lessor thereafter for approval. If the Lessor disapproves the emergency expenditure which was not previously approved by Lessor, Tenant shall refund the amount taken from the Capital Improvement Fund within thirty (30) days of written notice from the Lessor 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 Lessor of any damage relating to the Premises.

**6.2 Interior Improvements, Additions and Reconstruction of Improvements.** Following the completion of construction of the Initial Improvements, Tenant shall have the right from time to time to make any interior improvements to the Improvements that are consistent with the Lessor's approved use of the Premises as reflected in this Lease, without Lessor's prior written consent, but with prior written notice to the Lessor (except in the event of an emergency, in which case no prior written notice shall be required but Tenant shall notify Lessor of any emergency work done as soon as practicable). With prior written approval of Lessor, Tenant may restore and reconstruct the Improvements, and in that process make any modifications otherwise required by changes in Laws, following any damage or destruction thereto (whether or not required to do so under Article VII); and/or to make changes, revisions or improvements to the Improvements for uses consistent with the Lessor 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 construction of the Initial Improvements, and except as specified in Sections 6.1 and 6.2, any construction, alterations, additions, major repairs, demolition, improvements or reconstruction of any kind shall require the prior written consent of the Lessor, which consent shall not be unreasonably conditioned, delayed or withheld and may require their respective governing body's approval (e.g. Board of Supervisors' and City Council approval). 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, Agency, 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 Lessor Obligations.** Tenant specifically acknowledges and agrees that County, Agency and Lessor 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 Lessor Reservations.** Without limiting Lessor's rights with respect to the Premises, Lessor reserves for themselves, their 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 Lessor deems necessary or desirable to maintain, repair, improve, modify or reconstruct the Premises. The rights reserved to Lessor in this section or any other section of this Lease shall be exercised by the Lessor at their 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 Lessor 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 Lessor given by the later of ninety (90) days after the date of the damage or destruction or thirty (30) days after receipt by

Tenant of any such insurance proceeds, that there are not adequate proceeds to restore the Improvements and/or the Premises to substantially the same condition in which they existed prior to the occurrence of such damage or destruction, then Tenant may terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice. Notwithstanding Section 17.9, if Tenant terminates this Lease pursuant to this Section 7.1, Tenant shall surrender possession of the Premises to the Lessor immediately and assign to the Lessor (or, if same has already been received by Tenant, pay to the Lessor) all of its right, title and interest in and to the proceeds from Tenant's insurance upon the Premises.

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

**7.3 No Rental Abatement.** Tenant shall not be entitled to any abatement, allowance, reduction, or suspension of Rent because part or all of the Improvements become untenable as a result of the partial or total destruction of the Improvements, and Tenant's obligation to keep and perform all covenants and agreements on its part to be kept and performed hereunder, shall not be decreased or affected in any way by any destruction of or damage to the Improvements; 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 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, Agency and Tenant hereby expressly waive the provisions of California Civil Code Sections 1932(2) and 1933(4) with respect to any damage or destruction of the Premises and/or the Improvements and agree that their rights shall be exclusively governed by the provisions of this Article VII.

**7.6 Damage Near End of Term.** If, during the last three (3) years of the 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 Lessor of its election to repair or restore the Improvements as provided in this Article VII; or

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

## 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 or City for the full term of this Lease, the County or City 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

(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 Including Sexual Misconduct (defined as abuse, molestation and assault and battery)	\$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
Commercial Property Insurance on an "All Risk" or "Special Causes of Loss" basis covering all	100% of the Replacement Cost Value

buildings, contents and any tenant improvements including Business Interruption/Loss of Rents with a 12 month limit	and no coinsurance provision
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Contractor shall provide a builder’s risk policy providing coverage for the full project value and no coinsurance provision. The policy shall provide coverage for all perils excluding earthquake, and flood. Contractor is responsible for any deductible amount. The County of Orange and the Housing Authority of the City of Santa Ana shall be named as Loss Payees 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 their 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, City of Santa Ana, and their 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, City of Santa Ana, and their 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, City of Santa Ana, and their 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, City of Santa Ana, and their 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 and City of Santa Ana as both Named Insureds. 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 and City of Santa Ana as Loss Payees. A Loss Payee endorsement shall be submitted with the Certificate of Insurance as evidence of this requirement.

(d) Tenant shall notify County and City 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 and City. Failure to provide written notice of cancellation may

constitute a material breach of the Lease, after which the County or City 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 County and City 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 or City 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, City 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 Lessor, 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 claims arising from the gross negligence or willful misconduct of County or Agency, their officers, agents, employees and contractors. Tenant hereby agrees to indemnify, defend (with counsel approved in writing by Lessor), and hold harmless, County and the Agency, their respective elected and appointed officials, officers, agents, employees and contractors against any and all claims, losses, demands, damages, cost, expenses or liability for injury to any persons or property, arising out of the operation or maintenance of the Premises, and/or Tenant's exercise of the rights under this Lease, except for liability arising out of the gross negligence or willful misconduct of County or Agency, their 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 and/or Agency

is named as co-defendant in a lawsuit in connection with this Lease, Tenant shall notify Lessor of such fact and shall represent the County and/or Agency in such legal action unless County or Agency undertakes to represent themselves as co-defendant in such legal action, in which event, Tenant shall pay to Lessor their litigation costs, expenses, and reasonable attorneys' fees. If judgment is entered against County and/or Agency and Tenant by a court of competent jurisdiction because of the concurrent active negligence of County and/or Agency and Tenant, County, Agency 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 Lessor'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.** Lessor 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, Lessor shall be liable for injury or damage under this Section 8.3 resulting from County or Agency, their 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, Agency 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, Agency and Tenant. County, Agency 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 Lessor 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 Lessor, 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 Lessor 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, Lessor shall be entitled to receive the entire award for such Partial Taking, except that (i) the proceeds of such Partial Taking shall first be applied towards the cost of Restoring the Premises pursuant to Section 9.4.2 and (ii) Tenant shall be entitled to receive any portion of such award allocated to Tenant's interest in any of Tenant's Improvements, Personal property and trade fixtures taken, and any part of the award attributable to the low income housing tax credits.

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

10.1.2. Should Lessor 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 Lessor'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 Lessor'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 Lessor's Fee Interest, other than as required by TCAC pursuant to its lease rider, if any, and previously approved by Lessor prior to the Effective Date of this Lease, in connection with the award of low income housing tax credits to Tenant.

**10.3 Excluded Transfers.** Lessor'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 Lessor of such Excluded Transfer at least twenty (20) days prior to the consummation of such Excluded Transfer, and shall provide Lessor 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 Lessor with a written assumption of Tenant's obligations and liabilities under this Lease executed by such transferee in a form approved by the Lessor, 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 Lessor's consent is required hereunder, Tenant shall provide Lessor 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 Lessor may reasonably request concerning the proposed transferee. Lessor shall, no later than ninety (90) days after Lessor's receipt of the information specified above, deliver written notice to Tenant which shall (i) indicate whether Lessor give or withhold consent to the proposed Transfer, and (ii) if Lessor withhold consent to the proposed Transfer, setting forth a detailed explanation of Lessor's grounds for doing so. If Lessor consents to a proposed Transfer, then Tenant may thereafter effectuate such Transfer to the proposed transferee based upon the specific terms of the Lessor's approval and after execution of a consent to assignment by Lessor in a form approved by the Lessor, which approval shall not be unreasonably withheld, conditioned or delayed in the event that the assignment is consistent with the terms of this Lease; provided, however, that the provisions of this Section 10.4 shall not apply to any Transfer to a Foreclosure Transferee.

**10.5 Liability of Transferors/Transferees For Lease Obligations.** In the case of an assignment, including an assignment pursuant to Section 17.6.5, each Permitted Transferee and any other assignees or transferees of this Lease shall assume in writing all of Tenant's obligations thereafter arising under this Lease. All assignees or transferees of any interest in this Lease or the Premises or Improvements (whether or not directly liable on this Lease) shall be subject to the terms, conditions, covenants, restrictions and reservations of this Lease. 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 Lessor evidence of sufficient and adequate assets, including any required insurance policies, subject to approval by Lessor, 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 Lessor 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, Lessor 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 Lessor Consent.

10.6.1. Lessor may withhold consent to a Transfer (excluding Excluded Transfers which shall not require Lessor 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 construction of the Initial Improvements has not been completed.
- (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 Lessor's approval of the Transfer have not been disclosed in writing to the Lessor.

**10.7 Transfer of Mortgages of Lessor's Interest.** Notwithstanding anything to the contrary set forth in this Ground Lease, unless required by statute, court order or operation of law, Lessor shall not transfer, assign, pledge or hypothecate its fee interest in the Premises (other than to entities under common control with Lessor or other governmental entities under applicable law) without the prior written consent of Tenant, Leasehold Mortgagee 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 Lessor encumbering the Lessor's fee interest in the Premises shall be expressly subject and subordinate to this Lease, to all obligations of Lessor 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 Lessor's fee interest as a consequence of any conveyance, foreclosure or other transfer shall succeed to all of the obligations of the Lessor hereunder.

## ARTICLE XI DEFAULT AND REMEDIES

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

11.1.1. **Failure to Pay.** Tenant's failure or omission to pay any Rent or other sum payable hereunder on or before the date due where such failure shall continue for a period of five (5)

days after written notice thereof from Lessor to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure §1161 *et seq.*

11.1.2. **Failure to Perform.** The failure or inability by Tenant to observe or perform any of its obligations under this Lease (other than those specified in Sections 11.1.1, 11.1.3, 11.1.6, or 11.1.8 herein, which have their own notice and cure periods), where such failure shall continue for a period of thirty (30) days after written notice thereof from Lessor to Tenant or past any such longer period as reasonably agreed upon by the Tenant, Lessor in writing as may be necessary for completion of its cure; provided, however, that any such notice by Lessor 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 Lessor'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 Lessor.** Tenant's failure to reimburse the Lessor 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 Lessor of such termination.

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

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

11.2.1. **Termination of Lease.** Subject to Article 17, as applicable, Lessor 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 Lessor shall elect to so terminate this Lease then Lessor 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 Lessor 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 Lessor may by law hereafter be permitted to recover from Tenant to compensate Lessor 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.** Lessor may continue this Lease in effect without terminating Tenant's right to possession and to enforce all of Lessor'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 Lessor 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.** Lessor 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 Lessor'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, Lessor may at their election, but are 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 Lessor's demand. Tenant's failure to reimburse the County and/or Agency within 30 days of Lessor'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 and/or Agency liable for any loss or damage resulting from the same.

**11.4 Lessor's Default.** Lessor shall not be considered to be in default under this Lease unless Tenant has given Lessor written notice specifying the default, and either (i) as to monetary defaults, Lessor have failed to cure the same within ten (10) business days after written notice from Tenant, or (ii) as to nonmonetary defaults, Lessor have failed to cure the same within thirty (30) days after written notice from Tenant, or if the nature of Lessor'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 and/or Agency 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 and/or Agency 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 Lessor'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 Lessor contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Lessor 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 Lessor.** No delay or omission of Lessor 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 Lessor 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 Lessor's knowledge of such preceding breach or default at the time of acceptance of such rent or sum, or (b) waiver of Lessor's right to exercise any remedy available to Lessor by virtue of such breach or default. No act or thing done by County or Agency's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender shall be valid unless in writing and signed by Lessor.

**11.7 Interest.** Any installment or Rent due under this Lease or any other sums not paid to Lessor 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 Lessor 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 Lessor 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, Lessor 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 Lessor on Tenant's behalf shall not give rise to any responsibility of Lessor 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 Lessor in connection therewith, together with interest at the Interest Rate from the date incurred or paid by Lessor, 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 Lessor, and Tenant's failure to pay the Lessor, 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 Lessor, 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, Lessor 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 Lessor 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 and/or Agency in connection with such eviction action; Tenant shall also indemnify and hold Lessor harmless from all loss or liability or reasonable attorney's fees and costs, including any claim made by any succeeding tenant, incurred by County and/or Agency 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, Agency 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, Agency 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, Agency, 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 and the Agency 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 and Agency 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 Lessor 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 Lessor 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 Lessor with such budget.

15.1.1. Tenant acknowledges its understanding that any and all of the Financial Statement submitted to the Lessor 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 Lessor. Lessor shall, through their 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 Lessor 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 Lessor 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 Lessor 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 Lessor 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 Improvements, or any applicable portion thereof or interest therein.

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

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

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

17.1.5. "**Tenant**" shall mean all of the following: (i) the Tenant under this Lease; (ii) an approved assignee, transferee or subtenant of the Tenant under this Lease who is or becomes directly and primarily liable to Lessor; 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 Lessor.

17.2 **Tenant's Right to Encumber Leasehold Estate; No Right to Encumber Lessor's Fee Interest.** Provided that an Event of Default has not occurred and is continuing, Tenant may, at any time during the Term of this Lease (with consent of Lessor after prior written notice providing evidence that all requirements of this Lease have been complied with, which consent shall not be unreasonably withheld, conditioned or delayed), encumber all or any portion of Tenant's Leasehold Estate with one (1) or more Leasehold Mortgages; provided, however:

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

17.2.2. That Tenant shall not have the power to encumber, and no Leasehold Mortgage shall encumber, Lessor'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 Lessor 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 Lessor'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, any required consent of the Lessor under this Section 17.2 shall not be unreasonably withheld.

**17.3 Notification to Lessor of Leasehold Mortgage.** Tenant or any Leasehold Mortgagee shall, prior to making any Leasehold Mortgage, provide Lessor 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 Lessor 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 Lessor of any change in the identity or address of such Leasehold Mortgagee. Lessor shall be entitled to rely upon the addresses provided pursuant to this Section for purposes of giving any notices required by this Article XVII.

**17.4 Notice and Cure Rights of Leasehold Mortgagees With Respect to Tenant Defaults.** Lessor, 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 Lessor may predicate or claim a default, will promptly deliver a copy of such notice to each Leasehold Mortgagee. Each notice or demand required to be given by Lessor to a Leasehold Mortgagee under this Lease shall be in writing and shall be given by certified or registered mail, postage prepaid, return receipt requested, to such Leasehold Mortgagee at the address(es) provided by such Leasehold Mortgagee, as applicable, to Lessor from time to time in writing and shall be effective upon receipt (or refusal to accept receipt). No notice or demand given by Lessor 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 in accordance with this Lease. From and after the date such notice has been given to any Leasehold Mortgagee, such Leasehold Mortgagee 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, Agency 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). Lessor shall accept any and all performance by or on behalf of any Leasehold Mortgagee(s), including by any receiver obtained by any Leasehold Mortgagee(s), as if the same had been done by Tenant. Tenant authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option, and hereby authorizes any Leasehold Mortgagee (or any receiver or agent) to enter upon the Premises for such purpose.

**17.5 Limitation on Lessor'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 as allowed under Section 17.4, above), and such failure entitles County and/or Agency to terminate this Lease, Lessor shall have no right to terminate this Lease unless Lessor shall notify in writing each and every Leasehold Mortgagee who has complied with Section 17.3 of Lessor's intent to so terminate at least sixty (60) days in advance of the proposed effective date of such termination. If any Leasehold Mortgagee, within such sixty (60) day period, (i) notifies Lessor of such Leasehold Mortgagee'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 Lessor, at its sole discretion, may permit such additional time as necessary for any Leasehold Mortgagee 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 sixty (60) days as consistent with the conditions of this Section 17.5, Lessor 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 Lessor's notice under Section 17.5 specifies only monetary Events of Default as the basis for Lessor's election to terminate this Lease, and Leasehold Mortgagee has fully paid the monetary amount designated by Lessor in its notice, then such payment shall be deemed to have cured the Event of Default. If Lessor'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 Lessor's election to terminate this Lease, and Leasehold Mortgagee has fully paid the monetary amount designated by Lessor in its notice, as applicable, then the date of termination specified in Lessor'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, 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. 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 Lessor and the Leasehold Mortgagee, Lessor shall enter into such new lease with the Leasehold Mortgagee pursuant to Section 17.7, below, provided Lessor 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 Lessor'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 Lessor 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), Lessor 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 Lessor 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 Lessor to enter into a New Lease, Leasehold Mortgagee shall pay to Lessor 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, Agency 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 Lessor'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 Lessor 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 Lessor 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, Lessor 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 Lessor 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 Lessor may control the same, then the Leasehold Mortgagee under the New Lease shall be entitled to such net income received by Lessor except to the extent that it was applied to cure any default of Tenant.

17.7.4. All rights and claims of Tenant under this Lease shall be subject and subordinate to all right and 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 Lessor 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, Lessor 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 and/or Agency by multiple Leasehold Mortgagees, Lessor may (subject to any applicable court orders to the contrary) rely on the direction of the Leasehold Mortgagee whose Leasehold Mortgage is recorded first in time in the Official Records of the 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 Lessor'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.

**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.

**17.11 No Waiver.** No payment made to Lessor 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 Lessor pursuant to County and/or Agency'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 Lessor for its reasonable attorneys' fees and costs incurred in connection with Lessor'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, Agency and Tenant, (b) Lessor 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, 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).

**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 Lessor 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 Lessor for review and approval prior to implementation.

18.6 Lessor 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 Lessor, which approval may be withheld in the sole and absolute discretion of the Lessor, 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 Lessor 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 Lessor, within five (5) business days, a good and sufficient deed, in a form as approved by the Lessor, whereby all right, title, and interest of Tenant in the Premises is quitclaimed back to Lessor ("**Quitclaim Deed**"). The Quitclaim Deed shall then be recorded by Lessor to remove any cloud on title created by this Lease. In the event that the Tenant fails to provide such Quitclaim Deed within five (5) additional business days after written demand by either the County or City, the Parties agree that the County and City 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 Quitclaim Deed after such notice and cure period, in addition to any other remedy provided by law or equity, the Tenant shall pay the Lessor \$2,000 per day for every day that passes until a Quitclaim Deed is delivered, which amount shall be deemed to constitute a reasonable estimate of Lessor's damages and not a penalty. Such amount shall become due and payable by Tenant to Lessor for each calendar day that passes beyond the cure period. Notwithstanding the foregoing, if the Tenant has disputed the termination of the Lease by Lessor, 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 Lessor 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 Lessor determines that the records must be turned over, the Lessor 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 Lessor 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 and/or Agency, on behalf of the County and/or Agency, 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 Lessor 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 Lessor, Tenant shall provide to Lessor 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.

**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. In any provision relating to the conduct, acts or omissions of Agency, the term “**Agency**” shall include Agency’s agents, employees, contractors, invitees, successors or others using the Premises with Agency’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.

**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 Agency permits, constitute the entire agreement

between County, Agency 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, Agency and Tenant. County, Agency 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 Lessor: 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

And to:

Housing Authority of the City of Santa Ana  
20 Civic Center Plaza (M-26)  
P.O. Box 1988  
Santa Ana, California 92702  
Attn: Housing Manager

With a copy to: Office of the City Attorney  
City of Santa Ana  
20 Civic Center Plaza, 7th Floor (M-29)  
Santa Ana, California 92702

If to Tenant: c/o The Related Companies of California, LLC  
19201 Von Karman Avenue, Suite 900  
Irvine, CA 92612  
Attention: President

c/o A Community of Friends  
3701 Wilshire Boulevard, Suite 700  
Los Angeles, CA 90010  
Attention: Dora Leong Gallo, President and Chief Executive Officer

And to:

With a copy to:

Bocarsly Emden Cowan Esmail & Arndt LLP  
 633 W. 5th Street, 64th Floor  
 Los Angeles, CA 90071  
 Attention: Lance Bocarsly, 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 Lessor 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 and/or Agency's option, be deemed to have been transferred to County and/or Agency. County and/or Agency 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 Lessor's option, Lessor 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 Lessor 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 and/or Agency 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 and/or Agency 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, Agency and Tenant. County, Agency and Tenant mutually acknowledge that no business or financial relationship exists between them other than as County, Agency and Tenant, and that County and Agency is not responsible in any way for the debts of Tenant or any other Party.

**19.25 Authorization.** County, Agency 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 Lessor 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 in the event that the Tenant encumbers the leasehold as set forth in Article XVII, a memorandum hereof may be recorded in the form of **Exhibit D** attached hereto (the “**Memorandum**”). The Memorandum may be executed concurrently with this Lease and thereafter recorded in the Official Records of the County Recorder on the Effective Date of this Lease has occurred. Tenant shall be responsible for the payment of all charges imposed in connection with the recordation of the Memorandum, including, without limitation, any documentary transfer tax imposed in connection with this transaction and all recording fees and charges.

19.27 **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: Initial Improvements

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, Agency and/or Tenant the right to take any action, grant any approval or consent, or exercise any discretion, County, Agency 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 and Agency.** County and Agency hereby agree that (a) Agency staff shall be responsible for administering the operation of the Project to insure it is being used in conformance with this Lease, and (b) Agency staff shall serve as administrator of the Lease with the Tenant and coordinate with the County as necessary. County and Agency hereby agree to work cooperatively and expeditiously to provide written consent (or written refusal to provide consent) to Tenant, the Leasehold Mortgagees and Limited Partner hereunder.

[Signatures On Following Pages]

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

	<p><b>TENANT</b></p> <p>WASHINGTON SANTA ANA HOUSING PARTNERS, L.P., a California limited partnership</p> <p>By: Related/Washington Santa Ana Development Co., LLC, a California limited liability company, its Administrative General Partner</p> <p>By: _____ Frank Cardone, President</p> <p>By: Supportive Housing LLC, a California limited liability company</p> <p>By: A Community of Friends, a California nonprofit public benefit corporation, its sole member/manager</p> <p>By: _____ Dora Leong Gallo, President and Chief Executive Officer</p>
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<p>APPROVED AS TO FORM: SONIA CARVALHO AUTHORITY GENERAL COUNSEL</p> <p>By: _____ Ryan O. Hodge, Assistant City Attorney</p> <p>Date _____</p>	<p><b><u>LESSOR</u></b></p> <p>HOUSING AUTHORITY OF THE CITY OF SANTA ANA ACTING AS THE HOUSING SUCCESSOR AGENCY a public body, corporate and politic</p> <p>By: _____ Steven A. Mendoza, Executive Director</p> <p>Date _____</p>
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Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

<p>APPROVED AS TO FORM: COUNTY COUNSEL</p> <p>By: _____ Deputy</p> <p>Date _____</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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Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

**Exhibit A**  
**Legal Description of the Premises**

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

That certain parcel of land situated in the City of Santa Ana, County of Orange, State of California, being that portion of Parcel 1 of Parcel 73035 described in the Grant Deed recorded July 24, 1991, Instrument No. 91-387576 of Official Records, together with that portion of Parcel 73034 described in the Grant Deed recorded November 15, 1991, Instrument No. 91-626431 of Official Records, lying southwesterly and westerly of those three (3) courses and the Northwesterly extension of course Three (3) thereof, in the State Right of Way as shown on a map filed in Book 194, pages 28 through 36 inclusive of Record of Surveys in said Office of said County Recorder, said Three (3) courses being shown on sheet 2 of said map as:

- 1) North 21° 00' 58" West 286.98';
- 2) North 32° 46' 23" West 157.90';
- 3) North 25° 03' 45" West 62.42'.

EXCEPTING THEREFROM: That portion of above said Parcel 1, lying within the limits of the Washington Avenue Cul-De-Sac as shown on said Sheet 2 of said Map.

APN: 398-092-14

That portion of the land allotted to Maria Ygnacia Alvarado De Moreno, as described in the final decree of partition of the Rancho Santiago De Santa Ana, which was entered September 12, 1868 in Book "B" Page 410 of Judgments of the District Court of the 17th Judicial District, in and for Los Angeles County, California, described as follows:

Beginning at a point 1584.0 feet north and 301.05 feet west of an iron axle set at the intersection of the centerlines of Fourth Street and Grand Avenue; thence North 717.80 feet; thence West 606.90 feet; thence South 717.80 feet; thence East 606.90 feet to the point of beginning.

EXCEPTING THEREFROM: That portion lying southeasterly of the northwesterly line of that certain 104.00 foot strip of land described in Parcel A of Deed to the City of Santa Ana, recorded June 25, 1970 in Book 9327, page 72 of Official Records.

ALSO EXCEPTING THEREFROM: That portion described as Parcel C in said Deed to the City of Santa Ana.

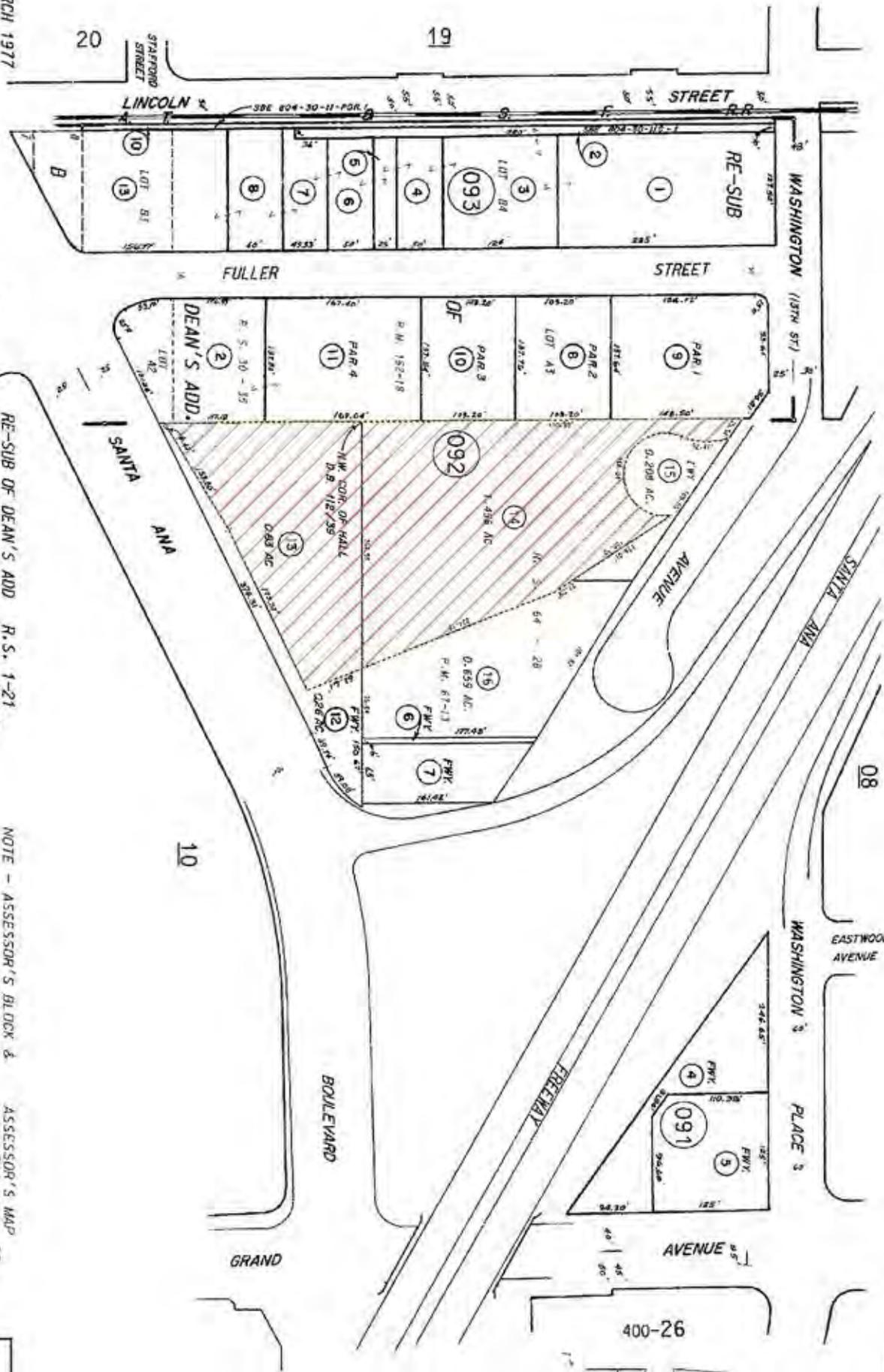
ALSO EXCEPTING THEREFROM: That portion conveyed in the deed to the State of California recorded January 10, 1992, Instrument 92-15188 of Official Records.

APN: 398-092-13

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

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

MARCH 1977



POR. S 1/2, NE 1/4, SEC. 7, T 5 S, R 9 W

RE-SUB OF DEAN'S ADD R.S. 1-21  
PARCEL MAP P.M. 162-18

NOTE - ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES ASSESSOR'S MAP BOOK 398 PAGE 09 COUNTY OF ORANGE

80A-105

398-0

**EXHIBIT B**  
**INITIAL IMPROVEMENTS**

The proposed Project includes the development of two residential buildings with 86 units surrounding two interior, landscaped courtyard/amenity spaces. The Project includes 16 studio units, 26 one bedroom units, 22 two-bedroom units, 17 three-bedroom units, and 5 four-bedroom units. All units will be flat apartments located on the first, second, third and fourth floors. In addition, a proposed sound wall is being positioned along the eastern property line adjacent to the US Interstate 5 ramp. Approximately 3,500 square foot of interior community amenities and leasing offices is designed to accommodate supportive and management services.

The Project will be 100% affordable to households earning no more than 30 percent of Area Median Income (AMI) for Orange County of which 43 units will be set-aside for Permanent Supportive Housing (PSH), with one exempt 2-bedroom managers unit. 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 County Loan 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	16			16
One-Bedroom	26			26
Two-Bedroom	1	20	1	22
Three-Bedroom		17		17
Four-Bedroom		5		5
<b>TOTAL</b>	<b>43</b>	<b>42</b>	<b>1</b>	<b>86</b>

**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



If to Tenant: c/o The Related Companies of California, LLC  
19201 Von Karman Avenue, Suite 900  
Irvine, CA 92612  
Attention: President

c/o A Community of Friends  
3701 Wilshire Boulevard, Suite 700  
Los Angeles, CA 90010  
Attention: Dora Leong Gallo

And to:

With a copy to: Bocarsly Emden Cowan Esmail & Arndt LLP  
633 W. 5th Street, 64th Floor  
Los Angeles, CA 90071  
Attention: Lance Bocarsly, 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 Lessor 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.

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

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

**COUNTY:**

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

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

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

**AGENCY:**

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

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

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

**TENANT:**

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

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

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

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

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

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

**EXHIBIT H  
COUNTY QUITCLAIM**

(See Attached)

Recording requested by and  
when recorded, return to:  
City of Santa Ana  
Clerk of the Council  
20 Civic Center Plaza (M-30)  
P.O. Box 1988  
Santa Ana, CA 92702  
Attention: Clerk of the Council

And

County of Orange, Real Estate Services  
333 West Santa Ana Blvd, 3<sup>rd</sup> Floor  
Santa Ana, CA 92701

Recording Fee Exempt  
Per Govt. Code 27383

---

Facility: XXXXXX  
Facility No.: XXXXXX  
Parcel No.: XXXXXX  
A.P. No.: 398-092-14  
Location: Santa Ana, CA

THE UNDERSIGNED GRANTOR DECLARES THAT THIS IS A CONVEYANCE TO A  
GOVERNMENTAL ENTITY AND NO TRANSFER TAX IS DUE PER CAL. R&T CODE 11922

**QUITCLAIM DEED**

For valuable consideration, receipt of which is hereby acknowledged, the

The Housing Authority of the City of Santa Ana,  
A public body, corporate and politic,  
hereinafter referred to as "AGENCY",

and

COUNTY OF ORANGE,  
hereinafter referred to as "COUNTY",

as Tenants in Common

do hereby remise, release and forever Quitclaim to

AGENCY

all right, title and interest in and to the real property in the City of Santa Ana, County of Orange,  
State of California, described as:

See EXHIBIT A,  
attached and by reference made a part.

**80A-112**  
-1-

GRANTOR:

HOUSING AUTHORITY OF THE CITY OF  
SANTA ANA ACTING AS THE HOUSING  
SUCCESSOR AGENCY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Steven A. Mendoza, Executive Director

APPROVED AS TO FORM  
Authority General Counsel

By: \_\_\_\_\_  
Ryan O. Hodge  
Assistant City Attorney

Date: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California                    )  
County of \_\_\_\_\_                  )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(here insert name and title of the officer)

personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

GRANTOR:

Dated: \_\_\_\_\_

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

APPROVED AS TO FORM  
County Counsel

By: \_\_\_\_\_  
Deputy County Counsel  
Michael Haubert

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2019 before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (seal)  
\_\_\_\_\_

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the within deed or grant to the Housing Authority of the City of Santa Ana, a public body, corporate and politic, is hereby accepted by order of the City Council of the City of Santa Ana, and the Housing Authority of the City of Santa Ana consents to recordation thereof by its duly authorized officer.

HOUSING AUTHORITY OF THE CITY OF SANTA ANA ACTING AS THE HOUSING SUCCESSOR AGENCY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Steven A. Mendoza, Executive Director

APPROVED AS TO FORM  
Authority General Counsel

By: \_\_\_\_\_  
Ryan O. Hodge  
Assistant City Attorney

Date: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2019 before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (seal)  
\_\_\_\_\_

**EXHIBIT I  
AGENCY QUITCLAIM**

(See Attached)

Recording requested by and  
when recorded, return to:  
City of Santa Ana  
Clerk of the Council  
20 Civic Center Plaza (M-30)  
P.O. Box 1988  
Santa Ana, CA 92702  
Attention: Clerk of the Council

And

County of Orange, Real Estate Services  
333 West Santa Ana Blvd, 3<sup>rd</sup> Floor  
Santa Ana, CA 92701

Recording Fee Exempt  
Per Govt. Code 27383

Facility: XXXXXX  
Facility No.: XXXXXX  
Parcel No.: XXXXXX  
A.P. No.: 398-092-13  
Location: Santa Ana, CA

THE UNDERSIGNED GRANTOR DECLARES THAT THIS IS A CONVEYANCE TO A  
GOVERNMENTAL ENTITY AND NO TRANSFER TAX IS DUE PER CAL. R&T CODE 11922

**QUITCLAIM DEED**

For valuable consideration, receipt of which is hereby acknowledged, the

The Housing Authority of the City of Santa Ana,  
A public body, corporate and politic,  
hereinafter referred to as "AGENCY",

and

COUNTY OF ORANGE,  
hereinafter referred to as "COUNTY",

as Tenants in Common

do hereby remise, release and forever Quitclaim to

COUNTY

all right, title and interest in and to the real property in the City of Santa Ana, County of Orange,  
State of California, described as:

See EXHIBIT A,  
attached and by reference made a part.

**80A-117**

GRANTOR:  
COUNTY OF ORANGE

Dated: \_\_\_\_\_

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

APPROVED AS TO FORM  
County Counsel

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

Date: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(here insert name and title of the officer)

personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the within deed or grant to the County of Orange, political subdivision of the State of California, is hereby accepted by order of the Board of Supervisors of the County of Orange, and the County of Orange consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

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

Thomas A. Miller  
Chief Real Estate Officer

APPROVED AS TO FORM  
County Counsel

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

Deputy County Counsel  
Michael Haubert

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2019 before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (seal)

\_\_\_\_\_

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

GRANTOR:

HOUSING AUTHORITY OF THE CITY OF  
SANTA ANA ACTING AS THE HOUSING  
SUCCESSOR AGENCY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Steven A. Mendoza, Executive Director

APPROVED AS TO FORM  
Authority General Counsel

By: \_\_\_\_\_  
Ryan O. Hodge  
Assistant City Attorney

Date: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2019 before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (seal)  
\_\_\_\_\_

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)



**OPTION AGREEMENT**

THIS OPTION AGREEMENT (“**Option Agreement**”) is made \_\_\_\_\_, 2020, (“**Effective Date**”) by and between the COUNTY OF ORANGE, a political subdivision of the State of California, the HOUSING AUTHORITY OF THE CITY OF SANTA ANA, a public body, corporate and politic, (respectively, the “**County**” and the “**Agency**,” and collectively “**Optionor**”) and WASHINGTON SANTA ANA HOUSING PARTNERS, L.P., a California limited partnership (hereinafter called “**Optionee**”). Optionor and Optionee may sometimes hereinafter individually be referred to as “**Party**” or jointly as “**Parties**.”

**Recitals**

- A. County and Agency are owners of contiguous parcels of land totaling approximately 2.26 acres located in Santa Ana, California, comprised of the two following lots: Assessor’s Parcel Number 398-092-14 (“**Agency Property**”); and Assessor’s Parcel Number 398-092-13 (“**County Property**”).
- B. The Agency and County desire to merge these two parcels for the purpose of executing a ground lease (“**Lease**”) for the combined property to Optionor, to create an 86-unit multifamily affordable housing project with a permanent supportive housing component (“**Project**”).
- C. Optionee desires to obtain an option to lease the combined Agency Property and County Property, once merged, as set forth on **Attachment I**, attached hereto and made a part hereof (“**Premises**”), to develop and construct the Project.
- D. The final negotiated form of the Lease is attached hereto as **Attachment II** and will more fully describe the Project and other permitted uses.
- E. Optionor is the fee owner of the Premises and is willing to enter into an option to lease said Premises for the Project as set forth herein.

NOW, THEREFORE the Parties agree as follows:

**1. DEFINITIONS (PM02.1 S)**

- a. “**Board of Supervisors**” means the Board of Supervisors of the County of Orange, a political subdivision of the State of California, the governing board of the County.
- b. “**Agency**” means the Housing Authority of the City of Santa Ana, acting as the Housing Successor Agency, a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the California Redevelopment Law. The principal office of the Agency is located at 20 Civic Center Plaza, Santa Ana, California 92702. “**Agency**” shall also refer to the City of Santa Ana where the context dictates, to the effect that the City of Santa Ana shall have all rights granted to the Agency hereunder.
- c. “**City**” shall mean the City of Santa Ana, California, a charter city and municipal corporation. “**City**” shall also refer to the Agency where the context dictates, to the effect that the Agency

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

shall have all the rights granted to the City hereunder. **“City Council”** shall mean the City Council of the City of Santa Ana.

- d. **“County”** means the County of Orange, a political subdivision of the State of California. Any reference to the County herein, unless expressly stated to the contrary, shall refer to the County solely in its capacity as owner of the Premises and not the County in its capacity as a land use or other governmental approval authority.
- e. **“Lease”** means that certain Ground Lease including any and all addenda, amendments and exhibits attached hereto as **Attachment II**.
- f. **“Premises”** means that certain real property containing approximately 2.28 acres of undeveloped land in the City of Santa Ana, made up of the Agency Property and the County Property, together with all easements, rights and privileges appurtenant thereto, to be leased to Optionee pursuant to the Lease for the development of the Project, as more fully set forth therein. The map of the Premises is attached hereto as **Attachment I**.

## 2. **OPTION (PM03.1 S)**

Optionor hereby grants Optionee the option (**“Option”**) to lease said Premises in accordance with the covenants and conditions set forth herein. For purposes of clarification and for the purpose of this Option Agreement, the Agency is specifically providing an Option on the Agency Property and the County is specifically providing an Option on the County Property, as more fully set forth herein.

## 3. **TERM (PM05.1 S)**

The term of this Option Agreement shall be thirty-six (36) calendar months (**“Option Term”**) and shall commence on the Effective Date shown above.

If at any point during the Option Term the Optionee has failed to act diligently and in good faith to obtain funding or to plan and permit the Project pursuant to Section 5, below, the Optionor, using reasonable discretion, may terminate this Option Agreement, with fifteen (15) days written notice to Optionee setting forth the reasons for such termination. If during such fifteen (15) day period the Optionee is able to cure any issues indicated in the notice of termination, this Option Agreement may be reinstated by the Optionor and shall remain in full force and effect.

## 4. **OPTION PRICE (PM04.2 N)**

The price of the Option granted herein is \$36 (**“Option Price”**), which shall be paid to Optionor prior to the Effective Date.

The Option Price shall be retained by Optionor in consideration for the granting of the Option. No portion of the Option Price shall be refunded or credited to rent payments under the Lease.

## 5. CONDITIONS (PM07.1 N)

The Option may not be exercised until the following terms and conditions shall have been met. Each time a condition has been met Optionor shall, upon written request therefor from Optionee, provide written confirmation that such condition has been satisfied.

### A. Preliminary Plans

Within one hundred eighty (180) days following the Effective Date of this Option Agreement, and not less than five (5) business days before Optionee intends to submit such documents to the City, Optionee shall submit preliminary plans for the development and use of the Premises for the Project ("**Preliminary Plans**"), for Optionor's approval. The preliminary plans shall be prepared by an architect licensed in the State of California and shall include:

- 1) A detailed site plan of the Premises showing:
  - a. all improvements planned for the Premises
  - b. any existing and/or proposed easements affecting the Premises
  - c. ingress and egress to and from the Premises
  - d. parking
  - e. location of all utilities
  - f. drainage plan
  - g. grade elevations of all structures;
- 2) Detailed landscape development plans;
- 3) Colored rendering or model of the planned development;
- 4) A detailed cost estimate of all improvements; and
- 5) A detailed estimate of the construction schedule.

Within ten (10) business days of receipt of the Preliminary Plans, the Optionor will provide Optionee with written comments, if any, on the Preliminary Plans. The Optionor's review shall be limited only to reviewing plans for conformity with this Option Agreement and impacts on flood control operations and shall not provide any representations or warranties regarding the sufficiency of the plans for the required land use approvals or for construction.

### B. Environmental Requirements

Concurrently with or prior to the submission of the Preliminary Plans to the Agency, Optionee shall submit to the City a draft Initial Study, with a copy to the Optionor, prepared at Optionee's expense, in order for the City to determine whether a Negative Declaration or an Environmental Impact Report will be necessary for the proposed development. Such determination will be made in accordance with the City's normal procedures.

If the City determines that a Negative Declaration is appropriate, Optionee shall submit all necessary documentation and cooperate with the City in order to provide the Optionor with written proof of environmental clearance on the Project from the appropriate governmental authority.

If an Environmental Impact Report is mandated by the City, Optionee shall obtain a screen check Environmental Impact Report and draft Environmental Impact Report at its own expense and shall process same in accordance with the City's procedure. Optionee shall, prior to commencement of any construction on the Premises, provide supporting documentation to Optionor, evidencing that Optionee has received environmental clearance on the Project from the appropriate authority governing this matter

C. General Plan Conformity

Optionee shall request a finding from the City that the proposed development is in conformance with the City's General Plan pursuant to Government Code Section 65402 and provide written evidence of such conformity to the Optionor.

D. Construction Contract Documents

Within ninety (90) days following the Optionee's receipt of a commitment from the California Tax Credit Allocation Committee of an award of tax credits for Optionee's proposed development of the Premises, and not less than five (5) business days before Optionee intends to submit such documents to the Agency, Optionee shall submit to the Optionor construction contract documents ("**Construction Contract Documents**") and cost estimates for development of the Premises. Such Construction Contract Documents shall consist of the following:

- 1) Complete architectural, landscape, and engineering working drawings;
- 2) Outline unit specifications;
- 3) Construction contract form; and
- 4) Construction schedule.

Within ten (10) business days of receipt of the Construction Contract Documents, the Optionor will provide Optionee with written comments, if any, on the Construction Contract Documents. If Optionor provides any comments within such ten (10) day period, then, to the extent reasonable, Optionee shall endeavor to address Optionor's comments with respect to the Construction Contract Documents during the approval process with the City.

E. Permits and Approvals.

Optionor shall not unreasonably withhold consent to any application by Optionee with respect to any permits or approvals related to activities or development plans approved by Optionor in accordance with this Option Agreement which may be required by any governmental or regulatory agency.

Optionee shall provide Optionor with satisfactory evidence that Optionee has met all City requirements, as applicable, and has obtained all necessary clearances and grading permits from the City to commence construction of the planned development as preliminarily approved by the Optionor.

Optionee acknowledges and agrees that no grading, or other construction activities shall be permitted on the Premises until all applicable permits and clearances have been obtained from the City.

F. Lease Requirements

Optionee shall submit to the Optionor:

- 1) Satisfactory evidence of Optionee's ability to finance the cost of the development planned for said Premises in accordance with the requirements of the Lease, which may be evidenced by commitments from the Optionee's tax credit investor and the lenders providing acquisition and construction financing for Optionee's proposed development of the Premises. If Optionee plans to hypothecate the leasehold as security for a loan, Optionee shall submit substantially final versions of all documents proposed in the loan transaction along with a request for Optionor's consent to the proposed hypothecation in accordance with the terms of the Lease, which consent shall not be unreasonably withheld.
- 2) Evidence that, when the Lease is executed, Optionee will provide assurances of construction completion in accordance with the Lease, or a letter of intent bond that is sufficient to assure Optionor that a bond is forthcoming consistent with the Lease, or Lessee will provide a completion guaranty in accordance with the Lease.
- 3) Evidence of insurance coverage which will be available when the Lease is executed and which fully complies with the Lease.

**6. REVIEW BY COUNTY AND AGENCY (PM08.1 N)**

Optionee hereby acknowledges that one of the purposes of this Option Agreement is to afford Optionee and Optionor the opportunity to determine whether Optionee is able to meet the various conditions of this Option Agreement and is able to obtain the required approvals as set forth in this Option Agreement. Several of those conditions involve obtaining reviews and approvals from officers, employees or agents of the Optionor, and/or the City. Each of those reviews shall be conducted in an independent manner and nothing contained herein shall be deemed to limit the jurisdiction or authority otherwise possessed by said officers, employees or agents in the conduct of such review.

Nothing contained in this Option Agreement shall be deemed to imply that required approvals will be forthcoming, and the failure to issue any such approval or permit by any officer, employee or agent of the County, and/or the City shall not be deemed in any manner a breach of this Option Agreement, nor shall any such denial give rise to any claim, liability, obligation, or cause of action with respect to this Option Agreement or the Lease.

No permit, approval, or consent given by the County, and/or the City, or their officers, employees, or agents, acting in its/their governmental capacity, shall affect or limit Optionee's obligations under this Option Agreement or under the Lease, nor shall any approvals or consents given under this Option Agreement by Optionor, as a Party hereto, be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, and/or regulations.

**7. DISCLAIMER OF REPRESENTATIONS OF WARRANTIES (PM015.1 N)**

Optionee agrees that Optionor has made no representations, warranties, or agreements as to any matters concerning the Premises, including, but without being limited to, the land, marketability of title, topography, climate, air, water, water rights, utilities, present or future zoning, soil, subsoil, hazardous substances, waste or materials, the purposes for which the Premises is suited, drainage, access to public roads, proposed routes of roads or extensions thereof or the availability of governmental permits or approvals of any kind. Optionee represents and warrants to Optionor that it and its representatives and employees have made or will make their own independent inspection and investigation of such matters concerning the Premises.

**8. OPTIONEE'S RIGHT TO ENTER PREMISES, INDEMNIFICATION (PM09.1.1 N)**

During the Option Term the Optionee and its employees, contractors, subcontractors, consultants, and agents (collectively, "**Consultants**") shall have the right, at Optionee's sole cost and expense, to enter onto the Premises at reasonable times to make such investigations of the Premises as the Optionee deems necessary for Optionee to prepare the hereinabove-described Preliminary Plans and Construction Contract Documents and in order to determine if the Premises is suitable for Optionee's intended development, including but not limited to invasive testing, geotechnical testing, and "Phase I" and/or "Phase II" investigations of Premises. The Optionee shall provide the Optionor with notice at least one (1) business day prior to the date of any intended entry onto the Premises. After making such tests and inspections, the Optionee shall promptly restore the Premises to its condition prior to such tests and inspections and shall provide the Optionor with any written reports delivered to Optionee as a result of such tests and inspections, but without any representation as to accuracy or the Optionor's right to rely on such reports.

Optionee hereby agrees to indemnify Optionor and hold Optionor, its officers, employees and agents harmless from any loss, claims, liability, or costs arising out of or incurred by reason of such investigation; provided, however, such indemnification shall not apply to any loss, claims, liability or costs arising out of Optionee's discovery of Hazardous Materials (as such term is defined in the form of Ground Lease) on the Premises not brought to the Premises by Optionee. Whether or not this option terminates or expires, Optionee agrees to repair any and all damages caused to the Premises by reason of any such investigation or investigations, which obligation shall not include remediation of any Hazardous Materials unless such Hazardous Materials were brought to the Premises by Optionee or unless Optionee agrees to move forward with such remediation after its environmental assessment of the Property. In no case shall Optionor be responsible for the costs associated with any such remediation required for the Project.

As a condition to any entry onto the Premises, Optionee shall provide evidence of insurance as stated in Section 11, entitled Insurance.

**9. OMITTED**

**10. HOLD HARMLESS (PMGE10.1 S)**

Optionee hereby releases and waives all claims and recourse against Optionor, 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 the activities of the Optionee or anyone acting for or under the direction of the Optionee under this Option Agreement except and to the extent of claims arising from the negligence or misconduct of Optionor, its officers, agents, and employees. Optionee hereby agrees to indemnify, defend (with counsel

approved in writing by Optionor), and hold harmless, Optionor, 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 (collectively, "Claims"), arising out of the Optionee's exercise of the rights under this Option Agreement, except and to the extent of liability arising out of the negligence or misconduct of Optionor, its elected and appointed officials, officers, agents, or employees, including the cost of defense of any lawsuit arising therefrom. If Optionor is named as co-defendant in a lawsuit with respect to a Claim for which the Optionee has an indemnity obligation under this section, Optionee shall notify Optionor of such fact and shall represent Optionor in such legal action unless Optionor undertakes to represent itself as co-defendant in such legal action, in which event, Optionee shall pay to Optionor its reasonable litigation costs, expenses, and attorneys' fees. If judgment is entered against Optionor and Optionee by a court of competent jurisdiction because of the concurrent negligence or misconduct of Optionor and Optionee, Optionor and Optionee agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

Optionee 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 that 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.*

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

## 11. INSURANCE (PM09.2.2S)

### A. General Requirements

Optionee agrees to purchase all required insurance at Optionee's expense and to deposit with the Optionor certificates of insurance, including all endorsements required herein, necessary to satisfy Optionor that the insurance provisions of this Option Agreement have been complied with and to keep such insurance coverage and the certificates and endorsements therefor on deposit with Optionor during the entire term of this Option Agreement and any extension thereof.

The Option shall terminate if Optionee's insurance coverage is terminated and Optionee has failed to reinstate such insurance within five (5) business days after termination

Optionee agrees that Optionee 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 Optionor. In no cases shall assurances by Optionee, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Optionor will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. Optionee also agrees that upon cancellation, termination, or expiration of Optionee's insurance, Optionor may take whatever steps are necessary to interrupt any operation from or on the Premises until such time as the Optionor reinstates the Option.

If Optionee fails at any time during the term of the Option to provide Optionor with a valid certificate

of insurance and endorsements, or binder, Optionor and Optionee agree that this shall constitute a material breach of this Option Agreement. Said material breach shall permit Optionor to take whatever steps 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 Optionee's employees and agents, from entering the Premises until such time as Optionor is provided with evidence of insurance required herein. Optionee further agrees to hold Optionor 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 Optionor's action.

All contractors performing work on behalf of Optionee pursuant to this Option Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for Optionee. Optionee shall not allow any contractor to work if the contractor has less than the level of coverage required by Optionor from the Optionee under this Option Agreement. It is the obligation of the Optionee to provide written notice of the insurance requirements to the 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 Optionee through the entirety of this Option Agreement and be available for inspection by an Optionor representative at any reasonable time.

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, and the City of Santa Ana Risk Manager ("Risk Manager") upon review of Optionee's current audited financial report. If Optionee's SIR is approved, Optionee, in addition to, and without limitation of, any other indemnity provision(s) in this Option, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County and City harmless against any and all liability, claim, demand or suit resulting from Optionee's, its agents, employee's or subcontractor's performance of this Agreement, Optionee shall defend the County and City at its sole cost and expense with counsel approved by Board of Supervisors and City of Santa Ana against same; and
- 2) Optionee'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 Optionee's SIR provision shall be interpreted as though the Optionee was an insurer and the County and City were the insureds.

If the Optionee fails to maintain insurance acceptable to Optionor for the full term of this Option Agreement, Optionor may terminate this Option Agreement, subject to the reinstatement rights above, if any, set forth above in this section.

#### B. Qualified Insurer

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

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

C. Minimum Limits

The policy or policies of insurance maintained by the Optionee shall provide the minimum limits and coverage as set forth below:

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

D. Coverage Forms

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.

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.

E. Required Endorsements. The following endorsements must be submitted with the Certificate of Insurance

- 1) The Commercial General Liability policy shall contain an Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the County their respective elected and appointed officials, officers, employees, and agents as Additional Insureds and the City of Santa Ana, its officers, employees, agents and representatives as Additional Insureds with respect to General Liability and Auto Liability per the attached endorsements or as required by written contract.

The Commercial General Liability policy shall contain a primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form as least as broad, evidencing that the Optionee's-insurance is primary and any insurance or self-insurance maintained by the

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

Optionor shall be excess and non-contributing

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

All insurance policies required by this contract shall waive all rights of subrogation against the Optionor, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Optionee shall notify Optionor 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 Optionor. Failure to provide written notice of cancellation may constitute a material breach of this Option upon which the Optionor may suspend or terminate this Option.

- 3) For the City, the Certificate Holder must specifically read:  
 City of Santa Ana  
 Risk Management Division, 4<sup>th</sup> Floor  
 20 Civic Center Plaza  
 Santa Ana, CA 92702
- 4) The Contractor's Pollution Liability policy shall contain the following endorsements and language, which shall accompany the Certificate of Insurance:  
 A) An Additional Insured endorsement naming the County of Orange, City of Santa Ana, and their respective elected and appointed officials, officers, employees and agents as Additional Insureds.  
 B) A primary and non-contributing endorsement evidencing the Optionee's insurance is primary and any insurance or self-insurance maintained by the County of Orange and City of Santa Ana shall be excess and non-contributing; and,  
 C) If Optionee's Contractor's Pollution Liability policy is a claims-made policy, Optionee shall agree to maintain coverage for two (2) years following termination of the Option.

F. Severability of Interest Clause - Commercial General Liability

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).

G. Delivery

Insurance certificates should be forwarded to Optionor address provided in Section 16 (Notices) below or to an address provided by the Optionor. Optionee has ten (10) business days to provide adequate evidence of insurance or this Option Agreement may be cancelled.

H. Insurance Requirement Changes

Optionor expressly retains the right to reasonably require Optionee to increase or decrease insurance

of any of the above insurance types throughout the term of this Option Agreement. Any increase or decrease in insurance will be as deemed by the County and City Risk Manager as appropriate to adequately protect Optionor.

Optionor shall notify Optionee in writing of changes in the insurance requirements. If Optionee does not deposit copies of acceptable certificates of insurance and endorsements with Optionor incorporating such changes within thirty (30) days of receipt of such notice, this Option Agreement may be in breach without further notice to Optionee, and Optionor shall be entitled to all legal remedies.

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

#### **12. ASSIGNMENT (PM010.1 S)**

The Optionee may assign its right, title and interest in and to this Option Agreement to an affiliated nonprofit public benefit corporation, or to a limited partnership whose general partner is a nonprofit corporation or limited liability company affiliated with the Optionee, subject to the Optionor's right to reasonably approve the agreement to effect such assignment. Otherwise, this Option Agreement shall not be sold, assigned, or otherwise transferred without the prior written consent of Optionor, which consent may be withheld in the Optionor's sole and absolute discretion. Failure to obtain Optionor's approval of the assignment agreement or required written consent, as applicable, shall render said sale, assignment, or transfer void.

If Optionee hereunder is a corporation or an unincorporated association or partnership, the sale, transfer, or assignment of any stock or interest in said corporation, association, or partnership in the aggregate exceeding twenty-five percent (25%) shall be deemed an assignment within the meaning of this clause.

#### **13. EXERCISE OF OPTION TO LEASE (PM011.1 S)**

At any time during the Option Term that Optionee shall have performed all conditions as set forth in Section 5 (Conditions) of this Option Agreement, Optionee may exercise the Option by giving Optionor written notice of election to do so, accompanied by properly executed copies of the Lease in triplicate. County and Agency hereby represent and warrant that concurrent with execution of this Option Agreement, County and Agency have entered into that certain Crossroads at Washington - Joint Powers Agreement ("JPA") and such agreement is in full force and effect.

#### **14. EXECUTION OF LEASE & MERGER OF PARCELS (PM012.1 N)**

After confirmation that the Optionee has performed all conditions as set forth in Section 5 (Conditions) of this Option Agreement, Optionor shall execute any and all documents necessary to merge the Premises under a tenants-in-common ownership structure and execute the Lease within fourteen (14) days of receipt of Optionee's notice of election to exercise the Option and receipt of the Lease executed by Optionee.

#### **15. TERMINATION (PM014.1 S)**

Failure of Optionee to fully and satisfactorily meet the terms and conditions of this Option Agreement within the time limits stated shall absolutely and conclusively terminate Optionee's rights hereunder.

Concurrent with execution of this Option Agreement, the Optionee shall execute, acknowledge, and deliver to Julie Massey, Escrow Officer, Old Republic Title Company, 555 - 12th Street, Suite 2000, Oakland, California 94607 (the "Escrow Holder") a quitclaim deed, in a form as approved by the Optionor, quitclaiming all right title and interest created by this Option Agreement back to the Optionor ("**Quitclaim Deed**"). In the event of termination of this Option Agreement for any reason, Optionor shall be entitled to instruct the Escrow Holder to record the Quitclaim Deed; provided, however, that County shall first deliver to Optionee at least five (5) days' prior to written notice of its intention to authorize Escrow Holder to record the Quitclaim Deed. Optionee shall be responsible for all costs associated with such escrow.

#### 16. NOTICES (PM018.1 N)

All notices, documents, correspondence and communications concerning this Option Agreement shall be addressed as set forth in this Section 16, or as the Parties may hereafter designate by written notice, and shall be sent through the United States mail, return receipt requested or with other proof of delivery, with postage prepaid, by personal delivery, Federal Express or similar courier service. Notices so given shall be deemed to have been given upon receipt.

##### TO OPTIONOR:

County of Orange  
c/o CEO Real Estate  
ATTN: Thomas Miller, Chief Real Estate  
Officer  
333 W. Santa Ana Blvd, 3rd Floor  
Santa Ana, CA 92702  
Email: [thomas.miller@ocgov.com](mailto:thomas.miller@ocgov.com)  
Phone: 714/834-3046

And to:

Housing Authority of the City of Santa Ana  
20 Civic Center Plaza (M-26)  
P.O. Box 1988  
Santa Ana, California 92702  
Attn: Housing Manager

With a copy to:

Office of the City Attorney  
City of Santa Ana  
20 Civic Center Plaza, 7th Floor (M-29)  
Santa Ana, California 92702

##### TO OPTIONEE:

c/o The Related Companies of California, LLC  
19201 Von Karman Avenue, Suite 900  
Irvine, CA 92612  
Attention: President

c/o A Community of Friends  
3701 Wilshire Boulevard, Suite 700  
Los Angeles, CA 90010  
Attention: Dora Leong Gallo, President and  
Chief Executive Officer

With a copy to:

Bocarsly Emden Cowan Esmail & Arndt LLP  
633 W. 5th Street, 64th Floor  
Los Angeles, CA 90071  
Attention: Lance Bocarsly, Esq.

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; except that notices required under Section 8 prior to Optionee's access onto the Premises may be given just by email

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.

**17. VENUE (PMES13.1S)**

The Parties hereto agree that this Option Agreement 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 Option Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in the County of Orange, 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.

**18. SEVERABILITY (PMES15.1S)**

If any term, covenant, condition, or provision of this Option Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**19. ATTORNEYS' FEES (PMES16.1S)**

In any action or proceeding brought to enforce or interpret any provision of this Option Agreement, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney fees and costs.

**20. SUCCESSORS AND ASSIGNS (PMES18.1S)**

The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of the Parties hereto.

**21. AUTHORITY (PMES20.1S)**

The Parties to this Option Agreement represent and warrant that it has been duly authorized and, once executed, will constitute the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

**22. ENTIRE AGREEMENT (PM017.1 S)**

This instrument contains the entire agreement between the Parties relating to the Option granted herein and all negotiations and agreements between the Parties hereto or their agents with respect to this transaction are merged herein. Any oral representations, modifications, or waivers concerning this instrument shall be of no force and effect, except in a subsequent instrument made in writing and signed by both Parties. Time is of

the essence in the performance of the Parties' respective obligations herein contained. Subject to the restrictions against sale, assignment, or other transfer above, this Option Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, successors, and assigns.

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Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

IN WITNESS WHEREOF, the Parties have executed this Option Agreement the day and year first above written.

**OPTIONEE**

WASHINGTON SANTA ANA HOUSING PARTNERS, L.P., a California limited partnership

By: Related/Washington Santa Ana Development Co., LLC, a California limited liability company, its Administrative General Partner

By: Frank Cardone, President

By: Supportive Housing LLC, a California limited liability company, its Managing General Partner

By: A Community of Friends, a California nonprofit public benefit corporation, its sole member/manager

By: Dora Leong Gallo, President and Chief Executive Officer

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

**Washington Santa Ana Housing Partners, L.P.**

18201 Von Karman Avenue, Suite 900 Irvine, CA 92612

P: (949) 660-7272

January 31, 2020

Mr. Judson Brown  
Housing Division Manager  
City of Santa Ana  
Community Development Agency  
20 Civic Center Plaza M-25, P.O. Box 1988  
Santa Ana, California 92702

RE: Acceptance of terms of Option Agreement and Ground Lease

Mr. Brown,

Washington Santa Ana Housing Partners, L.P., the California limited partnership formed by The Related Companies of California, LLC and A Community of Friends, has reviewed and accepted the terms of the Option Agreement and the Ground Lease.

If you have any questions, please don't hesitate to call me at (949) 660-7272.

Washington Santa Ana Housing Partners, L.P.,  
a California limited partnership

By: Related/Washington Santa Ana Development Co., LLC,  
a California limited liability company,  
its Administrative General Partner

By:   
Name: Liane Takano  
Title: Authorized Signatory

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

APPROVED AS TO FORM:  
COUNTY COUNSEL  
County of Orange, California

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

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
SONIA CARVALHO  
AUTHORITY GENERAL COUNSEL

By: \_\_\_\_\_  
Ryan O. Hodge, Assistant City Attorney

Date: 11/31/20

**OPTIONOR**

COUNTY OF ORANGE,  
a political subdivision of the State of California

\_\_\_\_\_  
Thomas Miller, Chief Real Estate Officer  
County of Orange, California

HOUSING AUTHORITY OF THE CITY OF SANTA  
ANA ACTING AS THE HOUSING SUCCESSOR  
AGENCY  
a public body, corporate and politic

\_\_\_\_\_  
Steven A. Mendoza, Executive Director

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

We acknowledge receipt of the foregoing agreement and agree to comply with the terms of Section 15 thereof with respect to recordation of the Quitclaim Deed.

Old Republic Title Company

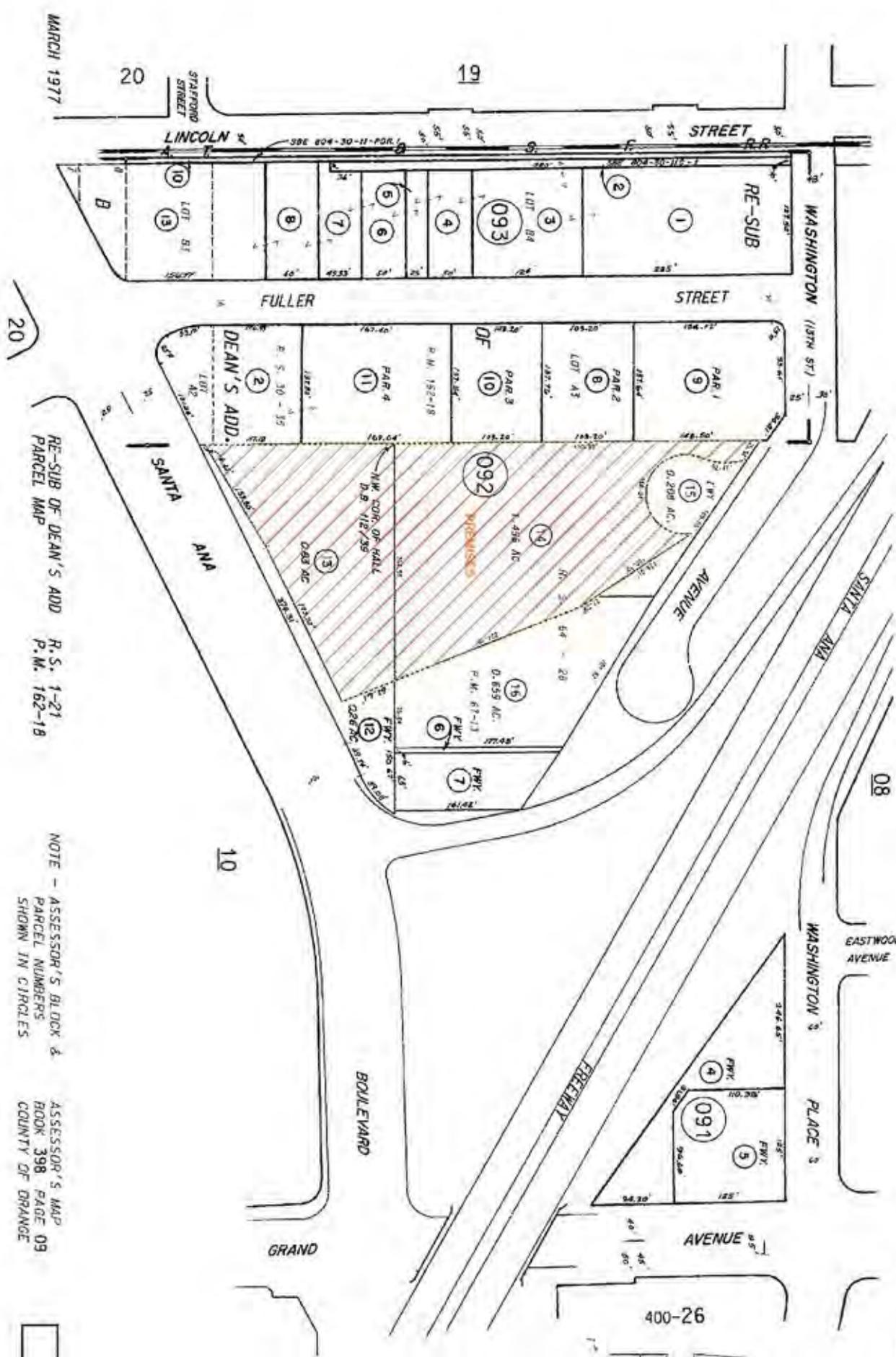
By:

Julie Massey, Escrow Officer

**ATTACHMENT I**

**PREMISES**

[to be attached]



POR. S 1/2, NE 1/4, SEC. 7, T 5 S, R 9 W

RE-SUB OF DEAN'S ADD  
PARCEL MAP R.S. 1-21  
P.M. 162-18

NOTE - ASSESSOR'S BLOCK &  
PARCEL NUMBERS  
SHOWN IN CIRCLES

ASSESSOR'S MAP  
BOOK 398 PAGE 09  
COUNTY OF ORANGE

80A-140

**ATTACHMENT II**  
**LEASE**  
[to be attached]



**GROUND LEASE**

THIS GROUND LEASE (“Lease”) is made and effective as of the \_\_\_ day of \_\_\_\_\_, 2020 (“**Effective Date**”) by and between the COUNTY OF ORANGE, a political subdivision of the State of California, the HOUSING AUTHORITY OF THE CITY OF SANTA ANA, a public body, corporate and politic, as tenants-in-common (respectively, the “**County**” and the “**Agency**”, and collectively “**Lessor**”) and WASHINGTON SANTA ANA HOUSING PARTNERS, L.P., a California limited partnership (hereinafter called “**Tenant**”) (also referred to hereinafter each as “**Party**” or collectively as the “**Parties**”).

**RECITALS**

A. County and Agency are tenants-in-common of a certain property that encompasses the Premises (as hereinafter defined).

B. County and Agency have executed a Joint Powers Agreement (“**Joint Powers Agreement**”), pursuant to which the County and Agency agreed to lease the Premises to the Tenant to develop, entitle and construct an 86-unit multifamily affordable housing project, as more fully described herein, upon the fulfillment of certain conditions precedent as set forth therein.

C. The Parties have executed an Option Agreement, dated \_\_\_\_\_, 2020 (“**Option Agreement**”), pursuant to which the Lessor had agreed to lease the Premises to the Tenant upon the fulfillment of certain conditions precedent.

D. The County and Agency acknowledge that the conditions precedent required by the Joint Powers Agreement and Option Agreement have been fulfilled and therefore the Parties desire that Tenant shall ground lease the Premises from Lessor on the terms set forth herein.

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

F. On July 2, 2019, the Agency authorized the Executive Director of the Agency and the Recording Secretary to execute a pre-commitment letter with the Tenant to enter into negotiations for a sixty-five (65) year ground-lease of 1126 E. Washington Ave for the development of the Crossroads at Washington affordable housing project located at 1126 and 1146 E. Washington Avenue, Santa Ana, CA 92701 (APNs 398-092-13 and 398-092-14).

G. On July 2, 2019, the City of Santa Ana authorized the City Manager and the Clerk of the Council to execute a pre-commitment letter with the Tenant for \$3,971,440 in affordable housing funds consisting of \$963,951 in Neighborhood Stabilization Program funds and \$3,007,489 in HOME Investment Partnerships Program funds, for the development of the Crossroads at Washington affordable housing project located at 1126 and 1146 E. Washington Avenue, Santa Ana, CA 92701 (APNs 398-092-13 and 398-092-14).

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, Agency 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. **"Agency"** shall mean the Housing Authority of the City of Santa Ana, acting as the Housing Successor Agency, a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the California Redevelopment Law. The principal office of the Agency is located at 20 Civic Center Plaza, Santa Ana, California 92702. "Agency" shall also refer to the City of Santa Ana where the context dictates, to the effect that the City of Santa Ana shall have all rights granted to the Agency hereunder.

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 the loans made by the Agency, City, and County, separately, for the Improvements and for so long as Base Rent remains unpaid and outstanding, as approved in writing by the Lessor. 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 Lessor, 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. Lessor 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 Lessor and Tenant prior to January 1 of such year, the annual operating budget from the previous year 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 a total of six million four hundred and fifty thousand dollars (\$6,450,000) due and owing and payable in full on the Commencement Date, but if not paid in full on the Commencement Date, then the Base Rent amount paid in accordance with this Lease, including pursuant to Article III, below, with four million, one hundred and eight thousand, one hundred and thirty-six dollars (\$4,108,136) being paid to the Agency pursuant to Section 3.1.2 and two million, three hundred and forty-one thousand, eight hundred and sixty-four dollars (\$2,341,864) being paid to the County pursuant to Section 3.1.1.

Address	APN	Size (Acres)	Size (SF)	Land Percentage	Value Allocation
City Owned Site	398-092-14	1.456	63,423	63.69%	\$4,108,136
County Owned Site	398-092-13	0.83	36,155	36.31%	\$2,341,864
<b>Total</b>		<b>2.286</b>	<b>99,578</b>	<b>100.00%</b>	<b>\$6,450,000</b>

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.

1.1.11. **“City”** shall mean the City of Santa Ana, California, a charter city and municipal corporation. “City” shall also refer to the Agency where the context dictates, to the effect that the Agency shall have all the rights granted to the City hereunder. **“City Council”** shall mean the City Council of the City of Santa Ana.

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

1.1.13. "**Commencement Date**" shall mean the date on which a Certificate of Occupancy is issued for the Project, and on which the Term shall commence and Base Rent shall become due and payable.

1.1.14. "**Contractor**" shall mean Tenant's general contractor for the construction of the Improvements.

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, and shall be the date on which Tenant take possession of the Premises and is entitled to commence construction pursuant to Article V, below.

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

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

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

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

1.1.26. **"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 and Improvements.

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. "**Lessor's Interest**" shall mean all of County's and Agency's interests in the real property, the Premises, this Lease as tenants-in-common and their 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. "**Lessor Parties**" shall mean, collectively and individually, the County, the Agency and their 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. "**Net Refinancing Proceeds**" is defined in Section 3.2.

1.1.38. "**Net Syndication Proceeds**" is defined in Section 3.2.

1.1.39. "**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 \$5,000 (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 \$20,000 (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 2.28 acres of undeveloped land in the City, together with all easements, rights and privileges appurtenant thereto, to be leased to Tenant pursuant to this Lease and on which Tenant intends to construct the Improvements. The legal description of the Premises is attached hereto as **Exhibit A**. A rendering showing the approximate boundaries of the Premises is attached hereto as **Exhibit A-1**.

1.1.45. **“Project”** shall mean the Improvements, and all related appurtenances, constructed by Tenant on the Premises.

1.1.46. **“Rent”** shall mean and includes the County Base Rent, the Agency 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 Improvements approved in writing by the Lessor at the closing of the construction financing for the Improvements or as otherwise approved pursuant to Section 17.2, below, (C) payment obligations approved in writing by the Lessor at the closing of the construction financing for the Improvements, (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 Lessor, (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 Lessor, (G) deferred developer fee, and (H) scheduled deposits to reserves approved in writing by the Lessor at the closing of the construction financing for the Improvements (or such higher reserve deposits as may be reasonably required by 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 and the Risk Manager for the City of Santa Ana, 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 Group”** shall mean Tenant and Tenant’s Affiliates, agents, employees, members, officers, directors and attorneys.

1.1.53. **“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 Tenants Amended and Restated Agreement of Limited Partnership dated as of \_\_\_\_\_.

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 construction activity with respect to the Improvements, including permitted future changes, alterations and renovations thereto and also including, without limiting the generality of the foregoing, site preparation, landscaping, installation of utilities, street construction or improvement and grading or filling in or on the Premises.

## ARTICLE II LEASE OF PROPERTY

### 2.1 Lease of Premises.

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

2.1.2. Warranty of Peaceful Possession. Lessor 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 Lessor 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. The "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 62nd anniversary of the Commencement Date, unless sooner terminated as a result of Tenant's non-compliance with any terms, conditions, covenants, restrictions or reservations of this Lease. Notwithstanding the foregoing, the Term shall not exceed sixty five (65) years from the Effective Date.

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

2.4 Condition of the Premises. **TENANT HEREBY ACCEPTS THE PREMISES "AS IS", AND ACKNOWLEDGES THAT THE PREMISES IS IN SATISFACTORY CONDITION. COUNTY AND AGENCY MAKES NO WARRANTY, IMPLIED OR OTHERWISE, AS TO THE SUITABILITY OF THE PREMISES FOR TENANT'S PROPOSED USES. COUNTY AND AGENCY 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 OR AGENCY COVENANT OR WARRANT, IMPLIED OR OTHERWISE, AS TO THE SUITABILITY OF THE PREMISES FOR THE PROPOSED DEVELOPMENT, CONSTRUCTION OR USE BY TENANT. COUNTY AND AGENCY SHALL NOT BE RESPONSIBLE FOR ANY LAND SUBSIDENCE, SLIPPAGE, SOIL INSTABILITY OR DAMAGE RESULTING**

THEREFROM. COUNTY AND AGENCY 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 Lessor, or any representation or warranty, either express or implied, relating to the nature or condition of the Premises or County's or Agency's interest therein.

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

**ARTICLE III  
TOTAL RENT**

3.1 **Base Rent.** Throughout the Term of this Lease, regardless of an earlier termination date Tenant shall pay to the County and the Agency the Base Rent as set forth herein.

3.1.1 **County Base Rent.** Tenant shall make annual payments to County of thirty-three and four-tenths percent (33.4%) of the then available Residual Receipts (defined above), but only to the extent said Residual Receipts are available, until the amount of two million, three hundred and forty-one thousand, eight hundred and sixty-four dollars (\$2,341,864) is fully paid ("County Base Rent"). County Base Rent shall only become due after the Tenant has repaid that certain loan from the County awarded under the 2016 Permanent Supportive Housing Notice of Funding Availability, Addendum One, evidenced by a Loan Agreement, Promissory Note and Leasehold Deed of Trust, in the amount of \$2,280,701, which is also being paid out of the same thirty-three and four-tenths percent (33.4%) of the Residual Receipts. On the last day of the Term the then outstanding amount of the County Base Rent shall be paid in full if not already paid by that time. County Base Rent will bear interest commencing on the Commencement Date at the simple rate of three percent (3%) per year until paid in full. Once the County Base Rent has been paid in full with interest, Tenant shall have no further obligation for County Base Rent under this Lease.

3.1.2 **Agency Base Rent.** Tenant shall also make annual payments to Agency of thirty-three and one-third percent (33.3%) of the then available Residual Receipts (defined above), but only to the extent said Residual Receipts are available, until the amount of four million, one hundred and eight thousand, one hundred and thirty-six dollars (\$4,108,136) is fully paid ("Agency Base Rent"). Agency Base Rent shall only become due after the Tenant has repaid those two certain loans from the City, each evidenced by a Loan Agreement, Promissory Note, Deed of Trust, and Affordability Restrictions on Transfer of Property dated \_\_\_\_\_, 20\_\_, in the amount of \$3,007,489.00, and dated \_\_\_\_\_, 20\_\_, in the amount of \$963,951, which is also being paid out of the same thirty-three and one-third percent (33.3%) of the Residual Receipts. On

the last day of the Term the then outstanding amount of the Agency Base Rent shall be paid in full if not already paid by that time. Agency Base Rent will bear interest commencing on the Commencement Date at the simple rate of three percent (3%) per year until paid in full. Once the Agency Base Rent has been paid in full, Tenant shall have no further obligation for Agency Base Rent under this Lease.

**3.2 Net Refinancing Proceeds/Net Syndication Proceeds.** Any Net Refinancing Proceeds or Net Syndication Proceeds received by Tenant shall be used to pay any unpaid Base Rent. Additionally, the Tenant's right and obligation to use such net proceeds to pay Base Rent is subject to the rights of Leasehold Mortgagees to control the use of such proceeds pursuant to the terms of their respective loan documents, all of which have been reviewed and reasonably approved by the Lessor and is further subject to the consent of TCAC to the extent required under the applicable regulations or the extended use agreement. Without limiting application of those loan documents and TCAC regulations and requirements, in no case shall Tenant be permitted to retain Net Refinancing Proceeds or Net Syndication Proceeds without the prior written consent of the Lessor, until full satisfaction of the unpaid Base Rent. Notwithstanding the foregoing, this Section 3.2 shall not apply to (i) any Excluded Transfer or (ii) any financing described in Section 17.2.

"Net Refinancing Proceeds" shall be defined as the proceeds from the refinancing of any loan approved by Lessor hereunder, net of all of the following: the amount of the financing which is satisfied out of such proceeds, closing costs, costs to rehabilitate the Project, including the costs necessary to obtain refinancing proceeds (such as consultant, legal and other consultant costs), the soft costs related to the rehabilitation of the Project (such as architecture, engineering and other consultant costs, and all required relocation costs), and all hard costs of the rehabilitation, all of which have been reviewed and reasonably approved by the Lessor.

"Net Syndication Proceeds" shall be defined as syndication proceeds net of final Project hard and soft construction costs, including developer fee, based on a cost certification completed at the end of construction, and syndication costs all of which has been reviewed and reasonably approved by the Lessor.

**3.3 Triple Net Rent.** It is the intent of the Parties that all Rent shall be absolutely net to Lessor 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 or Agency 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.

**3.4 Insufficient Funds.** For purposes of this Section 3.4, 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 and Agency 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 and Agency 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

and Agency shall accept such check or payment without prejudice to County's and Agency's right to recover the balance of the Rent or other fees or pursue any other remedy available to the County or Agency in this Lease.

### 3.5 Reserved.

### 3.6 Additional Rent.

3.6.1. **Additional Rent.** During the Term, the Base Rent shall be absolutely net to County and Agency 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 3.6.3 and 3.6.6, below, Tenant has the right to pay under protest the foregoing Additional Rent, as applicable, and defend against the same. Any imposition rebates shall belong to Tenant.

3.6.2. **Taxes.** During the Term, Tenant shall pay directly to the taxing authorities all Taxes (as herein defined) at least ten (10) days prior to delinquency thereof. For purposes hereof, "**Taxes**" shall include any form of assessment, license fee, license tax, business license fee, commercial rental tax, levy, penalty, sewer use fee, real property tax, charge, possessory interest tax, tax or similar imposition (other than inheritance or estate taxes), imposed by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage, flood control, water pollution control, public transit or other special district thereof, as against any legal or equitable interest of County or Agency in the Premises or any payments in lieu of taxes required to be made by County or Agency, 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 Lessor that all such new and increased assessments, taxes, fees, levies, charges and similar impositions be included within the definition of "**Taxes**" for the purpose of this Lease.

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

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

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

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

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

**3.6.4. Payment by Lessor.** 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 3.6.3, and if such amount is not paid by Tenant within fifteen (15) days after receipt of Lessor's written notice advising Tenant of such nonpayment, County and/or Agency 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 or Agency reimburse County and/or Agency for the full amount paid by County and/or Agency in paying, discharging or adjusting such tax, assessment or other charge, together with interest at the Interest Rate from the date advanced until the date repaid.

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

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

**ARTICLE IV**  
**USE OF PREMISES**

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

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

**4.1.2. Ancillary Services and Uses.** Subject to the prior written approval of Lessor, which approval may be granted or withheld in the sole discretion of the Lessor, 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 Lessor 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 Lessor, which approval may be granted or withheld in the sole discretion of the Lessor.

**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 Lessor.

**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). Lessor may cooperate with Tenant in all reasonable respects in such contest, including joining with Tenant in any such contest if County and/or Agency's joinder is required in order to maintain such contest; provide, however, that any such contest shall be without cost to Lessor, and Tenant shall indemnify, defend (with attorneys acceptable to Lessor), and hold harmless the Lessor 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 and/or Agency acting in their 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 construction, 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 return the Premises to the condition existing prior to the introduction of such Hazardous Materials to the Premises and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of County or Agency 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 Lessor. 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 Lessor.

#### 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 Lessor) Lessor, 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 Lessor.

**4.5 Access by Lessor.** Lessor reserves the right for County, Agency and their 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 or Agency under this Lease. Lessor 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 Lessor 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. Lessor will take all necessary measures not to unreasonably interfere with Tenant's business at the Premises in exercising its rights under this Section.

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

**ARTICLE V**  
**CONSTRUCTION OF IMPROVEMENTS**

**5.1 Construction of Improvements.**

**5.1.1. Initial Improvements.** Upon the fulfillment of the Preconditions set forth in Section 5.1.2, below, and payment for and issuance of all permits required under the Laws (whether from County or City in their governmental capacity, or otherwise), Tenant shall construct the Initial Improvements.

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

(a) Lessor has provided approval in writing that all the conditions set forth in Section 5 of the Option Agreement have been satisfied;

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

(c) Tenant has given Lessor written notice of the proposed commencement of construction of the Premises or the delivery of construction materials in order to allow Lessor 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 Lessor 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 Lessor with assurances sufficient to construct the Initial Improvements in accordance with Section 5.3 below.

**5.1.3. Utilities.** To the extent not already constructed, Tenant, at no cost to Lessor, shall construct or cause to be constructed all 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 and/or Agency in conducting its operations, if any, on or about the Premises. Nothing contained in this Section is to be construed or implied to give Tenant the right or permission to install or to permit any utility poles or communication towers to be constructed or installed on the Premises.

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

allocation thereof, so long as the aggregate available funding continues to be sufficient to pay for Tenant's estimated remaining cost of constructing the Initial Improvements, provided that Tenant shall promptly notify Lessor of any such change.

**5.1.5. Compliance with Laws and Permits.** Tenant shall cause all Improvements made by Tenant to be constructed in substantial compliance with all applicable Laws, including all applicable grading permits, building permits, and other permits and approvals issued by governmental agencies and bodies having jurisdiction over the construction thereof. No permit, approval, or consent given hereunder by County and/or Agency, in their governmental capacity, shall affect or limit Tenant's obligations hereunder, nor shall any approvals or consents given by County and/or Agency, 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 construction of the Initial Improvements, Tenant shall provide Lessor with written construction status reports in the form of AIA No. G702 ("**Application and Certification for Payment**") or comparable form, augmented by oral reports if so requested by County or Agency.

**5.1.7. Certificate of Occupancy.** Tenant shall provide Lessor with a copy of the Certificate of Occupancy promptly following issuance thereof. The date of issuance of the Certificate of Occupancy shall be the Commencement Date hereunder.

**5.1.8. Insurance.** Tenant (or the Contractor, as applicable) shall deliver to Lessor both (i) certificates of insurance evidencing coverage for "builder's risk," as specified in Section 8.1, and (ii) evidence of worker's compensation insurance, which provide the requisite insurance levels in accordance with Article VIII, for all persons employed in connection with the construction of any Improvements upon the Premises and with respect to whom death or bodily injury claims could be asserted against County and/or Agency 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, Agency 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 Lessor, 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/or Agency and hold County and Agency harmless from all claims, losses, demands, damages, cost, expenses, or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Premises, and from the cost of defending against such claims, including reasonable attorneys' fees and costs, but excluding any liability resulting from the gross negligence or willful misconduct of Lessor, and excluding any liens resulting from the actions of, or work performed by, the Lessor.

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

(d) **Lessor'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, Lessor 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 and/or Agency, Tenant shall immediately upon receipt of written request therefor by County or Agency, reimburse County and/or Agency for all sums paid by County and/or Agency under this paragraph together with all County and/or Agency's reasonable attorney's fees and costs, plus interest at the Interest Rate from the date of payment until the date of reimbursement.

5.1.10. **No Responsibility.** Any approvals by County or Agency with respect to any Improvements shall not make County or Agency responsible for the Improvement with respect to which approval is given or the construction thereof. Tenant shall indemnify, defend and hold Lessor 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 resulting from the gross negligence or willful

misconduct of Lessor, and excluding any liens resulting from the actions of, or work performed by, the Lessor.

## 5.2 Construction Contracts.

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

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

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

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

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

5.3.3. Cash deposited with the County or Agency (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 and Agency from an Affiliate of The Related Companies of California, LLC, in a form reasonably acceptable to Lessor, coupled with a repayment guaranty in favor of the senior construction lender for its loan;

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 Lessor. All bonds and letters of credit shall be in a form acceptable to Lessor, County’s Risk Manager and City’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 the construction of improvements within the Premises.

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

#### 5.4 Ownership of Improvements.

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

5.4.2. **During Term.** Title to all Improvements constructed or placed on the Premises by Tenant and paid for by Tenant are and shall be vested in Tenant during the Term of this Lease, until the expiration or earlier termination thereof. 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 Lessor's property free and clear of all claims to or against them by Tenant and free and clear of all Leasehold Mortgages and any other liens and claims arising from Tenant's use and occupancy of the Premises, and with Taxes paid current as of the expiration or earlier termination date. Tenant shall upon the expiration or earlier termination of the Term deliver possession of the Premises and the Improvements to Lessor 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.

5.5 **"AS-BUILT" Plans.** Within sixty (60) days following completion of any substantial improvement within the Premises, Tenant shall furnish the Lessor a complete set of reproducibles 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 Lessor, to Lessor's satisfaction, on Lessor'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 Lessor copy of the final construction costs for the construction of such improvements.

#### 5.6 Capital Improvement Fund.

5.6.1. Tenant shall establish and maintain a reserve fund (the "**Capital Improvement Fund**") during the Term of this Lease (as "Term" is defined in Section 2.2) 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 Lessor agree and acknowledge that the purpose of the Capital Improvement Fund shall be to provide sufficient funds to pay for the costs of major replacements, renovations or significant upgrades of or to the Improvements, including without limitation building facade or structure and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural or roof) that significantly affect the

capacity, efficiency, useful life or economy of operation of the Improvements or their major systems, after the completion of the Initial Improvements (“Permitted Capital Expenditure(s)”).

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

5.6.4. All specific purposes and costs for which Tenant desires to utilize amounts from the Capital Improvement Fund shall be at Tenant’s reasonable discretion and subject to Lessor’s written approval as provided for in Section 5.6.9, below. Tenant shall furnish to the Lessor 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 Lessor, 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 Lessor 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 Lessor’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 a monthly deposit to the Capital Improvement Fund in an amount equal to one percent (1%) of total rent collected by Tenant from sub-tenants for the previous month. 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 Lessor’s prior approval of any Capital Improvement Fund disbursements, Tenant shall submit to the Lessor 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**). Lessor 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 Lessor (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 Lessor for the Lessor'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 Lessor and provide applicable documentation to the Lessor thereafter for approval. If the Lessor disapproves the emergency expenditure which was not previously approved by Lessor, Tenant shall refund the amount taken from the Capital Improvement Fund within thirty (30) days of written notice from the Lessor 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 Lessor of any damage relating to the Premises.

**6.2 Interior Improvements, Additions and Reconstruction of Improvements.** Following the completion of construction of the Initial Improvements, Tenant shall have the right from time to time to make any interior improvements to the Improvements that are consistent with the Lessor's approved use of the Premises as reflected in this Lease, without Lessor's prior written consent, but with prior written notice to the Lessor (except in the event of an emergency, in which case no prior written notice shall be required but Tenant shall notify Lessor of any emergency work done as soon as practicable). With prior written approval of Lessor, Tenant may restore and reconstruct the Improvements, and in that process make any modifications otherwise required by changes in Laws, following any damage or destruction thereto (whether or not required to do so under Article VII); and/or to make changes, revisions or improvements to the Improvements for uses consistent with the Lessor 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 construction of the Initial Improvements, and except as specified in Sections 6.1 and 6.2, any construction, alterations, additions, major repairs, demolition, improvements or reconstruction of any kind shall require the prior written consent of the Lessor, which consent shall not be unreasonably conditioned, delayed or withheld and may require their respective governing body's approval (e.g. Board of Supervisors' and City Council approval). 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, Agency, 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 Lessor Obligations.** Tenant specifically acknowledges and agrees that County, Agency and Lessor 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 Lessor Reservations.** Without limiting Lessor's rights with respect to the Premises, Lessor reserves for themselves, their 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 Lessor deems necessary or desirable to maintain, repair, improve, modify or reconstruct the Premises. The rights reserved to Lessor in this section or any other section of this Lease shall be exercised by the Lessor at their 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 Lessor 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 Lessor given by the later of ninety (90) days after the date of the damage or destruction or thirty (30) days after receipt by

Tenant of any such insurance proceeds, that there are not adequate proceeds to restore the Improvements and/or the Premises to substantially the same condition in which they existed prior to the occurrence of such damage or destruction, then Tenant may terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice. Notwithstanding Section 17.9, if Tenant terminates this Lease pursuant to this Section 7.1, Tenant shall surrender possession of the Premises to the Lessor immediately and assign to the Lessor (or, if same has already been received by Tenant, pay to the Lessor) all of its right, title and interest in and to the proceeds from Tenant's insurance upon the Premises.

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

**7.3 No Rental Abatement.** Tenant shall not be entitled to any abatement, allowance, reduction, or suspension of Rent because part or all of the Improvements become untenable as a result of the partial or total destruction of the Improvements, and Tenant's obligation to keep and perform all covenants and agreements on its part to be kept and performed hereunder, shall not be decreased or affected in any way by any destruction of or damage to the Improvements; 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 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, Agency and Tenant hereby expressly waive the provisions of California Civil Code Sections 1932(2) and 1933(4) with respect to any damage or destruction of the Premises and/or the Improvements and agree that their rights shall be exclusively governed by the provisions of this Article VII.

**7.6 Damage Near End of Term.** If, during the last three (3) years of the 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 Lessor of its election to repair or restore the Improvements as provided in this Article VII; or

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

## 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 or City for the full term of this Lease, the County or City 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

(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 Including Sexual Misconduct (defined as abuse, molestation and assault and battery)	\$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
Commercial Property Insurance on an "All Risk" or "Special Causes of Loss" basis covering all	100% of the Replacement Cost Value

buildings, contents and any tenant improvements including Business Interruption/Loss of Rents with a 12 month limit	and no coinsurance provision
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Contractor shall provide a builder's risk policy providing coverage for the full project value and no coinsurance provision. The policy shall provide coverage for all perils excluding earthquake, and flood. Contractor is responsible for any deductible amount. The County of Orange and the Housing Authority of the City of Santa Ana shall be named as Loss Payees 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 their 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, City of Santa Ana, and their 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, City of Santa Ana, and their 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, City of Santa Ana, and their 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, City of Santa Ana, and their 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 and City of Santa Ana as both Named Insureds. 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 and City of Santa Ana as Loss Payees. A Loss Payee endorsement shall be submitted with the Certificate of Insurance as evidence of this requirement.

(d) Tenant shall notify County and City 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 and City. Failure to provide written notice of cancellation may

constitute a material breach of the Lease, after which the County or City 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 County and City 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 or City 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, City 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 Lessor, 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 claims arising from the gross negligence or willful misconduct of County or Agency, their officers, agents, employees and contractors. Tenant hereby agrees to indemnify, defend (with counsel approved in writing by Lessor), and hold harmless, County and the Agency, their respective elected and appointed officials, officers, agents, employees and contractors against any and all claims, losses, demands, damages, cost, expenses or liability for injury to any persons or property, arising out of the operation or maintenance of the Premises, and/or Tenant's exercise of the rights under this Lease, except for liability arising out of the gross negligence or willful misconduct of County or Agency, their 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 and/or Agency

is named as co-defendant in a lawsuit in connection with this Lease, Tenant shall notify Lessor of such fact and shall represent the County and/or Agency in such legal action unless County or Agency undertakes to represent themselves as co-defendant in such legal action, in which event, Tenant shall pay to Lessor their litigation costs, expenses, and reasonable attorneys' fees. If judgment is entered against County and/or Agency and Tenant by a court of competent jurisdiction because of the concurrent active negligence of County and/or Agency and Tenant, County, Agency 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 Lessor'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.** Lessor 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, Lessor shall be liable for injury or damage under this Section 8.3 resulting from County or Agency, their 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, Agency 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, Agency and Tenant. County, Agency 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 Lessor 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 Lessor, 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 Lessor 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, Lessor shall be entitled to receive the entire award for such Partial Taking, except that (i) the proceeds of such Partial Taking shall first be applied towards the cost of Restoring the Premises pursuant to Section 9.4.2 and (ii) Tenant shall be entitled to receive any portion of such award allocated to Tenant's interest in any of Tenant's Improvements, Personal property and trade fixtures taken, and any part of the award attributable to the low income housing tax credits.

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

10.1.2. Should Lessor 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 Lessor'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 Lessor'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 Lessor's Fee Interest, other than as required by TCAC pursuant to its lease rider, if any, and previously approved by Lessor prior to the Effective Date of this Lease, in connection with the award of low income housing tax credits to Tenant.

**10.3 Excluded Transfers.** Lessor'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 Lessor of such Excluded Transfer at least twenty (20) days prior to the consummation of such Excluded Transfer, and shall provide Lessor 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 Lessor with a written assumption of Tenant's obligations and liabilities under this Lease executed by such transferee in a form approved by the Lessor, 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 Lessor's consent is required hereunder, Tenant shall provide Lessor 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 Lessor may reasonably request concerning the proposed transferee. Lessor shall, no later than ninety (90) days after Lessor's receipt of the information specified above, deliver written notice to Tenant which shall (i) indicate whether Lessor give or withhold consent to the proposed Transfer, and (ii) if Lessor withhold consent to the proposed Transfer, setting forth a detailed explanation of Lessor's grounds for doing so. If Lessor consents to a proposed Transfer, then Tenant may thereafter effectuate such Transfer to the proposed transferee based upon the specific terms of the Lessor's approval and after execution of a consent to assignment by Lessor in a form approved by the Lessor, which approval shall not be unreasonably withheld, conditioned or delayed in the event that the assignment is consistent with the terms of this Lease; provided, however, that the provisions of this Section 10.4 shall not apply to any Transfer to a Foreclosure Transferee.

**10.5 Liability of Transferors/Transferees For Lease Obligations.** In the case of an assignment, including an assignment pursuant to Section 17.6.5, each Permitted Transferee and any other assignees or transferees of this Lease shall assume in writing all of Tenant's obligations thereafter arising under this Lease. All assignees or transferees of any interest in this Lease or the Premises or Improvements (whether or not directly liable on this Lease) shall be subject to the terms, conditions, covenants, restrictions and reservations of this Lease. 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 Lessor evidence of sufficient and adequate assets, including any required insurance policies, subject to approval by Lessor, 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 Lessor 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, Lessor 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 Lessor Consent.

10.6.1. Lessor may withhold consent to a Transfer (excluding Excluded Transfers which shall not require Lessor 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 construction of the Initial Improvements has not been completed.
- (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 Lessor's approval of the Transfer have not been disclosed in writing to the Lessor.

**10.7 Transfer of Mortgages of Lessor's Interest.** Notwithstanding anything to the contrary set forth in this Ground Lease, unless required by statute, court order or operation of law, Lessor shall not transfer, assign, pledge or hypothecate its fee interest in the Premises (other than to entities under common control with Lessor or other governmental entities under applicable law) without the prior written consent of Tenant, Leasehold Mortgagee 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 Lessor encumbering the Lessor's fee interest in the Premises shall be expressly subject and subordinate to this Lease, to all obligations of Lessor 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 Lessor's fee interest as a consequence of any conveyance, foreclosure or other transfer shall succeed to all of the obligations of the Lessor hereunder.

### ARTICLE XI DEFAULT AND REMEDIES

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

11.1.1. **Failure to Pay.** Tenant's failure or omission to pay any Rent or other sum payable hereunder on or before the date due where such failure shall continue for a period of five (5)

days after written notice thereof from Lessor to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure §1161 *et seq.*

**11.1.2. Failure to Perform.** The failure or inability by Tenant to observe or perform any of its obligations under this Lease (other than those specified in Sections 11.1.1, 11.1.3, 11.1.6, or 11.1.8 herein, which have their own notice and cure periods), where such failure shall continue for a period of thirty (30) days after written notice thereof from Lessor to Tenant or past any such longer period as reasonably agreed upon by the Tenant, Lessor in writing as may be necessary for completion of its cure; provided, however, that any such notice by Lessor 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 Lessor'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 Lessor.** Tenant's failure to reimburse the Lessor 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 Lessor of such termination.

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

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

11.2.1. **Termination of Lease.** Subject to Article 17, as applicable, Lessor 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 Lessor shall elect to so terminate this Lease then Lessor 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 Lessor 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 Lessor may by law hereafter be permitted to recover from Tenant to compensate Lessor 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.** Lessor may continue this Lease in effect without terminating Tenant's right to possession and to enforce all of Lessor'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 Lessor 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.** Lessor 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 Lessor'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, Lessor may at their election, but are 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 Lessor's demand. Tenant's failure to reimburse the County and/or Agency within 30 days of Lessor'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 and/or Agency liable for any loss or damage resulting from the same.

**11.4 Lessor's Default.** Lessor shall not be considered to be in default under this Lease unless Tenant has given Lessor written notice specifying the default, and either (i) as to monetary defaults, Lessor have failed to cure the same within ten (10) business days after written notice from Tenant, or (ii) as to nonmonetary defaults, Lessor have failed to cure the same within thirty (30) days after written notice from Tenant, or if the nature of Lessor'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 and/or Agency 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 and/or Agency 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 Lessor'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 Lessor contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Lessor 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 Lessor.** No delay or omission of Lessor 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 Lessor 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 Lessor's knowledge of such preceding breach or default at the time of acceptance of such rent or sum, or (b) waiver of Lessor's right to exercise any remedy available to Lessor by virtue of such breach or default. No act or thing done by County or Agency's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender shall be valid unless in writing and signed by Lessor.

**11.7 Interest.** Any installment or Rent due under this Lease or any other sums not paid to Lessor 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 Lessor 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 Lessor 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, Lessor 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 Lessor on Tenant's behalf shall not give rise to any responsibility of Lessor 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 Lessor in connection therewith, together with interest at the Interest Rate from the date incurred or paid by Lessor, 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 Lessor, and Tenant's failure to pay the Lessor, 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 Lessor, 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, Lessor 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 Lessor 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 and/or Agency in connection with such eviction action; Tenant shall also indemnify and hold Lessor harmless from all loss or liability or reasonable attorney's fees and costs, including any claim made by any succeeding tenant, incurred by County and/or Agency 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, Agency 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, Agency 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, Agency, 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 and the Agency 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 and Agency 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 Lessor 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 Lessor 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 Lessor with such budget.

15.1.1. Tenant acknowledges its understanding that any and all of the Financial Statement submitted to the Lessor 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 Lessor. Lessor shall, through their 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 Lessor 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 Lessor 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 Lessor 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 Lessor 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 Improvements, or any applicable portion thereof or interest therein.

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

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

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

17.1.5. "**Tenant**" shall mean all of the following: (i) the Tenant under this Lease; (ii) an approved assignee, transferee or subtenant of the Tenant under this Lease who is or becomes directly and primarily liable to Lessor; 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 Lessor.

17.2 **Tenant's Right to Encumber Leasehold Estate; No Right to Encumber Lessor's Fee Interest.** Provided that an Event of Default has not occurred and is continuing, Tenant may, at any time during the Term of this Lease (with consent of Lessor after prior written notice providing evidence that all requirements of this Lease have been complied with, which consent shall not be unreasonably withheld, conditioned or delayed), encumber all or any portion of Tenant's Leasehold Estate with one (1) or more Leasehold Mortgages; provided, however:

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

17.2.2. That Tenant shall not have the power to encumber, and no Leasehold Mortgage shall encumber, Lessor'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 Lessor 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 Lessor'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, any required consent of the Lessor under this Section 17.2 shall not be unreasonably withheld.

**17.3 Notification to Lessor of Leasehold Mortgage.** Tenant or any Leasehold Mortgagee shall, prior to making any Leasehold Mortgage, provide Lessor 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 Lessor 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 Lessor of any change in the identity or address of such Leasehold Mortgagee. Lessor shall be entitled to rely upon the addresses provided pursuant to this Section for purposes of giving any notices required by this Article XVII.

**17.4 Notice and Cure Rights of Leasehold Mortgagees With Respect to Tenant Defaults.** Lessor, 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 Lessor may predicate or claim a default, will promptly deliver a copy of such notice to each Leasehold Mortgagee. Each notice or demand required to be given by Lessor to a Leasehold Mortgagee under this Lease shall be in writing and shall be given by certified or registered mail, postage prepaid, return receipt requested, to such Leasehold Mortgagee at the address(es) provided by such Leasehold Mortgagee, as applicable, to Lessor from time to time in writing and shall be effective upon receipt (or refusal to accept receipt). No notice or demand given by Lessor 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 in accordance with this Lease. From and after the date such notice has been given to any Leasehold Mortgagee, such Leasehold Mortgagee 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, Agency 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). Lessor shall accept any and all performance by or on behalf of any Leasehold Mortgagee(s), including by any receiver obtained by any Leasehold Mortgagee(s), as if the same had been done by Tenant. Tenant authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option, and hereby authorizes any Leasehold Mortgagee (or any receiver or agent) to enter upon the Premises for such purpose.

**17.5 Limitation on Lessor'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 as allowed under Section 17.4, above), and such failure entitles County and/or Agency to terminate this Lease, Lessor shall have no right to terminate this Lease unless Lessor shall notify in writing each and every Leasehold Mortgagee who has complied with Section 17.3 of Lessor's intent to so terminate at least sixty (60) days in advance of the proposed effective date of such termination. If any Leasehold Mortgagee, within such sixty (60) day period, (i) notifies Lessor of such Leasehold Mortgagee'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 Lessor, at its sole discretion, may permit such additional time as necessary for any Leasehold Mortgagee 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 sixty (60) days as consistent with the conditions of this Section 17.5, Lessor 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 Lessor's notice under Section 17.5 specifies only monetary Events of Default as the basis for Lessor's election to terminate this Lease, and Leasehold Mortgagee has fully paid the monetary amount designated by Lessor in its notice, then such payment shall be deemed to have cured the Event of Default. If Lessor'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 Lessor's election to terminate this Lease, and Leasehold Mortgagee has fully paid the monetary amount designated by Lessor in its notice, as applicable, then the date of termination specified in Lessor'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, 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. 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 Lessor and the Leasehold Mortgagee, Lessor shall enter into such new lease with the Leasehold Mortgagee pursuant to Section 17.7, below, provided Lessor 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 Lessor'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 Lessor 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), Lessor 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 Lessor 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 Lessor to enter into a New Lease, Leasehold Mortgagee shall pay to Lessor 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, Agency 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 Lessor'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 Lessor 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 Lessor 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, Lessor 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 Lessor 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 Lessor may control the same, then the Leasehold Mortgagee under the New Lease shall be entitled to such net income received by Lessor except to the extent that it was applied to cure any default of Tenant.

17.7.4. All rights and claims of Tenant under this Lease shall be subject and subordinate to all right and 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 Lessor 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, Lessor 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 and/or Agency by multiple Leasehold Mortgagees, Lessor may (subject to any applicable court orders to the contrary) rely on the direction of the Leasehold Mortgagee whose Leasehold Mortgage is recorded first in time in the Official Records of the 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 Lessor'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.

**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.

**17.11 No Waiver.** No payment made to Lessor 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 Lessor pursuant to County and/or Agency'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 Lessor for its reasonable attorneys' fees and costs incurred in connection with Lessor'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, Agency and Tenant, (b) Lessor 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, 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).

**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 Lessor 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 Lessor for review and approval prior to implementation.

18.6 Lessor 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 Lessor, which approval may be withheld in the sole and absolute discretion of the Lessor, 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 Lessor 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 Lessor, within five (5) business days, a good and sufficient deed, in a form as approved by the Lessor, whereby all right, title, and interest of Tenant in the Premises is quitclaimed back to Lessor ("**Quitclaim Deed**"). The Quitclaim Deed shall then be recorded by Lessor to remove any cloud on title created by this Lease. In the event that the Tenant fails to provide such Quitclaim Deed within five (5) additional business days after written demand by either the County or City, the Parties agree that the County and City 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 Quitclaim Deed after such notice and cure period, in addition to any other remedy provided by law or equity, the Tenant shall pay the Lessor \$2,000 per day for every day that passes until a Quitclaim Deed is delivered, which amount shall be deemed to constitute a reasonable estimate of Lessor's damages and not a penalty. Such amount shall become due and payable by Tenant to Lessor for each calendar day that passes beyond the cure period. Notwithstanding the foregoing, if the Tenant has disputed the termination of the Lease by Lessor, 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 Lessor 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 Lessor determines that the records must be turned over, the Lessor 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 Lessor 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 and/or Agency, on behalf of the County and/or Agency, 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 Lessor 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 Lessor, Tenant shall provide to Lessor 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.

**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. In any provision relating to the conduct, acts or omissions of Agency, the term "Agency" shall include Agency's agents, employees, contractors, invitees, successors or others using the Premises with Agency'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.

**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 Agency permits, constitute the entire agreement

between County, Agency 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, Agency and Tenant. County, Agency 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 Lessor: 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

And to:

Housing Authority of the City of Santa Ana  
20 Civic Center Plaza (M-26)  
P.O. Box 1988  
Santa Ana, California 92702  
Attn: Housing Manager

With a copy to: Office of the City Attorney  
City of Santa Ana  
20 Civic Center Plaza, 7th Floor (M-29)  
Santa Ana, California 92702

If to Tenant: c/o The Related Companies of California, LLC  
19201 Von Karman Avenue, Suite 900  
Irvine, CA 92612  
Attention: President

c/o A Community of Friends  
3701 Wilshire Boulevard, Suite 700  
Los Angeles, CA 90010  
Attention: Dora Leong Gallo, President and Chief Executive Officer

And to:

With a copy to:

Bocarsly Emden Cowan Esmail & Arndt LLP  
 633 W. 5th Street, 64th Floor  
 Los Angeles, CA 90071  
 Attention: Lance Bocarsly, 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 Lessor 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 and/or Agency's option, be deemed to have been transferred to County and/or Agency. County and/or Agency 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 Lessor's option, Lessor 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 Lessor 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 and/or Agency 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 and/or Agency 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, Agency and Tenant. County, Agency and Tenant mutually acknowledge that no business or financial relationship exists between them other than as County, Agency and Tenant, and that County and Agency is not responsible in any way for the debts of Tenant or any other Party.

**19.25 Authorization.** County, Agency 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 Lessor 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 in the event that the Tenant encumbers the leasehold as set forth in Article XVII, a memorandum hereof may be recorded in the form of **Exhibit D** attached hereto (the “**Memorandum**”). The Memorandum may be executed concurrently with this Lease and thereafter recorded in the Official Records of the County Recorder on the Effective Date of this Lease has occurred. Tenant shall be responsible for the payment of all charges imposed in connection with the recordation of the Memorandum, including, without limitation, any documentary transfer tax imposed in connection with this transaction and all recording fees and charges.

19.27 **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: Initial Improvements

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, Agency and/or Tenant the right to take any action, grant any approval or consent, or exercise any discretion, County, Agency 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 and Agency.** County and Agency hereby agree that (a) Agency staff shall be responsible for administering the operation of the Project to insure it is being used in conformance with this Lease, and (b) Agency staff shall serve as administrator of the Lease with the Tenant and coordinate with the County as necessary. County and Agency hereby agree to work cooperatively and expeditiously to provide written consent (or written refusal to provide consent) to Tenant, the Leasehold Mortgagees and Limited Partner hereunder.

[Signatures On Following Pages]

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

	<p><b>TENANT</b></p> <p>WASHINGTON SANTA ANA HOUSING PARTNERS, L.P., a California limited partnership</p> <p>By: Related/Washington Santa Ana Development Co., LLC, a California limited liability company, its Administrative General Partner</p> <p>By: _____ Frank Cardone, President</p> <p>By: Supportive Housing LLC, a California limited liability company</p> <p>By: A Community of Friends, a California nonprofit public benefit corporation, its sole member/manager</p> <p>By: _____ Dora Leong Gallo, President and Chief Executive Officer</p>
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<p>APPROVED AS TO FORM: SONIA CARVALHO AUTHORITY GENERAL COUNSEL</p> <p>By: _____ Ryan O. Hodge, Assistant City Attorney</p> <p>Date _____</p>	<p><b><u>LESSOR</u></b></p> <p>HOUSING AUTHORITY OF THE CITY OF SANTA ANA ACTING AS THE HOUSING SUCCESSOR AGENCY a public body, corporate and politic</p> <p>By: _____ Steven A. Mendoza, Executive Director</p> <p>Date _____</p>
--	--

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

<p>APPROVED AS TO FORM: COUNTY COUNSEL</p> <p>By: _____ Deputy</p> <p>Date _____</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**

**Exhibit A**  
**Legal Description of the Premises**

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

That certain parcel of land situated in the City of Santa Ana, County of Orange, State of California, being that portion of Parcel 1 of Parcel 73035 described in the Grant Deed recorded July 24, 1991, Instrument No. 91-387576 of Official Records, together with that portion of Parcel 73034 described in the Grant Deed recorded November 15, 1991, Instrument No. 91-626431 of Official Records, lying southwesterly and westerly of those three (3) courses and the Northwesterly extension of course Three (3) thereof, in the State Right of Way as shown on a map filed in Book 194, pages 28 through 36 inclusive of Record of Surveys in said Office of said County Recorder, said Three (3) courses being shown on sheet 2 of said map as:

- 1) North 21° 00' 58" West 286.98';
- 2) North 32° 46' 23" West 157.90';
- 3) North 25° 03' 45" West 62.42'.

EXCEPTING THEREFROM: That portion of above said Parcel 1, lying within the limits of the Washington Avenue Cul-De-Sac as shown on said Sheet 2 of said Map.

APN: 398-092-14

That portion of the land allotted to Maria Ygnacia Alvarado De Moreno, as described in the final decree of partition of the Rancho Santiago De Santa Ana, which was entered September 12, 1868 in Book "B" Page 410 of Judgments of the District Court of the 17th Judicial District, in and for Los Angeles County, California, described as follows:

Beginning at a point 1584.0 feet north and 301.05 feet west of an iron axle set at the intersection of the centerlines of Fourth Street and Grand Avenue; thence North 717.80 feet; thence West 606.90 feet; thence South 717.80 feet; thence East 606.90 feet to the point of beginning.

EXCEPTING THEREFROM: That portion lying southeasterly of the northwesterly line of that certain 104.00 foot strip of land described in Parcel A of Deed to the City of Santa Ana, recorded June 25, 1970 in Book 9327, page 72 of Official Records.

ALSO EXCEPTING THEREFROM: That portion described as Parcel C in said Deed to the City of Santa Ana.

ALSO EXCEPTING THEREFROM: That portion conveyed in the deed to the State of California recorded January 10, 1992, Instrument 92-15188 of Official Records.

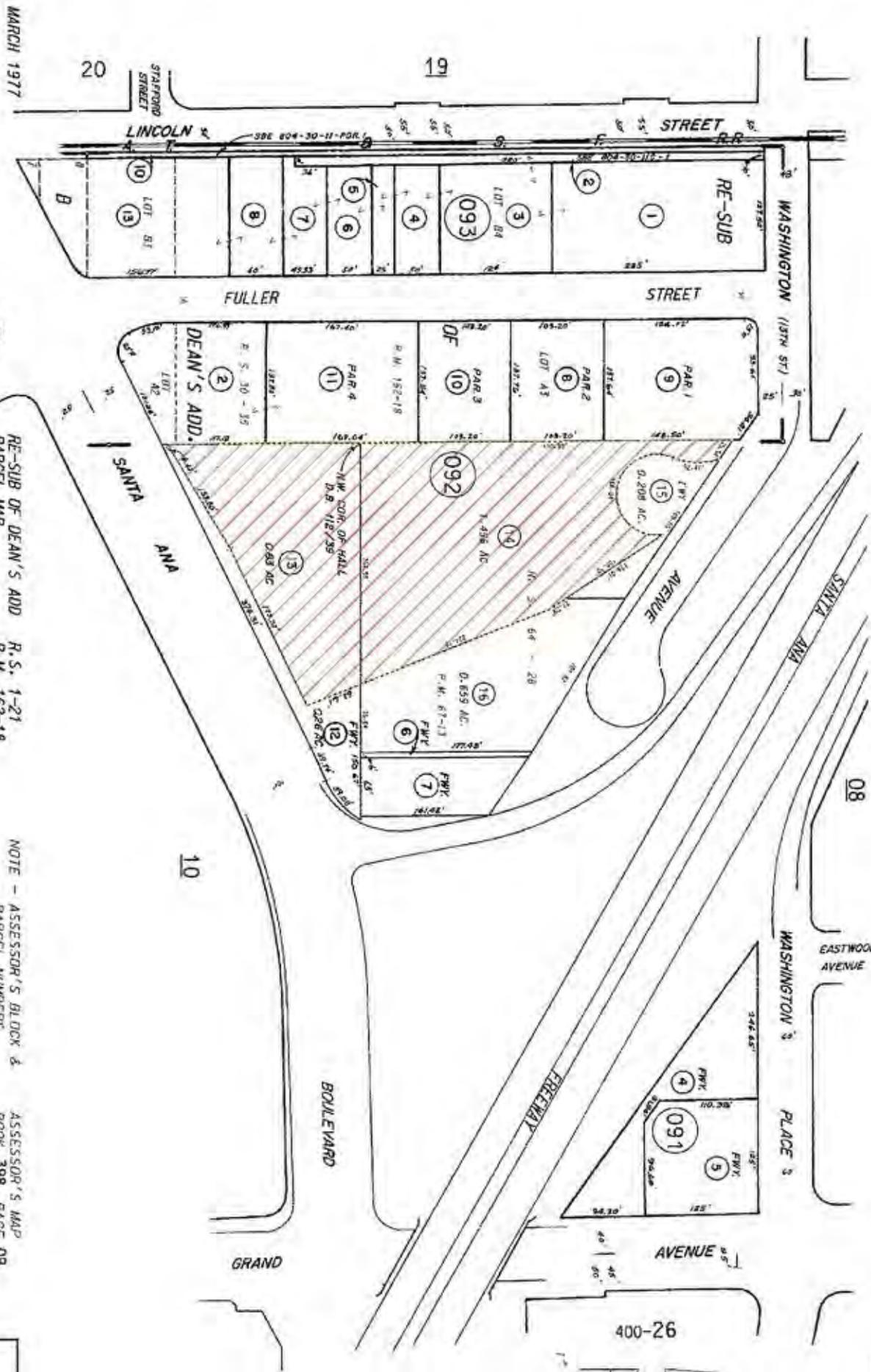
APN: 398-092-13

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

POR. S 1/2, NE 1/4, SEC. 7, T 5 S, R 9 W

398-0

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)



80A-205

MARCH 1977

RE-SUB OF DEAN'S ADD  
PARCEL MAP R.S. 1-21  
P.M. 162-18

NOTE - ASSESSOR'S BLOCK &  
PARCEL NUMBERS  
SHOWN IN CIRCLES

ASSESSOR'S MAP  
BOOK 398 PAGE 09  
COUNTY OF ORANGE



**EXHIBIT B  
INITIAL IMPROVEMENTS**

The proposed Project includes the development of two residential buildings with 86 units surrounding two interior, landscaped courtyard/amenity spaces. The Project includes 16 studio units, 26 one bedroom units, 22 two-bedroom units, 17 three-bedroom units, and 5 four-bedroom units. All units will be flat apartments located on the first, second, third and fourth floors. In addition, a proposed sound wall is being positioned along the eastern property line adjacent to the US Interstate 5 ramp. Approximately 3,500 square foot of interior community amenities and leasing offices is designed to accommodate supportive and management services.

The Project will be 100% affordable to households earning no more than 30 percent of Area Median Income (AMI) for Orange County of which 43 units will be set-aside for Permanent Supportive Housing (PSH), with one exempt 2-bedroom managers unit. 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 County Loan 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	16			16
One-Bedroom	26			26
Two-Bedroom	1	20	1	22
Three-Bedroom		17		17
Four-Bedroom		5		5
<b>TOTAL</b>	<b>43</b>	<b>42</b>	<b>1</b>	<b>86</b>

**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



If to Tenant: c/o The Related Companies of California, LLC  
19201 Von Karman Avenue, Suite 900  
Irvine, CA 92612  
Attention: President

c/o A Community of Friends  
3701 Wilshire Boulevard, Suite 700  
Los Angeles, CA 90010  
Attention: Dora Leong Gallo

And to:

With a copy to: Bocarsly Emden Cowan Esmail & Arndt LLP  
633 W. 5th Street, 64th Floor  
Los Angeles, CA 90071  
Attention: Lance Bocarsly, 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 Lessor 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: \_\_\_\_\_

**AGENCY:**

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

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

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

**TENANT:**

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

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

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

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

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

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



**GROUND LEASE**

THIS GROUND LEASE ("**Lease**") is made and effective as of the \_\_\_ day of \_\_\_\_\_, 2020 ("**Effective Date**") by and between the COUNTY OF ORANGE, a political subdivision of the State of California, the HOUSING AUTHORITY OF THE CITY OF SANTA ANA, a public body, corporate and politic, as tenants-in-common (respectively, the "**County**" and the "**Agency**", and collectively "**Lessor**") and WASHINGTON SANTA ANA HOUSING PARTNERS, L.P., a California limited partnership (hereinafter called "**Tenant**") (also referred to hereinafter each as "**Party**" or collectively as the "**Parties**").

**RECITALS**

A. County and Agency are tenants-in-common of a certain property that encompasses the Premises (as hereinafter defined).

B. County and Agency have executed a Joint Powers Agreement ("**Joint Powers Agreement**"), pursuant to which the County and Agency agreed to lease the Premises to the Tenant to develop, entitle and construct an 86-unit multifamily affordable housing project, as more fully described herein, upon the fulfillment of certain conditions precedent as set forth therein.

C. The Parties have executed an Option Agreement, dated \_\_\_\_\_, 2020 ("**Option Agreement**"), pursuant to which the Lessor had agreed to lease the Premises to the Tenant upon the fulfillment of certain conditions precedent.

D. The County and Agency acknowledge that the conditions precedent required by the Joint Powers Agreement and Option Agreement have been fulfilled and therefore the Parties desire that Tenant shall ground lease the Premises from Lessor on the terms set forth herein.

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

F. On July 2, 2019, the Agency authorized the Executive Director of the Agency and the Recording Secretary to execute a pre-commitment letter with the Tenant to enter into negotiations for a sixty-five (65) year ground-lease of 1126 E. Washington Ave for the development of the Crossroads at Washington affordable housing project located at 1126 and 1146 E. Washington Avenue, Santa Ana, CA 92701 (APNs 398-092-13 and 398-092-14).

G. On July 2, 2019, the City of Santa Ana authorized the City Manager and the Clerk of the Council to execute a pre-commitment letter with the Tenant for \$3,971,440 in affordable housing funds consisting of \$963,951 in Neighborhood Stabilization Program funds and \$3,007,489 in HOME Investment Partnerships Program funds, for the development of the Crossroads at Washington affordable housing project located at 1126 and 1146 E. Washington Avenue, Santa Ana, CA 92701 (APNs 398-092-13 and 398-092-14).

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, Agency 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. **“Agency”** shall mean the Housing Authority of the City of Santa Ana, acting as the Housing Successor Agency, a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the California Redevelopment Law. The principal office of the Agency is located at 20 Civic Center Plaza, Santa Ana, California 92702. **“Agency”** shall also refer to the City of Santa Ana where the context dictates, to the effect that the City of Santa Ana shall have all rights granted to the Agency hereunder.

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 the loans made by the Agency, City, and County, separately, for the Improvements and for so long as Base Rent remains unpaid and outstanding, as approved in writing by the Lessor. 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 Lessor, 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. Lessor 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 Lessor and Tenant prior to January 1 of such year, the annual operating budget from the previous year 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 a total of six million four hundred and fifty thousand dollars (\$6,450,000) due and owing and payable in full on the Commencement Date, but if not paid in full on the Commencement Date, then the Base Rent amount paid in accordance with this Lease, including pursuant to Article III, below, with four million, one hundred and eight thousand, one hundred and thirty-six dollars (\$4,108,136) being paid to the Agency pursuant to Section 3.1.2 and two million, three hundred and forty-one thousand, eight hundred and sixty-four dollars (\$2,341,864) being paid to the County pursuant to Section 3.1.1.

Address	APN	Size (Acres)	Size (SF)	Land Percentage	Value Allocation
City Owned Site	398-092-14	1.456	63,423	63.69%	\$4,108,136
County Owned Site	398-092-13	0.83	36,155	36.31%	\$2,341,864
<b>Total</b>		<b>2.286</b>	<b>99,578</b>	<b>100.00%</b>	<b>\$6,450,000</b>

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.

1.1.11. **“City”** shall mean the City of Santa Ana, California, a charter city and municipal corporation. “City” shall also refer to the Agency where the context dictates, to the effect that the Agency shall have all the rights granted to the City hereunder. **“City Council”** shall mean the City Council of the City of Santa Ana.

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

1.1.13. “**Commencement Date**” shall mean the date on which a Certificate of Occupancy is issued for the Project, and on which the Term shall commence and Base Rent shall become due and payable.

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

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, and shall be the date on which Tenant take possession of the Premises and is entitled to commence construction pursuant to Article V, below.

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

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

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

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

1.1.26. **"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 and Improvements.

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. "**Lessor's Interest**" shall mean all of County's and Agency's interests in the real property, the Premises, this Lease as tenants-in-common and their 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. "**Lessor Parties**" shall mean, collectively and individually, the County, the Agency and their 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. "**Net Refinancing Proceeds**" is defined in Section 3.2.

1.1.38. "**Net Syndication Proceeds**" is defined in Section 3.2.

1.1.39. "**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 \$5,000 (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 \$20,000 (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 2.28 acres of undeveloped land in the City, together with all easements, rights and privileges appurtenant thereto, to be leased to Tenant pursuant to this Lease and on which Tenant intends to construct the Improvements. The legal description of the Premises is attached hereto as **Exhibit A**. A rendering showing the approximate boundaries of the Premises is attached hereto as **Exhibit A-1**.

1.1.45. “**Project**” shall mean the Improvements, and all related appurtenances, constructed by Tenant on the Premises.

1.1.46. “**Rent**” shall mean and includes the County Base Rent, the Agency 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 Improvements approved in writing by the Lessor at the closing of the construction financing for the Improvements or as otherwise approved pursuant to Section 17.2, below, (C) payment obligations approved in writing by the Lessor at the closing of the construction financing for the Improvements, (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 Lessor, (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 Lessor, (G) deferred developer fee, and (H) scheduled deposits to reserves approved in writing by the Lessor at the closing of the construction financing for the Improvements (or such higher reserve deposits as may be reasonably required by 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 and the Risk Manager for the City of Santa Ana, 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 Group**” shall mean Tenant and Tenant’s Affiliates, agents, employees, members, officers, directors and attorneys.

1.1.53. “**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 Tenants Amended and Restated Agreement of Limited Partnership dated as of \_\_\_\_\_.

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 construction activity with respect to the Improvements, including permitted future changes, alterations and renovations thereto and also including, without limiting the generality of the foregoing, site preparation, landscaping, installation of utilities, street construction or improvement and grading or filling in or on the Premises.

## ARTICLE II LEASE OF PROPERTY

### 2.1 Lease of Premises.

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

2.1.2. Warranty of Peaceful Possession. Lessor 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 Lessor 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.** The “**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 62nd anniversary of the Commencement Date, unless sooner terminated as a result of Tenant’s non-compliance with any terms, conditions, covenants, restrictions or reservations of this Lease. Notwithstanding the foregoing, the Term shall not exceed sixty five (65) years from the Effective Date.

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

2.4 **Condition of the Premises.** TENANT HEREBY ACCEPTS THE PREMISES “AS IS”, AND ACKNOWLEDGES THAT THE PREMISES IS IN SATISFACTORY CONDITION. COUNTY AND AGENCY MAKES NO WARRANTY, IMPLIED OR OTHERWISE, AS TO THE SUITABILITY OF THE PREMISES FOR TENANT’S PROPOSED USES. COUNTY AND AGENCY 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 OR AGENCY COVENANT OR WARRANT, IMPLIED OR OTHERWISE, AS TO THE SUITABILITY OF THE PREMISES FOR THE PROPOSED DEVELOPMENT, CONSTRUCTION OR USE BY TENANT. COUNTY AND AGENCY SHALL NOT BE RESPONSIBLE FOR ANY LAND SUBSIDENCE, SLIPPAGE, SOIL INSTABILITY OR DAMAGE RESULTING

**THEREFROM. COUNTY AND AGENCY 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 Lessor, or any representation or warranty, either express or implied, relating to the nature or condition of the Premises or County's or Agency's interest therein.

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

**ARTICLE III  
TOTAL RENT**

**3.1 Base Rent.** Throughout the Term of this Lease, regardless of an earlier termination date Tenant shall pay to the County and the Agency the Base Rent as set forth herein.

**3.1.1 County Base Rent.** Tenant shall make annual payments to County of thirty-three and four-tenths percent (33.4%) of the then available Residual Receipts (defined above), but only to the extent said Residual Receipts are available, until the amount of two million, three hundred and forty-one thousand, eight hundred and sixty-four dollars (\$2,341,864) is fully paid ("**County Base Rent**"). County Base Rent shall only become due after the Tenant has repaid that certain loan from the County awarded under the 2016 Permanent Supportive Housing Notice of Funding Availability, Addendum One, evidenced by a Loan Agreement, Promissory Note and Leasehold Deed of Trust, in the amount of \$2,280,701, which is also being paid out of the same thirty-three and four-tenths percent (33.4%) of the Residual Receipts. On the last day of the Term the then outstanding amount of the County Base Rent shall be paid in full if not already paid by that time. County Base Rent will bear interest commencing on the Commencement Date at the simple rate of three percent (3%) per year until paid in full. Once the County Base Rent has been paid in full with interest, Tenant shall have no further obligation for County Base Rent under this Lease.

**3.1.2 Agency Base Rent.** Tenant shall also make annual payments to Agency of thirty-three and one-third percent (33.3%) of the then available Residual Receipts (defined above), but only to the extent said Residual Receipts are available, until the amount of four million, one hundred and eight thousand, one hundred and thirty-six dollars (\$4,108,136) is fully paid ("**Agency Base Rent**"). Agency Base Rent shall only become due after the Tenant has repaid those two certain loans from the City, each evidenced by a Loan Agreement, Promissory Note, Deed of Trust, and Affordability Restrictions on Transfer of Property dated \_\_\_\_\_, 20\_\_, in the amount of \$3,007,489.00, and dated \_\_\_\_\_, 20\_\_, in the amount of \$963,951, which is also being paid out of the same thirty-three and one-third percent (33.3%) of the Residual Receipts. On

the last day of the Term the then outstanding amount of the Agency Base Rent shall be paid in full if not already paid by that time. Agency Base Rent will bear interest commencing on the Commencement Date at the simple rate of three percent (3%) per year until paid in full. Once the Agency Base Rent has been paid in full, Tenant shall have no further obligation for Agency Base Rent under this Lease.

**3.2 Net Refinancing Proceeds/Net Syndication Proceeds.** Any Net Refinancing Proceeds or Net Syndication Proceeds received by Tenant shall be used to pay any unpaid Base Rent. Additionally, the Tenant's right and obligation to use such net proceeds to pay Base Rent is subject to the rights of Leasehold Mortgagees to control the use of such proceeds pursuant to the terms of their respective loan documents, all of which have been reviewed and reasonably approved by the Lessor and is further subject to the consent of TCAC to the extent required under the applicable regulations or the extended use agreement. Without limiting application of those loan documents and TCAC regulations and requirements, in no case shall Tenant be permitted to retain Net Refinancing Proceeds or Net Syndication Proceeds without the prior written consent of the Lessor, until full satisfaction of the unpaid Base Rent. Notwithstanding the foregoing, this Section 3.2 shall not apply to (i) any Excluded Transfer or (ii) any financing described in Section 17.2.

"Net Refinancing Proceeds" shall be defined as the proceeds from the refinancing of any loan approved by Lessor hereunder, net of all of the following: the amount of the financing which is satisfied out of such proceeds, closing costs, costs to rehabilitate the Project, including the costs necessary to obtain refinancing proceeds (such as consultant, legal and other consultant costs), the soft costs related to the rehabilitation of the Project (such as architecture, engineering and other consultant costs, and all required relocation costs), and all hard costs of the rehabilitation, all of which have been reviewed and reasonably approved by the Lessor.

"Net Syndication Proceeds" shall be defined as syndication proceeds net of final Project hard and soft construction costs, including developer fee, based on a cost certification completed at the end of construction, and syndication costs all of which has been reviewed and reasonably approved by the Lessor.

**3.3 Triple Net Rent.** It is the intent of the Parties that all Rent shall be absolutely net to Lessor 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 or Agency 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.

**3.4 Insufficient Funds.** For purposes of this Section 3.4, 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 and Agency 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 and Agency 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

and Agency shall accept such check or payment without prejudice to County's and Agency's right to recover the balance of the Rent or other fees or pursue any other remedy available to the County or Agency in this Lease.

### 3.5 Reserved.

### 3.6 Additional Rent.

3.6.1. **Additional Rent.** During the Term, the Base Rent shall be absolutely net to County and Agency 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 3.6.3 and 3.6.6, below, Tenant has the right to pay under protest the foregoing Additional Rent, as applicable, and defend against the same. Any imposition rebates shall belong to Tenant.

3.6.2. **Taxes.** During the Term, Tenant shall pay directly to the taxing authorities all Taxes (as herein defined) at least ten (10) days prior to delinquency thereof. For purposes hereof, "**Taxes**" shall include any form of assessment, license fee, license tax, business license fee, commercial rental tax, levy, penalty, sewer use fee, real property tax, charge, possessory interest tax, tax or similar imposition (other than inheritance or estate taxes), imposed by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage, flood control, water pollution control, public transit or other special district thereof, as against any legal or equitable interest of County or Agency in the Premises or any payments in lieu of taxes required to be made by County or Agency, 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 Lessor that all such new and increased assessments, taxes, fees, levies, charges and similar impositions be included within the definition of "**Taxes**" for the purpose of this Lease.

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

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

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

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

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

**3.6.4. Payment by Lessor.** 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 3.6.3, and if such amount is not paid by Tenant within fifteen (15) days after receipt of Lessor’s written notice advising Tenant of such nonpayment, County and/or Agency 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 or Agency reimburse County and/or Agency for the full amount paid by County and/or Agency in paying, discharging or adjusting such tax, assessment or other charge, together with interest at the Interest Rate from the date advanced until the date repaid.

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

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

**ARTICLE IV**  
**USE OF PREMISES**

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

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

**4.1.2. Ancillary Services and Uses.** Subject to the prior written approval of Lessor, which approval may be granted or withheld in the sole discretion of the Lessor, 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 Lessor 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 Lessor, which approval may be granted or withheld in the sole discretion of the Lessor.

**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 Lessor.

**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). Lessor may cooperate with Tenant in all reasonable respects in such contest, including joining with Tenant in any such contest if County and/or Agency's joinder is required in order to maintain such contest; provide, however, that any such contest shall be without cost to Lessor, and Tenant shall indemnify, defend (with attorneys acceptable to Lessor), and hold harmless the Lessor 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 and/or Agency acting in their 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 construction, 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 return the Premises to the condition existing prior to the introduction of such Hazardous Materials to the Premises and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of County or Agency 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 Lessor. 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 Lessor.

#### 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 Lessor) Lessor, 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 Lessor.

**4.5 Access by Lessor.** Lessor reserves the right for County, Agency and their 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 or Agency under this Lease. Lessor 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 Lessor 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. Lessor will take all necessary measures not to unreasonably interfere with Tenant's business at the Premises in exercising its rights under this Section.

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

**ARTICLE V**  
**CONSTRUCTION OF IMPROVEMENTS**

**5.1 Construction of Improvements.**

**5.1.1. Initial Improvements.** Upon the fulfillment of the Preconditions set forth in Section 5.1.2, below, and payment for and issuance of all permits required under the Laws (whether from County or City in their governmental capacity, or otherwise), Tenant shall construct the Initial Improvements.

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

(a) Lessor has provided approval in writing that all the conditions set forth in Section 5 of the Option Agreement have been satisfied;

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

(c) Tenant has given Lessor written notice of the proposed commencement of construction of the Premises or the delivery of construction materials in order to allow Lessor 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 Lessor 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 Lessor with assurances sufficient to construct the Initial Improvements in accordance with Section 5.3 below.

**5.1.3. Utilities.** To the extent not already constructed, Tenant, at no cost to Lessor, shall construct or cause to be constructed all 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 and/or Agency in conducting its operations, if any, on or about the Premises. Nothing contained in this Section is to be construed or implied to give Tenant the right or permission to install or to permit any utility poles or communication towers to be constructed or installed on the Premises.

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

allocation thereof, so long as the aggregate available funding continues to be sufficient to pay for Tenant's estimated remaining cost of constructing the Initial Improvements, provided that Tenant shall promptly notify Lessor of any such change.

**5.1.5. Compliance with Laws and Permits.** Tenant shall cause all Improvements made by Tenant to be constructed in substantial compliance with all applicable Laws, including all applicable grading permits, building permits, and other permits and approvals issued by governmental agencies and bodies having jurisdiction over the construction thereof. No permit, approval, or consent given hereunder by County and/or Agency, in their governmental capacity, shall affect or limit Tenant's obligations hereunder, nor shall any approvals or consents given by County and/or Agency, 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 construction of the Initial Improvements, Tenant shall provide Lessor with written construction status reports in the form of AIA No. G702 ("**Application and Certification for Payment**") or comparable form, augmented by oral reports if so requested by County or Agency.

**5.1.7. Certificate of Occupancy.** Tenant shall provide Lessor with a copy of the Certificate of Occupancy promptly following issuance thereof. The date of issuance of the Certificate of Occupancy shall be the Commencement Date hereunder.

**5.1.8. Insurance.** Tenant (or the Contractor, as applicable) shall deliver to Lessor both (i) certificates of insurance evidencing coverage for "builder's risk," as specified in Section 8.1, and (ii) evidence of worker's compensation insurance, which provide the requisite insurance levels in accordance with Article VIII, for all persons employed in connection with the construction of any Improvements upon the Premises and with respect to whom death or bodily injury claims could be asserted against County and/or Agency 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, Agency 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 Lessor, 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/or Agency and hold County and Agency harmless from all claims, losses, demands, damages, cost, expenses, or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Premises, and from the cost of defending against such claims, including reasonable attorneys' fees and costs, but excluding any liability resulting from the gross negligence or willful misconduct of Lessor, and excluding any liens resulting from the actions of, or work performed by, the Lessor.

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

(d) **Lessor'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, Lessor 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 and/or Agency, Tenant shall immediately upon receipt of written request therefor by County or Agency, reimburse County and/or Agency for all sums paid by County and/or Agency under this paragraph together with all County and/or Agency's reasonable attorney's fees and costs, plus interest at the Interest Rate from the date of payment until the date of reimbursement.

5.1.10. **No Responsibility.** Any approvals by County or Agency with respect to any Improvements shall not make County or Agency responsible for the Improvement with respect to which approval is given or the construction thereof. Tenant shall indemnify, defend and hold Lessor 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 resulting from the gross negligence or willful

misconduct of Lessor, and excluding any liens resulting from the actions of, or work performed by, the Lessor.

## 5.2 Construction Contracts.

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

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

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

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

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

5.3.3. Cash deposited with the County or Agency (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 and Agency from an Affiliate of The Related Companies of California, LLC, in a form reasonably acceptable to Lessor, coupled with a repayment guaranty in favor of the senior construction lender for its loan;

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 Lessor. All bonds and letters of credit shall be in a form acceptable to Lessor, County’s Risk Manager and City’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 the construction of improvements within the Premises.

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

#### 5.4 Ownership of Improvements.

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

5.4.2. **During Term.** Title to all Improvements constructed or placed on the Premises by Tenant and paid for by Tenant are and shall be vested in Tenant during the Term of this Lease, until the expiration or earlier termination thereof. 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 Lessor's property free and clear of all claims to or against them by Tenant and free and clear of all Leasehold Mortgages and any other liens and claims arising from Tenant's use and occupancy of the Premises, and with Taxes paid current as of the expiration or earlier termination date. Tenant shall upon the expiration or earlier termination of the Term deliver possession of the Premises and the Improvements to Lessor 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.

5.5 **"AS-BUILT" Plans.** Within sixty (60) days following completion of any substantial improvement within the Premises, Tenant shall furnish the Lessor a complete set of reproducibles 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 Lessor, to Lessor's satisfaction, on Lessor'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 Lessor copy of the final construction costs for the construction of such improvements.

#### 5.6 Capital Improvement Fund.

5.6.1. Tenant shall establish and maintain a reserve fund (the "**Capital Improvement Fund**") during the Term of this Lease (as "Term" is defined in Section 2.2) 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 Lessor agree and acknowledge that the purpose of the Capital Improvement Fund shall be to provide sufficient funds to pay for the costs of major replacements, renovations or significant upgrades of or to the Improvements, including without limitation building facade or structure and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural or roof) that significantly affect the

capacity, efficiency, useful life or economy of operation of the Improvements or their major systems, after the completion of the Initial Improvements (“**Permitted Capital Expenditure(s)**”).

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

5.6.4. All specific purposes and costs for which Tenant desires to utilize amounts from the Capital Improvement Fund shall be at Tenant’s reasonable discretion and subject to Lessor’s written approval as provided for in Section 5.6.9, below. Tenant shall furnish to the Lessor 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 Lessor, 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 Lessor 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 Lessor’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 a monthly deposit to the Capital Improvement Fund in an amount equal to one percent (1%) of total rent collected by Tenant from sub-tenants for the previous month. 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 Lessor’s prior approval of any Capital Improvement Fund disbursements, Tenant shall submit to the Lessor 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**). Lessor 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 Lessor (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 Lessor for the Lessor'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 Lessor and provide applicable documentation to the Lessor thereafter for approval. If the Lessor disapproves the emergency expenditure which was not previously approved by Lessor, Tenant shall refund the amount taken from the Capital Improvement Fund within thirty (30) days of written notice from the Lessor 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 Lessor of any damage relating to the Premises.

**6.2 Interior Improvements, Additions and Reconstruction of Improvements.** Following the completion of construction of the Initial Improvements, Tenant shall have the right from time to time to make any interior improvements to the Improvements that are consistent with the Lessor's approved use of the Premises as reflected in this Lease, without Lessor's prior written consent, but with prior written notice to the Lessor (except in the event of an emergency, in which case no prior written notice shall be required but Tenant shall notify Lessor of any emergency work done as soon as practicable). With prior written approval of Lessor, Tenant may restore and reconstruct the Improvements, and in that process make any modifications otherwise required by changes in Laws, following any damage or destruction thereto (whether or not required to do so under Article VII); and/or to make changes, revisions or improvements to the Improvements for uses consistent with the Lessor 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 construction of the Initial Improvements, and except as specified in Sections 6.1 and 6.2, any construction, alterations, additions, major repairs, demolition, improvements or reconstruction of any kind shall require the prior written consent of the Lessor, which consent shall not be unreasonably conditioned, delayed or withheld and may require their respective governing body's approval (e.g. Board of Supervisors' and City Council approval). 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, Agency, 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 Lessor Obligations.** Tenant specifically acknowledges and agrees that County, Agency and Lessor 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 Lessor Reservations.** Without limiting Lessor's rights with respect to the Premises, Lessor reserves for themselves, their 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 Lessor deems necessary or desirable to maintain, repair, improve, modify or reconstruct the Premises. The rights reserved to Lessor in this section or any other section of this Lease shall be exercised by the Lessor at their 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 Lessor 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 Lessor given by the later of ninety (90) days after the date of the damage or destruction or thirty (30) days after receipt by

Tenant of any such insurance proceeds, that there are not adequate proceeds to restore the Improvements and/or the Premises to substantially the same condition in which they existed prior to the occurrence of such damage or destruction, then Tenant may terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice. Notwithstanding Section 17.9, if Tenant terminates this Lease pursuant to this Section 7.1, Tenant shall surrender possession of the Premises to the Lessor immediately and assign to the Lessor (or, if same has already been received by Tenant, pay to the Lessor) all of its right, title and interest in and to the proceeds from Tenant's insurance upon the Premises.

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

**7.3 No Rental Abatement.** Tenant shall not be entitled to any abatement, allowance, reduction, or suspension of Rent because part or all of the Improvements become untenable as a result of the partial or total destruction of the Improvements, and Tenant's obligation to keep and perform all covenants and agreements on its part to be kept and performed hereunder, shall not be decreased or affected in any way by any destruction of or damage to the Improvements; 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 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, Agency and Tenant hereby expressly waive the provisions of California Civil Code Sections 1932(2) and 1933(4) with respect to any damage or destruction of the Premises and/or the Improvements and agree that their rights shall be exclusively governed by the provisions of this Article VII.

**7.6 Damage Near End of Term.** If, during the last three (3) years of the 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 Lessor of its election to repair or restore the Improvements as provided in this Article VII; or

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

## 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 or City for the full term of this Lease, the County or City 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.

EXHIBIT 4

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

EXHIBIT 4

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

(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	100% of the Replacement Cost Value

buildings, contents and any tenant improvements including Business Interruption/Loss of Rents with a 12 month limit	and no coinsurance provision
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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 and the Housing Authority of the City of Santa Ana shall be named as Loss Payees 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 their 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, City of Santa Ana, and their 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 from 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, City of Santa Ana, and their 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, City of Santa Ana, and their 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, City of Santa Ana, and their 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 and City of Santa Ana as both Named Insureds. 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 and City of Santa Ana as Loss Payees. A Loss Payee endorsement shall be submitted with the Certificate of Insurance as evidence of this requirement.

(d) Tenant shall notify County and City 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 and City. Failure to provide written notice of cancellation may

constitute a material breach of the Lease, after which the County or City 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 County and City 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 or City 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, City 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 Lessor, 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 claims arising from the gross negligence or willful misconduct of County or Agency, their officers, agents, employees and contractors. Tenant hereby agrees to indemnify, defend (with counsel approved in writing by Lessor), and hold harmless, County and the Agency, their respective elected and appointed officials, officers, agents, employees and contractors against any and all claims, losses, demands, damages, cost, expenses or liability for injury to any persons or property, arising out of the operation or maintenance of the Premises, and/or Tenant's exercise of the rights under this Lease, except for liability arising out of the gross negligence or willful misconduct of County or Agency, their 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 and/or Agency

is named as co-defendant in a lawsuit in connection with this Lease. Tenant shall notify Lessor of such fact and shall represent the County and/or Agency in such legal action unless County or Agency undertakes to represent themselves as co-defendant in such legal action, in which event, Tenant shall pay to Lessor their litigation costs, expenses, and reasonable attorneys' fees. If judgment is entered against County and/or Agency and Tenant by a court of competent jurisdiction because of the concurrent active negligence of County and/or Agency and Tenant, County, Agency 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 Lessor'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.** Lessor 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, Lessor shall be liable for injury or damage under this Section 8.3 resulting from County or Agency, their 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, Agency 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, Agency and Tenant. County, Agency 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 Lessor 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 Lessor, 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 Lessor 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, Lessor shall be entitled to receive the entire award for such Partial Taking, except that (i) the proceeds of such Partial Taking shall first be applied towards the cost of Restoring the Premises pursuant to Section 9.4.2 and (ii) Tenant shall be entitled to receive any portion of such award allocated to Tenant's interest in any of Tenant's Improvements, Personal property and trade fixtures taken, and any part of the award attributable to the low income housing tax credits.

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

10.1.2. Should Lessor 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 Lessor'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 Lessor'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 Lessor's Fee Interest, other than as required by TCAC pursuant to its lease rider, if any, and previously approved by Lessor prior to the Effective Date of this Lease, in connection with the award of low income housing tax credits to Tenant.

**10.3 Excluded Transfers.** Lessor'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 Lessor of such Excluded Transfer at least twenty (20) days prior to the consummation of such Excluded Transfer, and shall provide Lessor 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 Lessor with a written assumption of Tenant's obligations and liabilities under this Lease executed by such transferee in a form approved by the Lessor, 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 Lessor's consent is required hereunder, Tenant shall provide Lessor 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 Lessor may reasonably request concerning the proposed transferee. Lessor shall, no later than ninety (90) days after Lessor's receipt of the information specified above, deliver written notice to Tenant which shall (i) indicate whether Lessor give or withhold consent to the proposed Transfer, and (ii) if Lessor withhold consent to the proposed Transfer, setting forth a detailed explanation of Lessor's grounds for doing so. If Lessor consents to a proposed Transfer, then Tenant may thereafter effectuate such Transfer to the proposed transferee based upon the specific terms of the Lessor's approval and after execution of a consent to assignment by Lessor in a form approved by the Lessor, which approval shall not be unreasonably withheld, conditioned or delayed in the event that the assignment is consistent with the terms of this Lease; provided, however, that the provisions of this Section 10.4 shall not apply to any Transfer to a Foreclosure Transferee.

**10.5 Liability of Transferors/Transferees For Lease Obligations.** In the case of an assignment, including an assignment pursuant to Section 17.6.5, each Permitted Transferee and any other assignees or transferees of this Lease shall assume in writing all of Tenant's obligations thereafter arising under this Lease. All assignees or transferees of any interest in this Lease or the Premises or Improvements (whether or not directly liable on this Lease) shall be subject to the terms, conditions, covenants, restrictions and reservations of this Lease. 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 Lessor evidence of sufficient and adequate assets, including any required insurance policies, subject to approval by Lessor, 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 Lessor 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, Lessor 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 Lessor Consent.

10.6.1. Lessor may withhold consent to a Transfer (excluding Excluded Transfers which shall not require Lessor 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 construction of the Initial Improvements has not been completed.
- (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 Lessor's approval of the Transfer have not been disclosed in writing to the Lessor.

**10.7 Transfer of Mortgages of Lessor's Interest.** Notwithstanding anything to the contrary set forth in this Ground Lease, unless required by statute, court order or operation of law, Lessor shall not transfer, assign, pledge or hypothecate its fee interest in the Premises (other than to entities under common control with Lessor or other governmental entities under applicable law) without the prior written consent of Tenant, Leasehold Mortgagee 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 Lessor encumbering the Lessor's fee interest in the Premises shall be expressly subject and subordinate to this Lease, to all obligations of Lessor 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 Lessor's fee interest as a consequence of any conveyance, foreclosure or other transfer shall succeed to all of the obligations of the Lessor hereunder.

### ARTICLE XI DEFAULT AND REMEDIES

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

**11.1.1. Failure to Pay.** Tenant's failure or omission to pay any Rent or other sum payable hereunder on or before the date due where such failure shall continue for a period of five (5)

days after written notice thereof from Lessor to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure §1161 *et seq.*

**11.1.2. Failure to Perform.** The failure or inability by Tenant to observe or perform any of its obligations under this Lease (other than those specified in Sections 11.1.1, 11.1.3, 11.1.6, or 11.1.8 herein, which have their own notice and cure periods), where such failure shall continue for a period of thirty (30) days after written notice thereof from Lessor to Tenant or past any such longer period as reasonably agreed upon by the Tenant, Lessor in writing as may be necessary for completion of its cure; provided, however, that any such notice by Lessor 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 Lessor'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 Lessor.** Tenant's failure to reimburse the Lessor 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 Lessor of such termination.

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

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

11.2.1. **Termination of Lease.** Subject to Article 17, as applicable, Lessor 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 Lessor shall elect to so terminate this Lease then Lessor 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 Lessor 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 Lessor may by law hereafter be permitted to recover from Tenant to compensate Lessor 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.** Lessor may continue this Lease in effect without terminating Tenant's right to possession and to enforce all of Lessor'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 Lessor 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.** Lessor 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 Lessor'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, Lessor may at their election, but are 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 Lessor's demand. Tenant's failure to reimburse the County and/or Agency within 30 days of Lessor'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 and/or Agency liable for any loss or damage resulting from the same.

**11.4 Lessor's Default.** Lessor shall not be considered to be in default under this Lease unless Tenant has given Lessor written notice specifying the default, and either (i) as to monetary defaults, Lessor have failed to cure the same within ten (10) business days after written notice from Tenant, or (ii) as to nonmonetary defaults, Lessor have failed to cure the same within thirty (30) days after written notice from Tenant, or if the nature of Lessor'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 and/or Agency 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 and/or Agency 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 Lessor'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 Lessor contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Lessor 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 Lessor.** No delay or omission of Lessor 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 Lessor 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 Lessor's knowledge of such preceding breach or default at the time of acceptance of such rent or sum, or (b) waiver of Lessor's right to exercise any remedy available to Lessor by virtue of such breach or default. No act or thing done by County or Agency's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender shall be valid unless in writing and signed by Lessor.

**11.7 Interest.** Any installment or Rent due under this Lease or any other sums not paid to Lessor 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 Lessor 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 Lessor 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, Lessor 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 Lessor on Tenant's behalf shall not give rise to any responsibility of Lessor 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 Lessor in connection therewith, together with interest at the Interest Rate from the date incurred or paid by Lessor, 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 Lessor, and Tenant's failure to pay the Lessor, 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 Lessor, 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, Lessor 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 Lessor 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 and/or Agency in connection with such eviction action; Tenant shall also indemnify and hold Lessor harmless from all loss or liability or reasonable attorney's fees and costs, including any claim made by any succeeding tenant, incurred by County and/or Agency 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, Agency 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, Agency 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, Agency, 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 and the Agency 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 and Agency 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 Lessor 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 Lessor 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 Lessor with such budget.

15.1.1. Tenant acknowledges its understanding that any and all of the Financial Statement submitted to the Lessor 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 Lessor. Lessor shall, through their 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 Lessor 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 Lessor 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 Lessor 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 Lessor 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 Improvements, or any applicable portion thereof or interest therein.

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

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

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

17.1.5. "**Tenant**" shall mean all of the following: (i) the Tenant under this Lease; (ii) an approved assignee, transferee or subtenant of the Tenant under this Lease who is or becomes directly and primarily liable to Lessor; 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 Lessor.

**17.2 Tenant's Right to Encumber Leasehold Estate; No Right to Encumber Lessor's Fee Interest.** Provided that an Event of Default has not occurred and is continuing, Tenant may, at any time during the Term of this Lease (with consent of Lessor after prior written notice providing evidence that all requirements of this Lease have been complied with, which consent shall not be unreasonably withheld, conditioned or delayed), encumber all or any portion of Tenant's Leasehold Estate with one (1) or more Leasehold Mortgages; provided, however:

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

17.2.2. That Tenant shall not have the power to encumber, and no Leasehold Mortgage shall encumber, Lessor'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 Lessor 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 Lessor'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 Mortgage, as such, be deemed to be an assignee or transferee of this Lease or of the Leasehold Estate so as to require such Leasehold Mortgage, as such, to assume the Tenant's obligations and liabilities under this Lease.

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

**17.3 Notification to Lessor of Leasehold Mortgage.** Tenant or any Leasehold Mortgagee shall, prior to making any Leasehold Mortgage, provide Lessor 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 Lessor 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 Lessor of any change in the identity or address of such Leasehold Mortgagee. Lessor shall be entitled to rely upon the addresses provided pursuant to this Section for purposes of giving any notices required by this Article XVII.

**17.4 Notice and Cure Rights of Leasehold Mortgagees With Respect to Tenant Defaults.** Lessor, 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 Lessor may predicate or claim a default, will promptly deliver a copy of such notice to each Leasehold Mortgagee. Each notice or demand required to be given by Lessor to a Leasehold Mortgagee under this Lease shall be in writing and shall be given by certified or registered mail, postage prepaid, return receipt requested, to such Leasehold Mortgagee at the address(es) provided by such Leasehold Mortgagee, as applicable, to Lessor from time to time in writing and shall be effective upon receipt (or refusal to accept receipt). No notice or demand given by Lessor 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 in accordance with this Lease. From and after the date such notice has been given to any Leasehold Mortgagee, such Leasehold Mortgagee 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, Agency 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). Lessor shall accept any and all performance by or on behalf of any Leasehold Mortgagee(s), including by any receiver obtained by any Leasehold Mortgagee(s), as if the same had been done by Tenant. Tenant authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option, and hereby authorizes any Leasehold Mortgagee (or any receiver or agent) to enter upon the Premises for such purpose.

**17.5 Limitation on Lessor'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 as allowed under Section 17.4, above), and such failure entitles County and/or Agency to terminate this Lease. Lessor shall have no right to terminate this Lease unless Lessor shall notify in writing each and every Leasehold Mortgagee who has complied with Section 17.3 of Lessor's intent to so terminate at least sixty (60) days in advance of the proposed effective date of such termination. If any Leasehold Mortgagee, within such sixty (60) day period, (i) notifies Lessor of such Leasehold Mortgagee'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 Lessor, at its sole discretion, may permit such additional time as necessary for any Leasehold Mortgagee 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 sixty (60) days as consistent with the conditions of this Section 17.5, Lessor 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 Lessor's notice under Section 17.5 specifies only monetary Events of Default as the basis for Lessor's election to terminate this Lease, and Leasehold Mortgagee has fully paid the monetary amount designated by Lessor in its notice, then such payment shall be deemed to have cured the Event of Default. If Lessor'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 Lessor's election to terminate this Lease, and Leasehold Mortgagee has fully paid the monetary amount designated by Lessor in its notice, as applicable, then the date of termination specified in Lessor'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, 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. 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 Lessor and the Leasehold Mortgagee, Lessor shall enter into such new lease with the Leasehold Mortgagee pursuant to Section 17.7, below, provided Lessor 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 Lessor'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 Lessor 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), Lessor 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 Lessor 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 Lessor to enter into a New Lease, Leasehold Mortgagee shall pay to Lessor 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, Agency 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 Lessor'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 Lessor 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 Lessor 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, Lessor 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 Lessor 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 Lessor may control the same, then the Leasehold Mortgagee under the New Lease shall be entitled to such net income received by Lessor except to the extent that it was applied to cure any default of Tenant.

17.7.4. All rights and claims of Tenant under this Lease shall be subject and subordinate to all right and 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 Lessor 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, Lessor 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 and/or Agency by multiple Leasehold Mortgagees, Lessor may (subject to any applicable court orders to the contrary) rely on the direction of the Leasehold Mortgagee whose Leasehold Mortgage is recorded first in time in the Official Records of the 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 Lessor'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.

**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.

**17.11 No Waiver.** No payment made to Lessor 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 Lessor pursuant to County and/or Agency'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 Lessor for its reasonable attorneys' fees and costs incurred in connection with Lessor'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, Agency and Tenant, (b) Lessor 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, 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).

**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 Lessor 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 Lessor for review and approval prior to implementation.

18.6 Lessor 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 Lessor, which approval may be withheld in the sole and absolute discretion of the Lessor, 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 Lessor 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 Lessor, within five (5) business days, a good and sufficient deed, in a form as approved by the Lessor, whereby all right, title, and interest of Tenant in the Premises is quitclaimed back to Lessor ("**Quitclaim Deed**"). The Quitclaim Deed shall then be recorded by Lessor to remove any cloud on title created by this Lease. In the event that the Tenant fails to provide such Quitclaim Deed within five (5) additional business days after written demand by either the County or City, the Parties agree that the County and City 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 Quitclaim Deed after such notice and cure period, in addition to any other remedy provided by law or equity, the Tenant shall pay the Lessor \$2,000 per day for every day that passes until a Quitclaim Deed is delivered, which amount shall be deemed to constitute a reasonable estimate of Lessor's damages and not a penalty. Such amount shall become due and payable by Tenant to Lessor for each calendar day that passes beyond the cure period. Notwithstanding the foregoing, if the Tenant has disputed the termination of the Lease by Lessor, 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 Lessor 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 Lessor determines that the records must be turned over, the Lessor 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 Lessor 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 and/or Agency, on behalf of the County and/or Agency, 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 Lessor 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 Lessor, Tenant shall provide to Lessor 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.

**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. In any provision relating to the conduct, acts or omissions of Agency, the term "**Agency**" shall include Agency's agents, employees, contractors, invitees, successors or others using the Premises with Agency'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.

**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 Agency permits, constitute the entire agreement

between County, Agency 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, Agency and Tenant. County, Agency 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 Lessor: 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

And to:

Housing Authority of the City of Santa Ana  
20 Civic Center Plaza (M-26)  
P.O. Box 1988  
Santa Ana, California 92702  
Attn: Housing Manager

With a copy to: Office of the City Attorney  
City of Santa Ana  
20 Civic Center Plaza, 7th Floor (M-29)  
Santa Ana, California 92702

If to Tenant: c/o The Related Companies of California, LLC  
19201 Von Karman Avenue, Suite 900  
Irvine, CA 92612  
Attention: President

c/o A Community of Friends  
3701 Wilshire Boulevard, Suite 700  
Los Angeles, CA 90010  
Attention: Dora Leong Gallo, President and Chief Executive Officer

And to:

With a copy to:

Bocarsly Emden Cowan Esmail & Arndt LLP  
 633 W. 5th Street, 64th Floor  
 Los Angeles, CA 90071  
 Attention: Lance Bocarsly, 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 Lessor 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 and/or Agency's option, be deemed to have been transferred to County and/or Agency. County and/or Agency 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 Lessor's option, Lessor 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 Lessor 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 and/or Agency 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 and/or Agency 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, Agency and Tenant. County, Agency and Tenant mutually acknowledge that no business or financial relationship exists between them other than as County, Agency and Tenant, and that County and Agency is not responsible in any way for the debts of Tenant or any other Party.

**19.25 Authorization.** County, Agency 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 Lessor 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 in the event that the Tenant encumbers the leasehold as set forth in Article XVII, a memorandum hereof may be recorded in the form of **Exhibit D** attached hereto (the “**Memorandum**”). The Memorandum may be executed concurrently with this Lease and thereafter recorded in the Official Records of the County Recorder on the Effective Date of this Lease has occurred. Tenant shall be responsible for the payment of all charges imposed in connection with the recordation of the Memorandum, including, without limitation, any documentary transfer tax imposed in connection with this transaction and all recording fees and charges.

19.27 **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: Initial Improvements

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, Agency and/or Tenant the right to take any action, grant any approval or consent, or exercise any discretion, County, Agency 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 and Agency.** County and Agency hereby agree that (a) Agency staff shall be responsible for administering the operation of the Project to insure it is being used in conformance with this Lease, and (b) Agency staff shall serve as administrator of the Lease with the Tenant and coordinate with the County as necessary. County and Agency hereby agree to work cooperatively and expeditiously to provide written consent (or written refusal to provide consent) to Tenant, the Leasehold Mortgagees and Limited Partner hereunder.

[Signatures On Following Pages]

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

	<p><b>TENANT</b></p> <p>WASHINGTON SANTA ANA HOUSING PARTNERS, L.P., a California limited partnership</p> <p>By: Related/Washington Santa Ana Development Co., LLC, a California limited liability company, its Administrative General Partner</p> <p>By: _____ Frank Cardone, President</p> <p>By: Supportive Housing LLC, a California limited liability company</p> <p>By: A Community of Friends, a California nonprofit public benefit corporation, its sole member/manager</p> <p>By: _____ Dora Leong Gallo, President and Chief Officer</p> <p>Executive</p>
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<p>APPROVED AS TO FORM: SONIA CARVALHO AUTHORITY GENERAL COUNSEL</p> <p>By: _____ Ryan O. Hodge, Assistant City Attorney</p> <p>Date: 1/31/20</p>	<p><b>LESSOR</b></p> <p>HOUSING AUTHORITY OF THE CITY OF SANTA ANA ACTING AS THE HOUSING SUCCESSOR AGENCY a public body, corporate and politic</p> <p>By: _____ Steven A. Mendoza, Executive Director</p> <p>Date: _____</p>
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Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

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

	<p><b>TENANT</b></p> <p>WASHINGTON SANTA ANA HOUSING PARTNERS, L.P., a California limited partnership</p> <p>By: Related/Washington Santa Ana Development Co., LLC, a California limited liability company, its Administrative General Partner</p> <p>By: _____ Frank Cardone, President</p> <p>By: Supportive Housing LLC, a California limited liability company</p> <p>By: A Community of Friends, a California nonprofit public benefit corporation, its sole member/manager</p> <p>By: _____ Dora Leong Gallo, President and Chief Officer</p> <p>Executive</p>
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<p>APPROVED AS TO FORM: SONIA CARVALHO AUTHORITY GENERAL COUNSEL</p> <p>By: _____ Ryan O. Hodge, Assistant City Attorney</p> <p>Date _____</p>	<p><b><u>LESSOR</u></b></p> <p>HOUSING AUTHORITY OF THE CITY OF SANTA ANA ACTING AS THE HOUSING SUCCESSOR AGENCY a public body, corporate and politic</p> <p>By: _____ Steven A. Mendoza, Executive Director</p> <p>Date _____</p>
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Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

APPROVED AS TO FORM: COUNTY COUNSEL  By: _____ Deputy  Date _____	COUNTY OF ORANGE, a political subdivision of the State of California  _____ Thomas A. Miller, Chief Real Estate Officer Orange County, California
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**Washington Santa Ana Housing Partners, L.P.**

18201 Von Karman Avenue, Suite 900 Irvine, CA 92612

P: (949) 660-7272

January 31, 2020

Mr. Judson Brown  
Housing Division Manager  
City of Santa Ana  
Community Development Agency  
20 Civic Center Plaza M-25, P.O. Box 1988  
Santa Ana, California 92702

RE: Acceptance of terms of Option Agreement and Ground Lease

Mr. Brown,

Washington Santa Ana Housing Partners, L.P., the California limited partnership formed by The Related Companies of California, LLC and A Community of Friends, has reviewed and accepted the terms of the Option Agreement and the Ground Lease.

If you have any questions, please don't hesitate to call me at (949) 660-7272.

Washington Santa Ana Housing Partners, L.P.,  
a California limited partnership

By: Related/Washington Santa Ana Development Co., LLC,  
a California limited liability company,  
its Administrative General Partner

By:   
Name: Liane Takano  
Title: Authorized Signatory

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

**Exhibit A**  
**Legal Description of the Premises**

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

That certain parcel of land situated in the City of Santa Ana, County of Orange, State of California, being that portion of Parcel 1 of Parcel 73035 described in the Grant Deed recorded July 24, 1991, Instrument No. 91-387576 of Official Records, together with that portion of Parcel 73034 described in the Grant Deed recorded November 15, 1991, Instrument No. 91-626431 of Official Records, lying southwesterly and westerly of those three (3) courses and the Northwesterly extension of course Three (3) thereof, in the State Right of Way as shown on a map filed in Book 194, pages 28 through 36 inclusive of Record of Surveys in said Office of said County Recorder, said Three (3) courses being shown on sheet 2 of said map as:

- 1) North 21° 00' 58" West 286.98';
- 2) North 32° 46' 23" West 157.90';
- 3) North 25° 03' 45" West 62.42'.

EXCEPTING THEREFROM: That portion of above said Parcel 1, lying within the limits of the Washington Avenue Cul-De-Sac as shown on said Sheet 2 of said Map.

APN: 398-092-14

That portion of the land allotted to Maria Ygnacia Alvarado De Moreno, as described in the final decree of partition of the Rancho Santiago De Santa Ana, which was entered September 12, 1868 in Book "B" Page 410 of Judgments of the District Court of the 17th Judicial District, in and for Los Angeles County, California, described as follows:

Beginning at a point 1584.0 feet north and 301.05 feet west of an iron axle set at the intersection of the centerlines of Fourth Street and Grand Avenue; thence North 717.80 feet; thence West 606.90 feet; thence South 717.80 feet; thence East 606.90 feet to the point of beginning.

EXCEPTING THEREFROM: That portion lying southeasterly of the northwesterly line of that certain 104.00 foot strip of land described in Parcel A of Deed to the City of Santa Ana, recorded June 25, 1970 in Book 9327, page 72 of Official Records.

ALSO EXCEPTING THEREFROM: That portion described as Parcel C in said Deed to the City of Santa Ana.

ALSO EXCEPTING THEREFROM: That portion conveyed in the deed to the State of California recorded January 10, 1992, Instrument 92-15188 of Official Records.

APN: 398-092-13

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



POR. S 1/2, NE 1/4, SEC. 7, T 5 S, R 9 W

RE-SUB OF DEAN'S ADD  
PARCEL MAP R.S. 1-21  
P.M. 162-18

NOTE - ASSESSOR'S BLOCK &  
PARCEL NUMBERS  
SHOWN IN CIRCLES

ASSESSOR'S MAP  
BOOK 398 PAGE 09  
COUNTY OF ORANGE

80A-276

398-0

**EXHIBIT B  
INITIAL IMPROVEMENTS**

The proposed Project includes the development of two residential buildings with 86 units surrounding two interior, landscaped courtyard/amenity spaces. The Project includes 16 studio units, 26 one bedroom units, 22 two-bedroom units, 17 three-bedroom units, and 5 four-bedroom units. All units will be flat apartments located on the first, second, third and fourth floors. In addition, a proposed sound wall is being positioned along the eastern property line adjacent to the US Interstate 5 ramp. Approximately 3,500 square foot of interior community amenities and leasing offices is designed to accommodate supportive and management services.

The Project will be 100% affordable to households earning no more than 30 percent of Area Median Income (AMI) for Orange County of which 43 units will be set-aside for Permanent Supportive Housing (PSH), with one exempt 2-bedroom managers unit. 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 County Loan 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	16			16
One-Bedroom	26			26
Two-Bedroom	1	20	1	22
Three-Bedroom		17		17
Four-Bedroom		5		5
<b>TOTAL</b>	<b>43</b>	<b>42</b>	<b>1</b>	<b>86</b>

**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  
MEMORANDUM OF LEASE

This is a Memorandum of Lease (“Memorandum”) made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the County of Orange, a political subdivision of the State of California, the Housing Authority of the City of Santa Ana, a public body, corporate and politic (collectively, the “Lessor”) and \_\_\_\_\_, (“Tenant”), residing at \_\_\_\_\_, upon the following terms:

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

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

3. **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 be Sixty-Five (65) years from the Effective Date as stated in the written Lease. The Term shall commence on the date hereof and terminate Sixty-Two (62) years from the Commencement Date, which is the date on which a Certificate of Occupancy is issued for the Project, provided, however the Term shall be no longer than sixty five (65) years from the Effective Date.

5. **Duplicate Copies** of the originals of the Lease are in the possession of the Lessor 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 Lessor and Tenant are as follows:

If to Lessor: 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

And to:  
  
Housing Authority of the City of Santa Ana  
20 Civic Center Plaza (M-26)  
P.O. Box 1988  
Santa Ana, California 92702  
Attn: Housing Manager

With a copy to: Office of the City Attorney  
City of Santa Ana  
20 Civic Center Plaza, 7th Floor (M-29)  
Santa Ana, California 92702

If to Tenant: c/o The Related Companies of California, LLC  
19201 Von Karman Avenue, Suite 900  
Irvine, CA 92612  
Attention: President

c/o A Community of Friends  
3701 Wilshire Boulevard, Suite 700  
Los Angeles, CA 90010  
Attention: Dora Leong Gallo

And to:

With a copy to: Bocarsly Emden Cowan Esmail & Arndt LLP  
633 W. 5th Street, 64th Floor  
Los Angeles, CA 90071  
Attention: Lance Bocarsly, 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 Lessor 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: \_\_\_\_\_

**AGENCY:**

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

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

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

**TENANT:**

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

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

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

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

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

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

## RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE HOUSING AUTHORITY OF THE CITY OF SANTA ANA GRANTING CONSENT TO THE ORANGE COUNTY HOUSING AUTHORITY TO ADMINISTER PROJECT-BASED VOUCHERS IN THE CITY OF SANTA ANA**

**WHEREAS**, the Housing Authority of the City of Santa Ana ("Agency") is a California housing authority duly organized and existing under the California Housing Authorities Law, Part 2 of Division 24, Section 34200, et seq., of the Health and Safety Code ("HAL"), and has been authorized to transact business and exercise the power of a California housing authority pursuant to action of the City Council ("City Council") of the City of Santa Ana; and

**WHEREAS**, on July 2, 2019, the Agency authorized the Executive Director of the Agency and the Recording Secretary to execute a pre-commitment letter with the Related Companies of California to enter into negotiations for a sixty-two (62) year ground-lease of 1126 E. Washington Ave for the development of the Crossroads at Washington affordable housing project located at 1126 and 1146 E. Washington Avenue, Santa Ana, CA 92701 (APNs 398-092-13 and 398-092-14) ("Project"); and

**WHEREAS**, on July 2, 2019, the City of Santa Ana authorized the City Manager and the Clerk of the Council to execute a pre-commitment letter with the Related Companies of California for \$3,971,440 in affordable housing funds consisting of \$963,951 in Neighborhood Stabilization Program funds and \$3,007,489 in HOME Investment Partnerships Program funds, for the development of the Crossroads at Washington affordable housing project located at 1126 and 1146 E. Washington Avenue, Santa Ana, CA 92701 (APNs 398-092-13 and 398-092-14); and

**WHEREAS**, California Health and Safety Code Section 34209 allows the Orange County Housing Authority to allocate and administer Project-Based Vouchers in the City of Santa Ana with the consent of the City Council of the City of Santa Ana; and

**WHEREAS**, the Orange County Housing Authority intends to administer Project-Based Vouchers in the City of Santa Ana for the development of the Crossroads at Washington affordable housing project located at 1126 and 1146 E. Washington Avenue, Santa Ana, CA 92701 (APNs 398-092-13 and 398-092-14); and

**WHEREAS**, the Project is vital to and in the best interest of City and the health, safety and welfare of its residents, and is in accordance with the public purposes of applicable state and local laws.

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSING AUTHORITY OF THE CITY OF SANTA ANA:**

**Section 1.** The City Council finds and determines that the foregoing recitals are true and correct and are a substantive part of this Resolution.

**Section 2.** The City Council hereby grants consent to the Orange County Housing Authority to administer project-based vouchers in the City of Santa Ana for the development of the Project.

**Section 3.** This Resolution shall take effect immediately upon its adoption by the Housing Authority, and the Clerk of the Council shall attest to and certify the vote adopting this Resolution.

ADOPTED this \_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Miguel A. Pulido  
Mayor

APPROVED AS TO FORM:  
Sonia R. Carvalho, City Attorney

  
\_\_\_\_\_  
Ryan O. Hodge  
Assistant City Attorney

AYES: Councilmembers: \_\_\_\_\_  
NOES: Councilmembers: \_\_\_\_\_  
ABSTAIN: Councilmembers: \_\_\_\_\_  
NOT PRESENT: Councilmembers: \_\_\_\_\_

**CERTIFICATE OF ATTESTATION AND ORIGINALITY**

I, Daisy Gomez, Clerk of the Council, do hereby attest to and certify the attached Ordinance No. NS-XXXX to be the original ordinance adopted by the City Council of the City of Santa Ana on \_\_\_\_\_, 2019.

Date: \_\_\_\_\_

\_\_\_\_\_  
Clerk of the Council  
City of Santa Ana

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

**MEMORANDUM OF AGREEMENT  
BETWEEN THE COUNTY OF ORANGE AND THE CITY OF SANTA ANA  
REGARDING REGIONAL HOUSING NEEDS ALLOCATIONS FOR FUTURE  
HOUSING ELEMENT PLANNING PERIODS**

This Memorandum of Agreement ("MOU") between the County of Orange, a political subdivision of the State of California ("County") and the City of Santa Ana, a chartered city and municipal corporation ("City"), is dated, for the convenience of the parties, as the first date upon which it is executed by both the County and the City, as shown by the signatures of their authorized representatives below, and the various obligations established hereby shall take effect as provided herein.

**RECITALS**

A. The City and County have entered into a Joint Powers Agreement dated as of \_\_\_\_\_, 2020 ("**Agreement**") regarding the future development of multiple parcels of land in the City of Santa Ana comprising approximately 2.28 acres and commonly referred to as the Crossroads at Washington site (APNs 398-092-13 and 398-092-14, as and hereafter, the "**Property**"). The Property is depicted in greater particularity on Exhibit A hereto. The City has approved a development proposal for the Property (the "**Project**") which proposal is more particularly described in those certain documents entitled "PRE-COMMITMENT LETTER" dated July 2, 2019.

B. To further support of this Project, Orange County Board of Supervisors approved a loan in the amount of \$2,280,701 on February 25, 2020, toward the completion of 43 units within the Project.

C. The Orange County Board of Supervisors, acting as the Board of Commissioners to the Orange County Housing Authority, also approved the use of 43 Project-Based Housing Choice Vouchers on February 25, 2020, to further assist in the success of this Project.

D. The County desires to rely on housing proposed as part of the Project to meet certain affordable housing obligations imposed on the County by state law. Pursuant to Article 10.6 (the "**Housing Element Law**") (Government Code sections 65580 - 65589.8) of Chapter 3 of the Planning and Zoning Law, the Southern California Association of Governments ("**SCAG**") periodically adopts and assigns a Regional Housing Needs Assessment ("**RHNA**") allocation for each county and city in the County of Orange, including Orange County and the City of Santa Ana. Under the Housing Element Law, each city and county must periodically revise the housing element of its general plan utilizing the latest RHNA allocation adopted by SCAG. The next required revision to the housing elements of the City and County is designated as the sixth required revision by Government Code Section 65588, and is identified by SCAG as the 2021-2029 housing element planning period ("**2021-29 Planning Period**").

E. The Agreement between the City and County provides in Section 6 that the City and County may enter into a RHNA allocation transfer agreement as allowed under Government Code Section 65584.07 or any successor statute ("**Section 65584.07**") providing for

the transfer to the City of Santa Ana of some share of the County's RHNA allocation obligation for the sixth housing element planning period, provided that certain requirements of the Agreement are satisfied. This MOU is intended by the County and the City to serve as the RHNA allocation transfer agreement contemplated by Section 6 of the Agreement as may be amended pursuant to Section 14 of this agreement and to attain approval by SCAG.

- F. Approval of the Project and successful implementation of the MOU will allow the County to meet its RHNA for the 2021-29 Planning Period and obtain a certified housing element. This MOU provides for RHNA allocation transfers from the County to the City in the 2021-29 Planning Period.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, the Parties hereto mutually agree as follows:

1. Housing Site. The City has identified the specific portion of the Property zoned Transit Village (TV) in the Transit Zoning Code (the "**Housing Site**"), as shown in Exhibit B hereto, as an available site for housing in its 2021-2029 housing element, and intends to issue, upon application, residential building permits for construction of 85-units of extremely low-income housing on the Housing Site during the 2021-29 Planning Period, while the Housing Site remains in the City's jurisdiction, in order to satisfy the City's RHNA allocation obligation for the 2021-29 Planning Period. The City will receive RHNA credit for all of the units on the Housing Site.

2. Transfer of RHNA Allocation Shares.

- a. Very Low-Income Unit Transfer. For the 2021-29 RHNA Planning Period (or as that planning period may be adjusted by SCAG, the Department of Housing and Community Development, or statute), upon SCAG's adoption of a final RHNA, the County and City shall jointly apply to SCAG to transfer 20 units from the County's RHNA allocation to the City. This would result in a reduction of the County's RHNA allocation of very-low units by 20 units and an increase to the City's RHNA allocation of very-low units by 20 units, as provided for and in conformance with the requirements of Government Code section 65584.07. Accordingly, upon SCAG's approval, the City's RHNA allocation of very -low units will increase by 20 units and the County's RHNA allocation of very -low units shall decrease by 20 units, as allowed under Government Code section 65584.07. For purposes of this paragraph, "very low-income units" shall mean units where the household income for eligibility to live in the unit does not exceed 30% of the local area median income (AMI) as established by state and federal law.
- b. Moderate Unit Transfer. Additionally, the County's RHNA allocation of moderate-income units shall be reduced proportionally in conformance with the requirements of Government Code section 65584.07. To fulfill the obligations set forth in Government Code section 65584.07, the County and City shall jointly apply to SCAG to transfer 22 moderate units from the County's RHNA allocation to the City. This would result in a reduction of to reduce the County's RHNA

allocation of moderate units by 22 units and to an increase to the City's RHNA share allocation of moderate units by 22 units of the County's original RHNA allocation. Accordingly, upon SCAG's approval, the City's share of its RHNA allocation of moderate units will increase by 22 units of the County's original allocation and the County's RHNA allocation of moderate will decrease by 22 units of the County's original allocation. For purposes of this paragraph, "moderate units" shall mean units where the household income for eligibility to live in the unit does not exceed 120% of the local area median income (AMI) as established by state and federal law.

- c. The Parties agree that the land and financial commitments found in the Recitals to assist in the success of the Project is full and adequate consideration for the RHNA allocation transfers contemplated in this Section 2.

3. RHNA Methodologies; Parties Obligations. SCAG may determine the City and County's RHNA for the 2021-2029 Planning Period and subsequent revisions of the housing element in one of two ways. SCAG may make the determination based on its methodology adopted under Government Code Section 65584.04. Upon SCAG's adoption of a final RHNA, the County and City shall jointly apply to SCAG to reduce the County's RHNA allocation as described in Section 2., above, and to increase the City's RHNA allocation as described in Section 2., above.

4. Cooperation. The City and County shall take all steps reasonably necessary to comply with the Government Code section 65584.07 to implement this MOU, including but not limited to, providing the appropriate documentation to SCAG or any other agency, as required. The parties agree to work together to obtain SCAG and any other approval where required to effectuate this MOU. City further agrees that it will utilize the revised RHNA allocation that includes the transfer of RHNA shares contemplated by this MOU in preparing the City's 2021-2029 Planning Period and subsequent housing element revisions, as applicable.

5. Indemnification. City shall, to the extent permitted by law, indemnify, defend, and hold harmless the County and its officers, agents, and employees, from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon the negligence or wrongful act or omission of City or its City Council, boards and commissions, officers, agents, volunteers, or employees, in approving this MOU.

County shall, to the extent permitted by law, indemnify, defend, and hold harmless the City and its officers, agents, and employees, from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorney's fees), resulting from, arising out of, or based upon the negligence or wrongful act or omission of County or its Board of Supervisors, committees and commissions, officers, agents, volunteers, employees, in approving this MOU.

6. Time. Time is of the essence in this MOU.

7. Management. Except as otherwise provided in this MOU, the approval of both the City and County shall be required for decisions regarding management and disposition of the Joint Property.

8. Successors and Assigns. This MOU shall be binding upon and shall inure to the benefit of the County and City and their respective heirs, personal representatives, successors and assigns. Neither Party shall have the right to assign this MOU or any interest or right under this MOU without the prior written consent of the other Party.

9. No Attorneys' Fees. In any action between the Parties to interpret, enforce, award, modify or rescind any of the terms or provisions of this MOU, or any action otherwise commenced or taken in connection with this MOU, both Parties shall be responsible for their respective litigation costs and attorneys' fees, except as provided in Section 5, above, regarding indemnity.

10. Jurisdiction and Venue. This MOU shall be construed under the laws of the State of California in effect at the time of the signing of this MOU. The Parties consent to the jurisdiction of the California courts with venue in County of Orange.

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

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

13. No Waiver. A waiver by either Party of a breach of any of the covenants, conditions or agreements under this MOU to be performed by the other Party shall not be construed as a waiver of any such breach or succeeding breach or of the same or other covenants, agreements, restrictions or conditions of this MOU.

14. Modifications. Any alteration, change or modification of or to this MOU, to become effective, shall be made in writing and in each instance signed on behalf of each Party.

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

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

17. Counterparts. This MOU may be signed in multiple counterparts which, when signed by all Parties, shall constitute a binding agreement.

18. Notices. Any notice requirement set forth herein shall be in writing and delivered to the appropriate party at the address listed in this subparagraph. Addresses for notice may be changed from time to time by written notice to the other party. All communications shall be effective when actually received; provided, however, that nonreceipt of any communication as the result of a change in address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

To County: County of Orange  
 Attn: County Executive Office, Real Estate  
 333 W. Santa Ana Boulevard, 3<sup>rd</sup> Floor  
 Santa Ana, CA 92701

To City: City of Santa Ana  
 Attn: Housing Manager  
 20 Civic Center Plaza (M-26)  
 P.O. Box 1988  
 Santa Ana, California 92702

IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be executed by their respective governing bodies on the dates set forth opposite their signatures.

COUNTY:

COUNTY OF ORANGE, a political subdivision of the State of California

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

Dated: \_\_\_\_\_

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

Title: Chairwoman, Board of Supervisors

APPROVED AS TO FORM:  
OFFICE OF COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

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

*No further  
revisions  
are warranted.  
1/31/2020  
x [Signature]  
Barbara Bauer*

SIGNED AND CERTIFIED THAT A  
COPY OF THIS DOCUMENT HAS  
BEEN DELIVERED TO THE CHAIRWOMAN  
OF THE BOARD PER GC § 25103, RESO. 79-1535

Attest:

\_\_\_\_\_  
ROBIN STIELER  
Clerk of the Board of Supervisors  
of Orange County, California

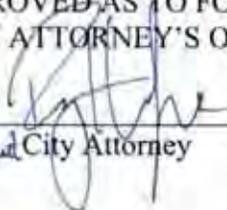
CITY:

CITY OF SANTA ANA, a municipal corporation and charter city

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

Dated: \_\_\_\_\_

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

By:  \_\_\_\_\_  
Assistant City Attorney

ATTEST:

By: \_\_\_\_\_  
City Clerk

**Exhibit A**  
**[PROPERTY LEGAL DESCRIPTION]**

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

**Exhibit A**  
**Legal Description of the Premises**

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

That certain parcel of land situated in the City of Santa Ana, County of Orange, State of California, being that portion of Parcel 1 of Parcel 73035 described in the Grant Deed recorded July 24, 1991, Instrument No. 91-387576 of Official Records, together with that portion of Parcel 73034 described in the Grant Deed recorded November 15, 1991, Instrument No. 91-626431 of Official Records, lying southwesterly and westerly of those three (3) courses and the Northwesterly extension of course Three (3) thereof, in the State Right of Way as shown on a map filed in Book 194, pages 28 through 36 inclusive of Record of Surveys in said Office of said County Recorder, said Three (3) courses being shown on sheet 2 of said map as:

- 1) North 21° 00' 58" West 286.98';
- 2) North 32° 46' 23" West 157.90';
- 3) North 25° 03' 45" West 62.42'.

EXCEPTING THEREFROM: That portion of above said Parcel 1, lying within the limits of the Washington Avenue Cul-De-Sac as shown on said Sheet 2 of said Map.

APN: 398-092-14

That portion of the land allotted to Maria Ygnacia Alvarado De Moreno, as described in the final decree of partition of the Rancho Santiago De Santa Ana, which was entered September 12, 1868 in Book "B" Page 410 of Judgments of the District Court of the 17th Judicial District, in and for Los Angeles County, California, described as follows:

Beginning at a point 1584.0 feet north and 301.05 feet west of an iron axle set at the intersection of the centerlines of Fourth Street and Grand Avenue; thence North 717.80 feet; thence West 606.90 feet; thence South 717.80 feet; thence East 606.90 feet to the point of beginning.

EXCEPTING THEREFROM: That portion lying southeasterly of the northwesterly line of that certain 104.00 foot strip of land described in Parcel A of Deed to the City of Santa Ana, recorded June 25, 1970 in Book 9327, page 72 of Official Records.

ALSO EXCEPTING THEREFROM: That portion described as Parcel C in said Deed to the City of Santa Ana.

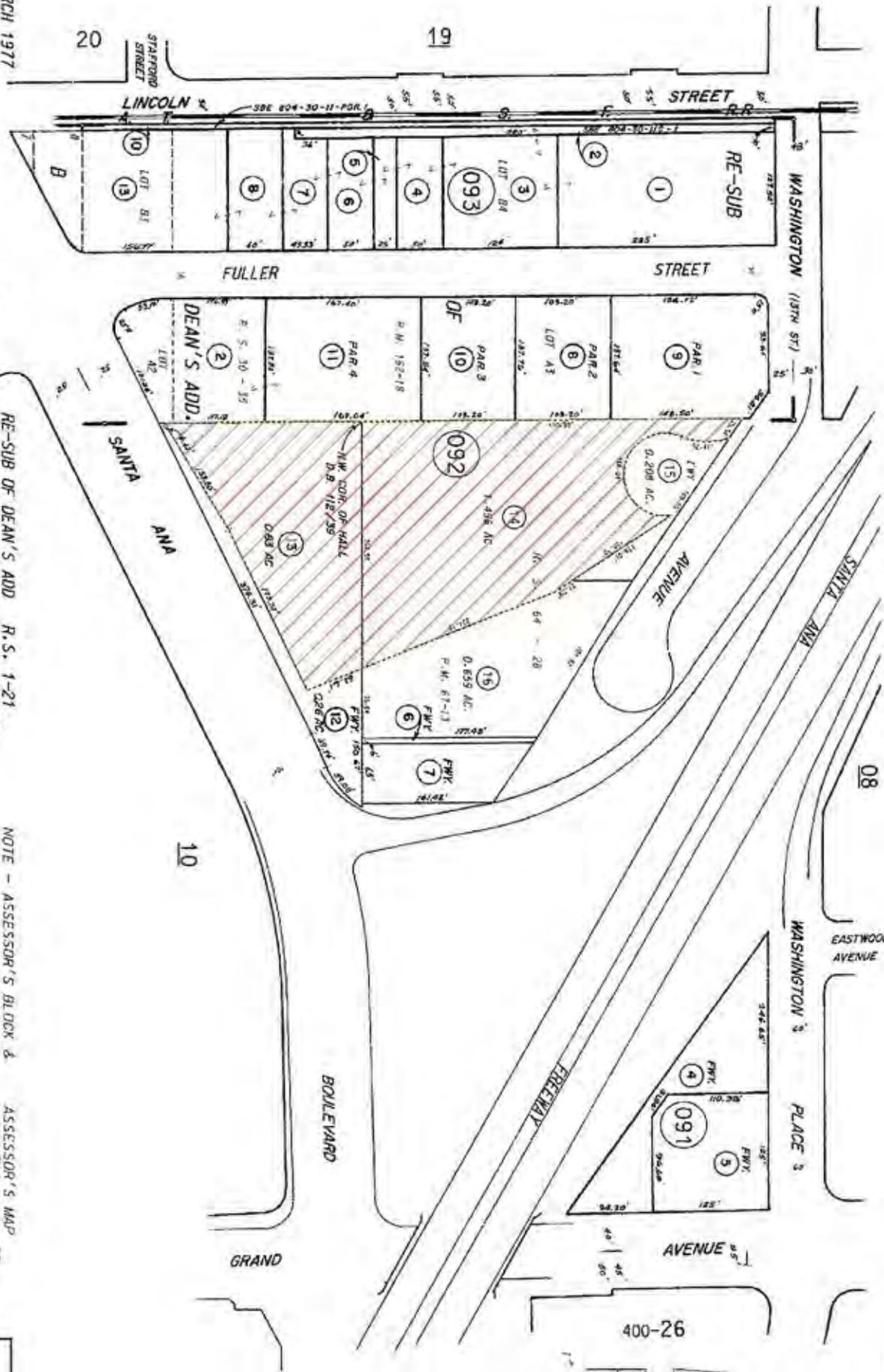
ALSO EXCEPTING THEREFROM: That portion conveyed in the deed to the State of California recorded January 10, 1992, Instrument 92-15188 of Official Records.

APN: 398-092-13

**Exhibit B**  
**[HOUSING SITE DESCRIPTION]**

Attachment: Minute Order and City of Santa Ana staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

MARCH 1977



POR. S 1/2, NE 1/4, SEC. 7, T 5 S, R 9 W

RE-SUB OF DEAN'S ADD R.S. 1-21  
PARCEL MAP P.M. 162-18

NOTE - ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES ASSESSOR'S MAP BOOK 398 PAGE 09 COUNTY OF ORANGE

80A-295

398-0

**SUBSTANTIAL AMENDMENT TO THE CITY OF SANTA ANA  
NEIGHBORHOOD STABILIZATION PROGRAM (NSP 1, 2 and 3)**

The City of Santa Ana recommends a "Substantial Amendment" to the Neighborhood Stabilization Program 1, 2, and 3 (NSP) to reallocate funds to a newly added activity.

The City of Santa Ana is proposing to:

- Add the Crossroads at Washington affordable housing project as a new NSP Activity.
- Reallocate \$963,951 in NSP 1, 2 and 3 funds to the Crossroads at Washington affordable housing project.

The proposed use of NSP 1, 2 and 3 funds will allow the City to increase the housing stock and provide suitable housing for low and moderate-income residents. In particular, the funds will be used to complete the development of the Crossroads at Washington affordable housing project. Due to the project's development costs, the project requires funding from the NSP Program. The reallocation and obligation of NSP 1, 2, and 3 dollars to this project will allow the developer to secure their remaining financing, including Low-Income Housing Tax Credits, needed to complete the project.

Attached is a "New Activity" sheet providing a detailed description of the Crossroads at Washington affordable housing project.

**NEW ACTIVITY**

(1) Activity Name: Crossroads at Washington Affordable Housing Project

(2) Activity Type:

NSP Eligible Use:	Redevelopment
NSP Eligible Property:	Vacant Property
Eligible Activity:	New Construction Activities (24 CFR 570.201(d))
Specific Activity:	Construct new affordable housing development

(3) National Objective:

24 CFR 570.208(a)(3) – LMMH - Rent the residential property to family at or below 120% AMI.

(4) Projected Start Date: December 2020

(5) Projected End Date: February 2023

(6) Responsible Organization:

City of Santa Ana  
 Community Development Agency - Housing Division  
 20 Civic Center Plaza  
 Post Office Box 1988  
 Santa Ana, CA 92702  
 Attn: Judson Brown, Hosing Division Manager  
 Tel: (714) 667-2241  
[jbrown@santa-ana.org](mailto:jbrown@santa-ana.org)

(7) Location Description:

The Crossroads at Washington affordable housing project is located at 1126 and 1146 E. Washington Avenue, Santa Ana, CA 92701 (APNs 398-092-13 and 398-092-14).

(8) Activity Description:

The proposed project will consist of a new transit-oriented affordable housing community on 2.28 acres located at 1126 and 1146 Washington Avenue and the County of Orange parcel directly to the south of 1126 and 1146 Washington Avenue. The site is currently vacant, and positioned within walking distance from the Santa Ana Regional Transportation Center — a key transit hub for not only Orange County, but all of Southern California. The Project site is on two (2) contiguous undeveloped parcels, one fronting E. Washington Avenue on the northern half of the site (Housing Authority-owned parcel) and one parcel directly south of the Housing Authority-owned

parcel (County-owned parcel). The five original buildings located on the site were demolished in the 1990s by CalTrans during a freeway-widening project. As a vacant and undeveloped site, there is an opportunity to imagine a newly designed site that will truly meet the needs of the local community. The entire site is designated District Center (DC) in the City of Santa Ana 1998 General Plan and zoned Transit Village (TV) in the Transit Zoning Code. The proposed Project includes the development of one residential building, subdivided into three (3) residential portions, with 86 units surrounding two interior landscaped courtyard and amenity spaces. Developed at an overall density of 37.7 units per acre, there will be 16 studios, 26 one-bedroom units, 22 two-bedroom units, 17 three-bedroom units, and 5 four-bedroom units. All units will be apartments located on the first, second, and third floors.

(9) Total Budget:

This Activity will use \$963,951 in NSP 1, 2 and 3 Program funds.

(10) Performance Measures

The Project will be 100% affordable to households earning no more than 30 percent of Area Median Income (AMI) of which 43 units will be set - aside for Permanent Supportive Housing, with one exempt 2-bedroom manager’s unit. The large bedroom units align with the City’s priorities and needs while the Permanent Supportive Housing units meets the County’s priorities. The proposed unit mix and rent restrictions are as follows:

Bedroom Size	30% AMI (PSH)	30% AMI	Manager’s Unit	Total Units
Studios	16			16
One-Bedroom	26			26
Two-Bedroom	1	20	1	22
Three-Bedroom		17		17
Four-Bedroom		5		5
<b>TOTAL</b>	<b>43</b>	<b>42</b>	<b>1</b>	<b>86</b>

**ORANGE COUNTY BOARD OF SUPERVISORS**

**Acting as the Board of Supervisors and Orange County Housing Authority Acting as Housing Agency and Acting as the Orange County Housing Authority**

**MINUTE ORDER**

**February 25, 2020**

Submitting Agency/Department: OC COMMUNITY RESOURCES

Acting as the Board of Supervisors - Approve Option Agreement and Ground Lease Agreement with Washington Santa Ana Housing Partners, L.P. for development of The Crossroads at Washington, Santa Ana; authorize Chief Real Estate Officer or designee to execute Option Agreement, Ground Lease and related documents and amendments; approve the Crossroads at Washington Joint Powers Agreement with the City of Santa Ana to facilitate tenants-in-common ownership; approve Memorandum of Agreement with City of Santa Ana for transfer of Regional Housing Needs Assessment shares and authorize OC Public

Continued on attached page...

**The following is action taken by the Board of Supervisors:**

APPROVED AS RECOMMENDED  OTHER

**Unanimous**  (1) DO: Y (2) STEEL: Y (3) WAGNER: Y (4) CHAFFEE: Y (5) BARTLETT: Y

*Vote Key: Y=Yes; N=No; A=Abstain; X=Excused; B.O.=Board Order*

**Documents accompanying this matter:**

- Resolution(s) 20-008
- Ordinances(s)
- Contract(s)

Item No. 7

Special Notes:

Copies sent to:

OCCR – Dylan Wright  
Thomas Miller



I certify that the foregoing is a true and correct copy of the Minute Order adopted by the Board of Supervisors, Acting as the Board of Supervisors and Orange County Housing Authority Acting as Housing Successor Agency and Acting as the Orange County Housing Authority, Orange County, State of California.  
Robin Stieler, Clerk of the Board

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

**ORANGE COUNTY BOARD OF SUPERVISORS**  
**MINUTE ORDER**  
**February 25, 2020**

**The following is action taken by the Board of Supervisors:**

APPROVED AS RECOMMENDED  OTHER

**Unanimous**  (1) DO: Y (2) STEEL: Y (3) WAGNER: Y (4) CHAFFEE: Y (5) BARTLETT: Y

*Vote Key: Y=Yes; N=No; A=Abstain; X=Excused; B.O.=Board Order*

Works Director or designee to execute agreement under certain conditions; adopt resolution making related findings; and make California Environmental Quality Act and other findings; Acting as the Board of Supervisors and the Housing Successor Agency - authorize OC Community Resources Director or designee to utilize HOME Investment Partnership Act funds and/or Orange County Housing Successor Agency funds for permanent loan financing and to execute subordination agreements, loan documents and other related documents; approve loan commitment to a limited partnership to be formed by The Related Companies of California, LLC and A Community of Friends as co-general partners (\$2,280,701); approve subordination of permanent financing to an amortized first trust deed permanent loan (\$3,204,000); and Acting as the Orange County Housing Authority - approve selection of The Crossroads at Washington for utilization of 43 project based Housing Choice Vouchers; and authorize Executive Director to execute related documents - District 1

Item No. 7



I certify that the foregoing is a true and correct copy of the Minute Order adopted by the Board of Supervisors, Acting as the Board of Supervisors and Orange County Housing Authority Acting as Housing Successor Agency and Acting as the Orange County Housing Authority, Orange County, State of California.  
Robin Stieler, Clerk of the Board

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



AGENDA STAFF REPORT

Agenda Item

7

ASR Control 20-000060

MEETING DATE: 02/25/20
LEGAL ENTITY TAKING ACTION: Board of Supervisors and Orange County Housing Authority
BOARD OF SUPERVISORS DISTRICT(S): 1
SUBMITTING AGENCY/DEPARTMENT: OC Community Resources (Approved)
DEPARTMENT CONTACT PERSON(S): Dylan Wright (714) 480-2788
Thomas Miller (714) 834-6019

SUBJECT: The Crossroads at Washington Loan Request and Lease

Table with 3 columns: CEO CONCUR (Concur), COUNTY COUNSEL REVIEW (Approved Agreement to Form), CLERK OF THE BOARD (Discussion, 3 Votes Board Majority)

Budgeted: Yes Current Year Cost: \$2,280,701 Annual Cost: N/A

Staffing Impact: No # of Positions: Sole Source: N/A

Current Fiscal Year Revenue: N/A

Funding Source: See Financial Impact Section County Audit in last 3 years: No

Prior Board Action: 07/16/2019 #28, 12/18/2018 #24, 04/24/2018 #38, 11/10/2015 #26

RECOMMENDED ACTION(S):

- 1. Find that the subject activity is not a project within the meaning of CEQA Guidelines Section 15378 and is therefore not subject to review under CEQA.
2. Approve the Option Agreement with Washington Santa Ana Housing Partners, L.P. to conduct due diligence and obtain entitlements for the development of The Crossroads at Washington, an 86-unit affordable housing development in the City of Santa Ana, and authorize the Chief Real Estate Officer or designee to execute the Option Agreement in substantial conformance with the attached form with approval of County Counsel, for an up to a 36-month term.
3. Approve the Ground Lease Agreement with Washington Santa Ana Housing Partners, L.P. for a 65-year term, to plan, design, fund, construct, renovate, market, operate, manage and maintain The Crossroads at Washington property, and authorize the Chief Real Estate Officer or designee to execute the Ground Lease Agreement in substantial conformance with the attached form, with approval of County Counsel, upon fulfillment of the conditions set forth in the Option Agreement.
4. Approve The Crossroads at Washington – Joint Powers Agreement By and Between the County of Orange and the Housing Authority of the City of Santa Ana necessary to facilitate tenants-in-common ownership for the joint development of the County-owned property (APN 398-092-13) and Housing Authority-owned property (APN 398-098-14) underlying the proposed Crossroads

at Washington project and execute the Joint Powers Agreement in substantial conformance with the attached form, with approval of County Counsel.

5. Approve the Memorandum of Agreement Between the County of Orange and the City of Santa Ana Regarding Housing Needs Allocations for Future Housing Element Planning Periods to provide an agreement for the transfer of Regional Housing Needs Assessment allocation shares between the County and City of Santa Ana and authorize the Director of OC Public Works or designee to execute the Memorandum of Agreement in substantial conformance with the attached form and subject to no substantive changes, with approval of County Counsel, upon the final release of Regional Housing Needs Assessment by the Southern California Association of Governments.
6. Authorize the Chief Real Estate Officer or designee to sign any and all necessary documents related to the process of entitling and developing the property underlying the proposed Crossroads at Washington project as set forth in the Option Agreement, Ground Lease Agreement, Joint Powers Agreement and Memorandum of Agreement, including any documents necessary for the merger of the City of Santa Ana and County properties and minor modifications and amendments to the agreements that do not materially alter the terms or financial obligations to the County, with approval of County Counsel, and perform all activities specified under the terms of these agreements.
7. Adopt the Resolution making certain findings pursuant to Government Code 26227 related to the approval of the Option Ground Lease with Washington Santa Ana Housing Partners, L.P. for the construction, entitlement, operation, maintenance and management of The Crossroads at Washington on City- and County-owned property located at 1126 E. Washington Avenue, Santa Ana.

Acting as the Board of Supervisors and as the Board of Commissioners to the Orange County Housing Authority, acting in its capacity as Housing Successor Agency:

8. Authorize the OC Community Resources Director or designee to utilize HOME Investment Partnership Act funds and/or Orange County Housing Successor Agency funds for permanent loan financing to a limited partnership to be formed by The Related Companies of California, LLC and A Community of Friends for the development of The Crossroads at Washington, an 86-unit affordable housing development in the City of Santa Ana, pursuant to the 2016 Permanent Supportive Housing Notice of Funding Availability Addendum 1.
9. Approve the loan commitment to a limited partnership to be formed by The Related Companies of California, LLC and A Community of Friends, as co-general partners, in an amount not to exceed \$2,280,701, subject to contingencies outlined in this Agenda Staff Report.
10. Approve subordination at permanent financing of the \$2,280,701 permanent loan to an amortized first trust deed permanent loan of \$3,204,000 as set forth in this Agenda Staff Report and authorize the OC Community Resources Director or designee to subordinate to additional senior debt up to 100 percent of the cumulative loan-to-value based on the as-built appraised market value, if necessary, based on any future changes in project financing, including refinancing of the project at the expiration of the tax credits.
11. Authorize the OC Community Resources Director or designee to execute subordination agreements; standard set of loan documents and restrictive covenants; and such additional

agreements, contracts, instructions and instruments necessary or appropriate for permanent loan financing.

Acting as the Board of Commissioners to the Orange County Housing Authority:

12. Approve the selection of The Crossroads at Washington for utilization of 43 Project-Based Housing Choice Vouchers in accordance with the policies and procedures identified in the Orange County Housing Authority Administrative Plan and authorize the execution of related documents, instruments and agreements.
13. Authorize the Executive Director of the Orange County Housing Authority to execute any document related to the commitment of the U.S. Department of Housing and Urban Development Project-Based Housing Choice Vouchers, which incorporate the business and financial terms set forth in this Agenda Staff Report in a form as approved by County Counsel.

**SUMMARY:**

Approval of the various agreements for disposition of the property located at 1126 E. Washington Avenue, Santa Ana, and approval of the County permanent loan, subordination of that loan at permanent financing and commitment of Project-Based Housing Choice Vouchers will facilitate the development of the affordable housing project, The Crossroads at Washington.

**BACKGROUND INFORMATION:**

On November 10, 2015, the Board of Supervisors (Board) approved issuance of the 2016 Permanent Supportive Housing Notice of Funding Availability (2016 PSH NOFA). The objective of the 2016 PSH NOFA was to provide up to \$8 million in HOME Investment Partnership Act (HOME) funds and/or Orange County Housing Successor Agency (HSA) funds and up to 100 Project-Based Vouchers (PBV) for the acquisition, new construction and acquisition/rehabilitation of supportive housing for extremely low-income households who are experiencing homelessness in Orange County. The 2016 PSH NOFA is one of the strategies implemented by the County of Orange (County) to align resources to end homelessness through the development of supportive housing. On April 24, 2018, the Board approved the issuance of Addendum 1 to this 2016 PSH NOFA, which increased the amount of funding by \$4 million, to a total of \$12 million, under this NOFA. The Addendum 1 also increased the number of Veterans Affairs Supportive Housing (VASH) and/or Housing Choice Vouchers (HCV) by 100, to a total of 200 vouchers, and approved modifications including, but not limited to, increases to the per unit subsidy limits for projects located in participating cities. On December 18, 2018, the Board approved an additional increase in funding by another \$2 million, to a new combined total of \$14 million in HOME and/or HSA funds and the utilization of up to 50 additional VASH vouchers.

On July 16, 2019, the Board selected The Related Companies of California, LLC (Developer) for the lease and development of the County owned property for an affordable housing project to be known as the Crossroads at Washington project (Project), and authorized the Chief Real Estate Officer to negotiate an option agreement and ground lease agreement with the Developer, as well as a joint powers agreement (JPA) with the Housing Authority of the City of Santa Ana (Authority) and transfer agreement of Regional Housing Needs Assessments allocations between the City of Santa Ana (City) and the County

## **Option Agreement**

CEO Real Estate and City staff have worked closely to finalize the terms of an Option Agreement with the Developer (Attachment A). The Option Agreement has an option term of 36 months for a one-time cost of \$36. The Developer is required to satisfy a number of conditions within the Option Agreement during the option term in order to exercise its rights to ground lease the property underlying this development. These conditions include: submittal and approval of preliminary plans detailing the development; compliance with environmental requirements for the development; approval of general plan conformity; submittal of construction drawings after approval of funding by the California Tax Credit Allocation Committee; approval of permits necessary to commence construction; and compliance with pre-condition to the ground lease agreement.

## **Lease Agreement**

Upon satisfaction of the conditions set forth in the Option Agreement above, the Developer will be entitled to enter into the Ground Lease negotiated between the County/City and the Developer (Attachment B). The Ground Lease has a term of 65 years, but the obligation to pay rent will arise upon the receipt of a certificate of occupancy for the Project once construction is completed and continue for a period of 62 years. The additional period of time prior to the rent commencement date will provide the Developer time to construct the Project.

The Developer is obligated to pay ground lease payments to the County structured as capitalized ground rent. These capitalized ground rent payments are estimated to be a minimum of \$2,341,864, with 3 percent simple interest, which will be repaid out of the Project's residual receipts after the repayment of the County/OC Community Resources (OCCR) loan to be approved herein and described below. This revised capitalized ground rent payment figure is based upon an appraisal of the County's property. These amounts will be secured by a promissory note on the Project Site and be repaid through a share of the Project's residual receipts to be paid to the County and OCCR, respectively. Keyser Marston Associates estimates that with the 62-year term both the County/OCCR loan and the ground rent can be fully repaid.

## **Joint Powers Agreement**

The property (Property) underlying this Project is comprised of two adjacent parcels, one owned by the Authority and the other owned by the County. Developing an affordable housing project across two parcels with different ownership presents unique challenges from a development, legal and lending perspective. As a result, the City and County agreed on a joint ownership of the parcels through a tenants in common (TIC) ownership structure to be governed by the JPA (Attachment C). Upon satisfaction of the conditions set forth in the Option Agreement, each landowner will execute a quitclaim to merge the parcels into one parcel owned jointly by the County and Authority, and to convey a proportional property interest in the respective parcels into a jointly held TIC ownership structure. The City will act as the lead agency for processing the entitlements required for this development. This TIC structure will result in a jointly owned Property with title to be held individually to the extent of each party's proportional interest in the combined two parcels. The County parcel is 36.3 percent and City parcel is 63.7 percent of the Property. Subsequently, one ground lease agreement with the County and City as TIC will then be entered into with the Developer for the site development.

## **Memorandum of Agreement**

The Project is located within the incorporated City. However, the County desires to rely on the Project to meet certain affordable housing obligation imposed on the County by state law. The JPA set forth above

provides that the City and County may enter into a Regional Housing Needs Assessment (RHNA) allocation transfer agreement, as allowed under Government Code section 65584.07, providing for the transfer to the City of some share of the County's RHNA allocation obligation for the sixth housing element planning period. Accordingly, the City and County drafted the enclosed Memorandum of Agreement (Agreement) between the County and City to provide for this allocation (Attachment D). This Agreement is conditioned upon approval by the Southern California Association of Governments (SCAG). If approved, the Agreement would result in reduction of the County's RHNA allocation of extremely low-income units by 20 units and increase the City's RHNA share of extremely low-income units by 20 units from the County's original RHNA allocation. The County's RHNA allocation of moderate-income units would also be reduced by 22 and the City's RHNA share of the moderate income units would increase proportionally in accordance with state law. SCAG's approval could have a beneficial impact upon the County's RHNA allocations established by SCAG.

## **Funding**

The Developer responded to the 2016 PSH NOFA Addendum 1 with a funding application for an 86-unit affordable rental housing development. The Project will be located at 1126 and 1146 E. Washington Avenue in the City. The site consists of two adjacent, irregular, vacant parcels currently owned by the City and the County, which will be leased to the limited partnership owner through a 65-year ground lease. The parcels were purchased by the City and County from Caltrans as part of an I-5 freeway widening project and have a combined 2.286 acres.

The Project is the proposed new construction of a four-story apartment community consisting of 86 units (85 rental units), of which 43 units are set aside for formerly homeless households. The Project will consist of 16 studio units, 26 one-bedroom units, 21 two-bedroom units, 17 three-bedroom units, five four-bedroom units and one two-bedroom manager's unit. Rents for all of the rental units will be set at 30 percent of Area Median Income (AMI). The Orange County Housing Authority (OCHA) Project-Based HCVs are requested under the 2016 PSH NOFA Addendum 1 for 16 studio units, 26 one-bedroom units and one two-bedroom unit.

The Developer was established in 1989 and is an experienced developer, owner and operator of affordable and mixed-income housing. The Developer has developed over 11,000 housing units, including over 1,300 units in Orange County, and currently has more than 1,750 affordable units in pre-development throughout California. The Co-Developer and Lead Service Provider, A Community of Friends (ACOF), is a nonprofit affordable housing developer, manager and service provider with over 30 years of experience. ACOF focuses on the provision of supportive housing and provides wide-ranging on-site support services including individual case management, referral services, life skills classes, substance abuse recovery assistance, family support and programming, childcare assistance, transportation assistance and employment services. ACOF has developed 49 multi-family housing developments with over 2,000 units throughout Southern California.

## **Permanent Financing and Project-Based Housing Choice Vouchers**

The Developer is requesting permanent loan financing under the 2016 PSH NOFA Addendum 1 in the amount of \$2,280,701 to be available to the project after construction has been completed, a Certificate of Occupancy has been issued and conditions placed on the loan have been satisfied. The County loan will be subordinate to financing as outlined in financial summary below. To encumber funds per the U.S. Department of Housing and Urban Development (HUD) and/or HSA fund requirements, OCCR intends to close the loan at construction closing but fund at permanent loan closing. OCCR is requesting authorization to subordinate to additional senior debt up to 100 percent of the cumulative loan-to-value

based on the as-built appraised market value, if necessary, based on any future changes in project financing. In determining the maximum additional senior debt to which the County will subordinate its loan, OCCR will calculate the senior debt plus the County loan and subtract that total from the current (within last six months) as-built appraised market value. If the current as-built appraised market value exceeds the cumulative senior debt plus the County loan, the County may subordinate to additional senior debt, if necessary, for the viability of the project.

Additionally, the Developer is requesting 43 Project-Based HCVs to be available to the Project after construction is completed and a Certificate of Occupancy is issued. The value of the 43 HCVs for the 15-year period is estimated to be \$11,940,660 based on the current OCHA Voucher Payment Standard and anticipated Utility Allowance. The final contract rents for the Project-Based HCVs shall be determined by the Housing Authority of the City. These Project-Based HCVs will be guaranteed for 15 years, consistent with HUD regulations, and the OCHA Administrative Plan will provide rent subsidies to 43 of the apartments funded under the 2016 PSH NOFA Addendum 1.

The following financial summary highlights the Permanent Financing phase of the Project:

<b>Sources of Funds</b>	<b>Total</b>
Permanent Loan	\$3,204,000
County NOFA Loan	\$2,280,701
County Land Loan	\$2,341,864
City Residual Receipts Loan (Land Value)	\$4,108,136
City Residual Receipts Loan (Other Public Subsidies)	\$3,971,440
Tax Credit Proceeds	\$25,571,547
<b>Total Development Costs</b>	<b>\$41,477,688</b>

#### **County Loan Terms and Project-Based Vouchers:**

Permanent Loan:	\$2,280,701
Interest Rate:	3 percent simple
Term:	55 years
Security:	Second and/or Third Deed of Trust
Payments:	Residual Receipts

The County will record rent and occupancy restrictions on 16 studio units, 26 one-bedroom units and one two-bedroom unit to households experiencing homelessness earning at or below 30 percent AMI for a term of 55 years. An additional 43 units will be restricted by the City, other lenders or the Tax Credit Allocation Committee to households with incomes at or below 30 percent AMI.

Funding of the County loan and commitment of the Project-Based HCVs is contingent upon the following:

1. Receipt and approval of a Phase 2 Environmental Report, and any additional environmental testing and reports, if needed;
2. Review and approval of the terms and conditions of subordinated residual receipts loans from the City;
3. Evidence of commitment of all construction and permanent financing sources;
4. Receipt and approval of final project development costs;
5. Execution of an Option for Ground Lease between the County, the Housing Authority of the City and the Developer;

6. Execution of a JPA between the County and the Housing Authority of the City;
7. Formation of a limited partnership; and
8. Approval of entitlements and any and all local approvals by the City.

The Project Advisory Committee of the Housing & Community Development Commission concurred with staff recommendations at their January 15, 2020, meeting.

This Project is part of the concerted effort to develop the System of Care. Approval of this loan request and project-based voucher award will contribute to the efforts on building a responsive System of Care in Orange County that provides permanent housing solutions that meet the needs of the homeless populations. The proposed Project has the opportunity to end homelessness by providing supportive housing to 43 formerly homeless households. Additionally, the creation of 86 affordable housing units provides housing stability and security for households with extremely low income. The supportive housing units in this Project are part of the 2,700 permanent supportive housing units identified in the Housing Funding Strategy to address housing needs for senior individuals and households experiencing homelessness. As such, these 43 units of new supportive housing will contribute to the progress of this Countywide effort.

**Compliance with CEQA:** This action is not a project within the meaning of CEQA Guidelines Section 15378 and is therefore not subject to CEQA, since it does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The approval of this agenda item does not commit the County to a definite course of action in regards to a project since it is for the approval of the County permanent loan, commitment of 43 Project-Based HCVs, and subordination of the County loan to senior debt for the Project, which will support the development of supportive housing in Orange County. This proposed activity is therefore not subject to CEQA. Any future action connected to this approval that constitutes a project will be reviewed for compliance with CEQA through the entitlement process with the City, as required by the Option Agreement.

**Compliance with NEPA:** Per 24 CFR Part 58, an Environmental Assessment of the project was completed and the Authority to Use Grant Funds was issued by the U.S. Department of Housing and Urban Development on December 29, 2019 for HOME funds and on December 31, 2019 for Project-Based Rental Subsidy Vouchers.

## **FINANCIAL IMPACT:**

### **Lease Revenue:**

The Developer is proposing to pay capitalized ground rent payments for the County Site, estimated to be \$2,341,864, with 3 percent simple interest, from residual receipts after the repayment of the County/OCCR loan.

### **Loan:**

Existing appropriations can absorb encumbering the funds in the current fiscal year to be paid upon issuance of the Certificate of Occupancy. This loan will be funded with 100 percent HOME Investment Partnership Act in OC Housing Fund 15G and/or in Housing Asset Fund 170. The 43 Project-Based HCVs available to recipients is funded 100 percent by federal HUD funding and can be absorbed with existing appropriations within OC Housing Authority Fund 15F.

**STAFFING IMPACT:**

N/A

**ATTACHMENT(S):**

Attachment A - Option Agreement

Attachment B - Ground Lease Agreement

Attachment C - Crossroads at Washington – Joint Powers Agreement By and Between the County of Orange and the Housing Authority of the City of Santa

Attachment D - Memorandum of Agreement Between the County of Orange and the City of Santa Ana Regarding Housing Needs Allocations for Future Housing Element Planning Periods

Attachment E - Government Code § 65584.07

Attachment F - Resolution



**OPTION AGREEMENT**

THIS OPTION AGREEMENT (“**Option Agreement**”) is made \_\_\_\_\_, 2020, (“**Effective Date**”) by and between the COUNTY OF ORANGE, a political subdivision of the State of California, the HOUSING AUTHORITY OF THE CITY OF SANTA ANA, a public body, corporate and politic, (respectively, the “**County**” and the “**Agency**,” and collectively “**Optionor**”) and WASHINGTON SANTA ANA HOUSING PARTNERS, L.P., a California limited partnership (hereinafter called “**Optionee**”). Optionor and Optionee may sometimes hereinafter individually be referred to as “**Party**” or jointly as “**Parties.**”

**Recitals**

- A. County and Agency are owners of contiguous parcels of land totaling approximately 2.26 acres located in Santa Ana, California, comprised of the two following lots: Assessor’s Parcel Number 398-092-14 (“**Agency Property**”); and Assessor’s Parcel Number 398-092-13 (“**County Property**”).
- B. The Agency and County desire to merge these two parcels for the purpose of executing a ground lease (“**Lease**”) for the combined property to Optionor, to create an 86-unit multifamily affordable housing project with a permanent supportive housing component (“**Project**”).
- C. Optionee desires to obtain an option to lease the combined Agency Property and County Property, once merged, as set forth on Attachment I, attached hereto and made a part hereof (“**Premises**”), to develop and construct the Project.
- D. The final negotiated form of the Lease is attached hereto as Attachment II and will more fully describe the Project and other permitted uses.
- E. Optionor is the fee owner of the Premises and is willing to enter into an option to lease said Premises for the Project as set forth herein.

NOW, THEREFORE the Parties agree as follows:

**1. DEFINITIONS (PM02.1 S)**

- a. “**Board of Supervisors**” means the Board of Supervisors of the County of Orange, a political subdivision of the State of California, the governing board of the County.
- b. “**Agency**” means the Housing Authority of the City of Santa Ana, acting as the Housing Successor Agency, a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the California Redevelopment Law. The principal office of the Agency is located at 20 Civic Center Plaza, Santa Ana, California 92702. “Agency” shall also refer to the City of Santa Ana where the context dictates, to the effect that the City of Santa Ana shall have all rights granted to the Agency hereunder.
- c. “**City**” shall mean the City of Santa Ana, California, a charter city and municipal corporation. “City” shall also refer to the Agency where the context dictates, to the effect that the Agency

Attachment: Minute Order and County of Orange staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

shall have all the rights granted to the City hereunder. **“City Council”** shall mean the City Council of the City of Santa Ana.

- d. **“County”** means the County of Orange, a political subdivision of the State of California. Any reference to the County herein, unless expressly stated to the contrary, shall refer to the County solely in its capacity as owner of the Premises and not the County in its capacity as a land use or other governmental approval authority.
- e. **“Lease”** means that certain Ground Lease including any and all addenda, amendments and exhibits attached hereto as **Attachment II**.
- f. **“Premises”** means that certain real property containing approximately 2.28 acres of undeveloped land in the City of Santa Ana, made up of the Agency Property and the County Property, together with all easements, rights and privileges appurtenant thereto, to be leased to Optionee pursuant to the Lease for the development of the Project, as more fully set forth therein. The map of the Premises is attached hereto as **Attachment I**.

## 2. **OPTION (PM03.1 S)**

Optionor hereby grants Optionee the option (**“Option”**) to lease said Premises in accordance with the covenants and conditions set forth herein. For purposes of clarification and for the purpose of this Option Agreement, the Agency is specifically providing an Option on the Agency Property and the County is specifically providing an Option on the County Property, as more fully set forth herein.

## 3. **TERM (PM05.1 S)**

The term of this Option Agreement shall be thirty-six (36) calendar months (**“Option Term”**) and shall commence on the Effective Date shown above.

If at any point during the Option Term the Optionee has failed to act diligently and in good faith to obtain funding or to plan and permit the Project pursuant to Section 5, below, the Optionor, using reasonable discretion, may terminate this Option Agreement, with fifteen (15) days written notice to Optionee setting forth the reasons for such termination. If during such fifteen (15) day period the Optionee is able to cure any issues indicated in the notice of termination, this Option Agreement may be reinstated by the Optionor and shall remain in full force and effect.

## 4. **OPTION PRICE (PM04.2 N)**

The price of the Option granted herein is \$36 (**“Option Price”**), which shall be paid to Optionor prior to the Effective Date.

The Option Price shall be retained by Optionor in consideration for the granting of the Option. No portion of the Option Price shall be refunded or credited to rent payments under the Lease.

## 5. CONDITIONS (PM07.1 N)

The Option may not be exercised until the following terms and conditions shall have been met. Each time a condition has been met Optionor shall, upon written request therefor from Optionee, provide written confirmation that such condition has been satisfied.

### A. Preliminary Plans

Within one hundred eighty (180) days following the Effective Date of this Option Agreement, and not less than five (5) business days before Optionee intends to submit such documents to the City, Optionee shall submit preliminary plans for the development and use of the Premises for the Project (“**Preliminary Plans**”), for Optionor’s approval. The preliminary plans shall be prepared by an architect licensed in the State of California and shall include:

- 1) A detailed site plan of the Premises showing:
  - a. all improvements planned for the Premises
  - b. any existing and/or proposed easements affecting the Premises
  - c. ingress and egress to and from the Premises
  - d. parking
  - e. location of all utilities
  - f. drainage plan
  - g. grade elevations of all structures;
- 2) Detailed landscape development plans;
- 3) Colored rendering or model of the planned development;
- 4) A detailed cost estimate of all improvements; and
- 5) A detailed estimate of the construction schedule.

Within ten (10) business days of receipt of the Preliminary Plans, the Optionor will provide Optionee with written comments, if any, on the Preliminary Plans. The Optionor’s review shall be limited only to reviewing plans for conformity with this Option Agreement and impacts on flood control operations and shall not provide any representations or warranties regarding the sufficiency of the plans for the required land use approvals or for construction.

### B. Environmental Requirements

Concurrently with or prior to the submission of the Preliminary Plans to the Agency, Optionee shall submit to the City a draft Initial Study, with a copy to the Optionor, prepared at Optionee’s expense, in order for the City to determine whether a Negative Declaration or an Environmental Impact Report will be necessary for the proposed development. Such determination will be made in accordance with the City’s normal procedures.

If the City determines that a Negative Declaration is appropriate, Optionee shall submit all necessary documentation and cooperate with the City in order to provide the Optionor with written proof of environmental clearance on the Project from the appropriate governmental authority.

If an Environmental Impact Report is mandated by the City, Optionee shall obtain a screen check Environmental Impact Report and draft Environmental Impact Report at its own expense and shall process same in accordance with the City's procedure. Optionee shall, prior to commencement of any construction on the Premises, provide supporting documentation to Optionor, evidencing that Optionee has received environmental clearance on the Project from the appropriate authority governing this matter

C. General Plan Conformity

Optionee shall request a finding from the City that the proposed development is in conformance with the City's General Plan pursuant to Government Code Section 65402 and provide written evidence of such conformity to the Optionor.

D. Construction Contract Documents

Within ninety (90) days following the Optionee's receipt of a commitment from the California Tax Credit Allocation Committee of an award of tax credits for Optionee's proposed development of the Premises, and not less than five (5) business days before Optionee intends to submit such documents to the Agency, Optionee shall submit to the Optionor construction contract documents ("**Construction Contract Documents**") and cost estimates for development of the Premises. Such Construction Contract Documents shall consist of the following:

- 1) Complete architectural, landscape, and engineering working drawings;
- 2) Outline unit specifications;
- 3) Construction contract form; and
- 4) Construction schedule.

Within ten (10) business days of receipt of the Construction Contract Documents, the Optionor will provide Optionee with written comments, if any, on the Construction Contract Documents. If Optionor provides any comments within such ten (10) day period, then, to the extent reasonable, Optionee shall endeavor to address Optionor's comments with respect to the Construction Contract Documents during the approval process with the City.

E. Permits and Approvals.

Optionor shall not unreasonably withhold consent to any application by Optionee with respect to any permits or approvals related to activities or development plans approved by Optionor in accordance with this Option Agreement which may be required by any governmental or regulatory agency.

Optionee shall provide Optionor with satisfactory evidence that Optionee has met all City requirements, as applicable, and has obtained all necessary clearances and grading permits from the City to commence construction of the planned development as preliminarily approved by the Optionor.

Optionee acknowledges and agrees that no grading, or other construction activities shall be permitted on the Premises until all applicable permits and clearances have been obtained from the City.

F. Lease Requirements

Optionee shall submit to the Optionor:

- 1) Satisfactory evidence of Optionee's ability to finance the cost of the development planned for said Premises in accordance with the requirements of the Lease, which may be evidenced by commitments from the Optionee's tax credit investor and the lenders providing acquisition and construction financing for Optionee's proposed development of the Premises. If Optionee plans to hypothecate the leasehold as security for a loan, Optionee shall submit substantially final versions of all documents proposed in the loan transaction along with a request for Optionor's consent to the proposed hypothecation in accordance with the terms of the Lease, which consent shall not be unreasonably withheld.
- 2) Evidence that, when the Lease is executed, Optionee will provide assurances of construction completion in accordance with the Lease, or a letter of intent bond that is sufficient to assure Optionor that a bond is forthcoming consistent with the Lease, or Lessee will provide a completion guaranty in accordance with the Lease.
- 3) Evidence of insurance coverage which will be available when the Lease is executed and which fully complies with the Lease.

**6. REVIEW BY COUNTY AND AGENCY (PM08.1 N)**

Optionee hereby acknowledges that one of the purposes of this Option Agreement is to afford Optionee and Optionor the opportunity to determine whether Optionee is able to meet the various conditions of this Option Agreement and is able to obtain the required approvals as set forth in this Option Agreement. Several of those conditions involve obtaining reviews and approvals from officers, employees or agents of the Optionor, and/or the City. Each of those reviews shall be conducted in an independent manner and nothing contained herein shall be deemed to limit the jurisdiction or authority otherwise possessed by said officers, employees or agents in the conduct of such review.

Nothing contained in this Option Agreement shall be deemed to imply that required approvals will be forthcoming, and the failure to issue any such approval or permit by any officer, employee or agent of the County, and/or the City shall not be deemed in any manner a breach of this Option Agreement, nor shall any such denial give rise to any claim, liability, obligation, or cause of action with respect to this Option Agreement or the Lease.

No permit, approval, or consent given by the County, and/or the City, or their officers, employees, or agents, acting in its/their governmental capacity, shall affect or limit Optionee's obligations under this Option Agreement or under the Lease, nor shall any approvals or consents given under this Option Agreement by Optionor, as a Party hereto, be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, and/or regulations.

**7. DISCLAIMER OF REPRESENTATIONS OF WARRANTIES (PM015.1 N)**

Optionee agrees that Optionor has made no representations, warranties, or agreements as to any matters concerning the Premises, including, but without being limited to, the land, marketability of title, topography, climate, air, water, water rights, utilities, present or future zoning, soil, subsoil, hazardous substances, waste or materials, the purposes for which the Premises is suited, drainage, access to public roads, proposed routes of roads or extensions thereof or the availability of governmental permits or approvals of any kind. Optionee represents and warrants to Optionor that it and its representatives and employees have made or will make their own independent inspection and investigation of such matters concerning the Premises.

**8. OPTIONEE'S RIGHT TO ENTER PREMISES, INDEMNIFICATION (PM09.1.1 N)**

During the Option Term the Optionee and its employees, contractors, subcontractors, consultants, and agents (collectively, "**Consultants**") shall have the right, at Optionee's sole cost and expense, to enter onto the Premises at reasonable times to make such investigations of the Premises as the Optionee deems necessary for Optionee to prepare the hereinabove-described Preliminary Plans and Construction Contract Documents and in order to determine if the Premises is suitable for Optionee's intended development, including but not limited to invasive testing, geotechnical testing, and "Phase I" and/or "Phase II" investigations of Premises. The Optionee shall provide the Optionor with notice at least one (1) business day prior to the date of any intended entry onto the Premises. After making such tests and inspections, the Optionee shall promptly restore the Premises to its condition prior to such tests and inspections and shall provide the Optionor with any written reports delivered to Optionee as a result of such tests and inspections, but without any representation as to accuracy or the Optionor's right to rely on such reports.

Optionee hereby agrees to indemnify Optionor and hold Optionor, its officers, employees and agents harmless from any loss, claims, liability, or costs arising out of or incurred by reason of such investigation; provided, however, such indemnification shall not apply to any loss, claims, liability or costs arising out of Optionee's discovery of Hazardous Materials (as such term is defined in the form of Ground Lease) on the Premises not brought to the Premises by Optionee. Whether or not this option terminates or expires, Optionee agrees to repair any and all damages caused to the Premises by reason of any such investigation or investigations, which obligation shall not include remediation of any Hazardous Materials unless such Hazardous Materials were brought to the Premises by Optionee or unless Optionee agrees to move forward with such remediation after its environmental assessment of the Property. In no case shall Optionor be responsible for the costs associated with any such remediation required for the Project.

As a condition to any entry onto the Premises, Optionee shall provide evidence of insurance as stated in Section 11, entitled Insurance.

**9. OMITTED**

**10. HOLD HARMLESS (PMGE10.1 S)**

Optionee hereby releases and waives all claims and recourse against Optionor, 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 the activities of the Optionee or anyone acting for or under the direction of the Optionee under this Option Agreement except and to the extent of claims arising from the negligence or misconduct of Optionor, its officers, agents, and employees. Optionee hereby agrees to indemnify, defend (with counsel

approved in writing by Optionor), and hold harmless, Optionor, 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 (collectively, “**Claims**”), arising out of the Optionee’s exercise of the rights under this Option Agreement, except and to the extent of liability arising out of the negligence or misconduct of Optionor, its elected and appointed officials, officers, agents, or employees, including the cost of defense of any lawsuit arising therefrom. If Optionor is named as co-defendant in a lawsuit with respect to a Claim for which the Optionee has an indemnity obligation under this section, Optionee shall notify Optionor of such fact and shall represent Optionor in such legal action unless Optionor undertakes to represent itself as co-defendant in such legal action, in which event, Optionee shall pay to Optionor its reasonable litigation costs, expenses, and attorneys' fees. If judgment is entered against Optionor and Optionee by a court of competent jurisdiction because of the concurrent negligence or misconduct of Optionor and Optionee, Optionor and Optionee agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

Optionee 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 that 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.*

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

## 11. INSURANCE (PM09.2.2S)

### A. General Requirements

Optionee agrees to purchase all required insurance at Optionee’s expense and to deposit with the Optionor certificates of insurance, including all endorsements required herein, necessary to satisfy Optionor that the insurance provisions of this Option Agreement have been complied with and to keep such insurance coverage and the certificates and endorsements therefor on deposit with Optionor during the entire term of this Option Agreement and any extension thereof.

The Option shall terminate if Optionee’s insurance coverage is terminated and Optionee has failed to reinstate such insurance within five (5) business days after termination

Optionee agrees that Optionee 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 Optionor. In no cases shall assurances by Optionee, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Optionor will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. Optionee also agrees that upon cancellation, termination, or expiration of Optionee’s insurance, Optionor may take whatever steps are necessary to interrupt any operation from or on the Premises until such time as the Optionor reinstates the Option.

If Optionee fails at any time during the term of the Option to provide Optionor with a valid certificate

of insurance and endorsements, or binder, Optionor and Optionee agree that this shall constitute a material breach of this Option Agreement. Said material breach shall permit Optionor to take whatever steps 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 Optionee's employees and agents, from entering the Premises until such time as Optionor is provided with evidence of insurance required herein. Optionee further agrees to hold Optionor 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 Optionor's action.

All contractors performing work on behalf of Optionee pursuant to this Option Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for Optionee. Optionee shall not allow any contractor to work if the contractor has less than the level of coverage required by Optionor from the Optionee under this Option Agreement. It is the obligation of the Optionee to provide written notice of the insurance requirements to the 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 Optionee through the entirety of this Option Agreement and be available for inspection by an Optionor representative at any reasonable time.

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, and the City of Santa Ana Risk Manager ("Risk Manager") upon review of Optionee's current audited financial report. If Optionee's SIR is approved, Optionee, in addition to, and without limitation of, any other indemnity provision(s) in this Option, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County and City harmless against any and all liability, claim, demand or suit resulting from Optionee's, its agents, employee's or subcontractor's performance of this Agreement, Optionee shall defend the County and City at its sole cost and expense with counsel approved by Board of Supervisors and City of Santa Ana against same; and
  - 2) Optionee'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 Optionee's SIR provision shall be interpreted as though the Optionee was an insurer and the County and City were the insureds.
- If the Optionee fails to maintain insurance acceptable to Optionor for the full term of this Option Agreement, Optionor may terminate this Option Agreement, subject to the reinstatement rights above, if any, set forth above in this section.

#### B. Qualified Insurer

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

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

C. Minimum Limits

The policy or policies of insurance maintained by the Optionee shall provide the minimum limits and coverage as set forth below:

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

D. Coverage Forms

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.

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.

E. Required Endorsements. The following endorsements must be submitted with the Certificate of Insurance

- 1) The Commercial General Liability policy shall contain an Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the County their respective elected and appointed officials, officers, employees, and agents as Additional Insureds and the City of Santa Ana, its officers, employees, agents and representatives as Additional Insureds with respect to General Liability and Auto Liability per the attached endorsements or as required by written contract.

The Commercial General Liability policy shall contain a primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form as least as broad, evidencing that the Optionee's insurance is primary and any insurance or self-insurance maintained by the

Optionor shall be excess and non-contributing

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

All insurance policies required by this contract shall waive all rights of subrogation against the Optionor, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Optionee shall notify Optionor 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 Optionor. Failure to provide written notice of cancellation may constitute a material breach of this Option upon which the Optionor may suspend or terminate this Option.

- 3) For the City, the Certificate Holder must specifically read:

City of Santa Ana  
Risk Management Division, 4<sup>th</sup> Floor  
20 Civic Center Plaza  
Santa Ana, CA 92702

- 4) The Contractor's Pollution Liability policy shall contain the following endorsements and language, which shall accompany the Certificate of Insurance:
- A) An Additional Insured endorsement naming the County of Orange, City of Santa Ana, and their respective elected and appointed officials, officers, employees and agents as Additional Insureds.
- B) A primary and non-contributing endorsement evidencing the Optionee's insurance is primary and any insurance or self-insurance maintained by the County of Orange and City of Santa Ana shall be excess and non-contributing; and,
- C) If Optionee's Contractor's Pollution Liability policy is a claims-made policy, Optionee shall agree to maintain coverage for two (2) years following termination of the Option.

F. Severability of Interest Clause - Commercial General Liability

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).

G. Delivery

Insurance certificates should be forwarded to Optionor address provided in Section 16 (Notices) below or to an address provided by the Optionor. Optionee has ten (10) business days to provide adequate evidence of insurance or this Option Agreement may be cancelled.

H. Insurance Requirement Changes

Optionor expressly retains the right to reasonably require Optionee to increase or decrease insurance

of any of the above insurance types throughout the term of this Option Agreement. Any increase or decrease in insurance will be as deemed by the County and City Risk Manager as appropriate to adequately protect Optionor.

Optionor shall notify Optionee in writing of changes in the insurance requirements. If Optionee does not deposit copies of acceptable certificates of insurance and endorsements with Optionor incorporating such changes within thirty (30) days of receipt of such notice, this Option Agreement may be in breach without further notice to Optionee, and Optionor shall be entitled to all legal remedies.

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

## **12. ASSIGNMENT (PM010.1 S)**

The Optionee may assign its right, title and interest in and to this Option Agreement to an affiliated nonprofit public benefit corporation, or to a limited partnership whose general partner is a nonprofit corporation or limited liability company affiliated with the Optionee, subject to the Optionor's right to reasonably approve the agreement to effect such assignment. Otherwise, this Option Agreement shall not be sold, assigned, or otherwise transferred without the prior written consent of Optionor, which consent may be withheld in the Optionor's sole and absolute discretion. Failure to obtain Optionor's approval of the assignment agreement or required written consent, as applicable, shall render said sale, assignment, or transfer void.

If Optionee hereunder is a corporation or an unincorporated association or partnership, the sale, transfer, or assignment of any stock or interest in said corporation, association, or partnership in the aggregate exceeding twenty-five percent (25%) shall be deemed an assignment within the meaning of this clause.

## **13. EXERCISE OF OPTION TO LEASE (PM011.1 S)**

At any time during the Option Term that Optionee shall have performed all conditions as set forth in Section 5 (Conditions) of this Option Agreement, Optionee may exercise the Option by giving Optionor written notice of election to do so, accompanied by properly executed copies of the Lease in triplicate. County and Agency hereby represent and warrant that concurrent with execution of this Option Agreement, County and Agency have entered into that certain Crossroads at Washington - Joint Powers Agreement ("JPA") and such agreement is in full force and effect.

## **14. EXECUTION OF LEASE & MERGER OF PARCELS (PM012.1 N)**

After confirmation that the Optionee has performed all conditions as set forth in Section 5 (Conditions) of this Option Agreement, Optionor shall execute any and all documents necessary to merge the Premises under a tenants-in-common ownership structure and execute the Lease within fourteen (14) days of receipt of Optionee's notice of election to exercise the Option and receipt of the Lease executed by Optionee.

## **15. TERMINATION (PM014.1 S)**

Failure of Optionee to fully and satisfactorily meet the terms and conditions of this Option Agreement within the time limits stated shall absolutely and conclusively terminate Optionee's rights hereunder.

Concurrent with execution of this Option Agreement, the Optionee shall execute, acknowledge, and deliver to Julie Massey, Escrow Officer, Old Republic Title Company, 555 - 12th Street, Suite 2000, Oakland, California 94607 (the "Escrow Holder") a quitclaim deed, in a form as approved by the Optionor, quitclaiming all right title and interest created by this Option Agreement back to the Optionor ("**Quitclaim Deed**"). In the event of termination of this Option Agreement for any reason, Optionor shall be entitled to instruct the Escrow Holder to record the Quitclaim Deed; provided, however, that County shall first deliver to Optionee at least five (5) days' prior to written notice of its intention to authorize Escrow Holder to record the Quitclaim Deed. Optionee shall be responsible for all costs associated with such escrow.

## 16. NOTICES (PM018.1 N)

All notices, documents, correspondence and communications concerning this Option Agreement shall be addressed as set forth in this Section 16, or as the Parties may hereafter designate by written notice, and shall be sent through the United States mail, return receipt requested or with other proof of delivery, with postage prepaid, by personal delivery, Federal Express or similar courier service. Notices so given shall be deemed to have been given upon receipt.

### TO OPTIONOR:

County of Orange  
c/o CEO Real Estate  
ATTN: Thomas Miller, Chief Real Estate  
Officer  
333 W. Santa Ana Blvd, 3rd Floor  
Santa Ana, CA 92702  
Email: [thomas.miller@ocgov.com](mailto:thomas.miller@ocgov.com)  
Phone: 714/834-3046

And to:  
Housing Authority of the City of Santa Ana  
20 Civic Center Plaza (M-26)  
P.O. Box 1988  
Santa Ana, California 92702  
Attn: Housing Manager

With a copy to:

Office of the City Attorney  
City of Santa Ana  
20 Civic Center Plaza, 7th Floor (M-29)  
Santa Ana, California 92702

### TO OPTIONEE:

c/o The Related Companies of California, LLC  
19201 Von Karman Avenue, Suite 900  
Irvine, CA 92612  
Attention: President

c/o A Community of Friends  
3701 Wilshire Boulevard, Suite 700  
Los Angeles, CA 90010  
Attention: [Dora Leong Gallo, President and  
Chief Executive Officer](#)

With a copy to:

Bocarsly Emden Cowan Esmail & Arndt LLP  
633 W. 5th Street, 64th Floor  
Los Angeles, CA 90071  
Attention: Lance Bocarsly, Esq.

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; except that notices required under Section 8 prior to Optionee's access onto the Premises may be given just by email

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.

#### **17. VENUE (PMES13.1S)**

The Parties hereto agree that this Option Agreement 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 Option Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in the County of Orange, 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.

#### **18. SEVERABILITY (PMES15.1S)**

If any term, covenant, condition, or provision of this Option Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

#### **19. ATTORNEYS' FEES (PMES16.1S)**

In any action or proceeding brought to enforce or interpret any provision of this Option Agreement, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney fees and costs.

#### **20. SUCCESSORS AND ASSIGNS (PMES18.1S)**

The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of the Parties hereto.

#### **21. AUTHORITY (PMES20.1S)**

The Parties to this Option Agreement represent and warrant that it has been duly authorized and, once executed, will constitute the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

#### **22. ENTIRE AGREEMENT (PM017.1 S)**

This instrument contains the entire agreement between the Parties relating to the Option granted herein and all negotiations and agreements between the Parties hereto or their agents with respect to this transaction are merged herein. Any oral representations, modifications, or waivers concerning this instrument shall be of no force and effect, except in a subsequent instrument made in writing and signed by both Parties. Time is of

the essence in the performance of the Parties' respective obligations herein contained. Subject to the restrictions against sale, assignment, or other transfer above, this Option Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, successors, and assigns.

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Attachment: Minute Order and County of Orange staff report (Transfer of RHINA Units from County of Orange to City of Santa Ana)

IN WITNESS WHEREOF, the Parties have executed this Option Agreement the day and year first above written.

**OPTIONEE**

WASHINGTON SANTA ANA HOUSING PARTNERS, L.P., a California limited partnership

By: Related/Washington Santa Ana Development Co., LLC, a California limited liability company, its Administrative General Partner

By: \_\_\_\_\_  
Frank Cardone, President

By: Supportive Housing LLC, a California limited liability company, its Managing General Partner

By: A Community of Friends, a California nonprofit public benefit corporation, its sole member/manager

By: \_\_\_\_\_  
Dora Leong Gallo,  
President and Chief Executive Officer

Attachment: Minute Order and County of Orange staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

APPROVED AS TO FORM:  
COUNTY COUNSEL  
County of Orange, California

By: *Michael A. Hodge*  
Deputy

Date: 2/3/20

APPROVED AS TO FORM:  
SONIA CARVALHO  
AUTHORITY GENERAL COUNSEL

By: \_\_\_\_\_  
Ryan O. Hodge, Assistant City Attorney

Date \_\_\_\_\_

**OPTIONOR**

COUNTY OF ORANGE,  
a political subdivision of the State of California

\_\_\_\_\_  
Thomas Miller, Chief Real Estate Officer  
County of Orange, California

HOUSING AUTHORITY OF THE CITY OF SANTA  
ANA ACTING AS THE HOUSING SUCCESSOR  
AGENCY  
a public body, corporate and politic

\_\_\_\_\_  
Steven A. Mendoza, Executive Director

Attachment: Minute Order and County of Orange staff report (Transfer of RHINA Units from County of Orange to City of Santa Ana)

We acknowledge receipt of the foregoing agreement and agree to comply with the terms of Section 15 thereof with respect to recordation of the Quitclaim Deed.

Old Republic Title Company

By:

\_\_\_\_\_  
Julie Massey, Escrow Officer

Attachment: Minute Order and County of Orange staff report (Transfer of RHINA Units from County of Orange to City of Santa Ana)

**ATTACHMENT I**

**PREMISES**

[to be attached]

**ATTACHMENT II**  
**LEASE**  
[to be attached]

Attachment: Minute Order and County of Orange staff report (Transfer of RHINA Units from County of Orange to City of Santa Ana)



### GROUND LEASE

THIS GROUND LEASE (“**Lease**”) is made and effective as of the \_\_\_ day of \_\_\_\_\_, 2020 (“**Effective Date**”) by and between the COUNTY OF ORANGE, a political subdivision of the State of California, the HOUSING AUTHORITY OF THE CITY OF SANTA ANA, a public body, corporate and politic, as tenants-in-common (respectively, the “**County**” and the “**Agency**”, and collectively “**Lessor**”) and WASHINGTON SANTA ANA HOUSING PARTNERS, L.P., a California limited partnership (hereinafter called “**Tenant**”) (also referred to hereinafter each as “**Party**” or collectively as the “**Parties**”).

### RECITALS

A. County and Agency are tenants-in-common of a certain property that encompasses the Premises (as hereinafter defined).

B. County and Agency have executed a Joint Powers Agreement (“**Joint Powers Agreement**”), pursuant to which the County and Agency agreed to lease the Premises to the Tenant to develop, entitle and construct an 86-unit multifamily affordable housing project, as more fully described herein, upon the fulfillment of certain conditions precedent as set forth therein.

C. The Parties have executed an Option Agreement, dated \_\_\_\_\_, 2020 (“**Option Agreement**”), pursuant to which the Lessor had agreed to lease the Premises to the Tenant upon the fulfillment of certain conditions precedent.

D. The County and Agency acknowledge that the conditions precedent required by the Joint Powers Agreement and Option Agreement have been fulfilled and therefore the Parties desire that Tenant shall ground lease the Premises from Lessor on the terms set forth herein.

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

F. On July 2, 2019, the Agency authorized the Executive Director of the Agency and the Recording Secretary to execute a pre-commitment letter with the Tenant to enter into negotiations for a sixty-five (65) year ground-lease of 1126 E. Washington Ave for the development of the Crossroads at Washington affordable housing project located at 1126 and 1146 E. Washington Avenue, Santa Ana, CA 92701 (APNs 398-092-13 and 398-092-14).

G. On July 2, 2019, the City of Santa Ana authorized the City Manager and the Clerk of the Council to execute a pre-commitment letter with the Tenant for \$3,971,440 in affordable housing funds consisting of \$963,951 in Neighborhood Stabilization Program funds and \$3,007,489 in HOME Investment Partnerships Program funds, for the development of the Crossroads at Washington affordable housing project located at 1126 and 1146 E. Washington Avenue, Santa Ana, CA 92701 (APNs 398-092-13 and 398-092-14).

Attachment: Minute Order and County of Orange staff report (Transfer of RHINA Units from County of Orange to City of Santa Ana)

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, Agency 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. “**Agency**” shall mean the Housing Authority of the City of Santa Ana, acting as the Housing Successor Agency, a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the California Redevelopment Law. The principal office of the Agency is located at 20 Civic Center Plaza, Santa Ana, California 92702. “Agency” shall also refer to the City of Santa Ana where the context dictates, to the effect that the City of Santa Ana shall have all rights granted to the Agency hereunder.

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 the loans made by the Agency, City, and County, separately, for the Improvements and for so long as Base Rent remains unpaid and outstanding, as approved in writing by the Lessor. 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 Lessor, 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. Lessor 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 Lessor and Tenant prior to January 1 of such year, the annual operating budget from the previous year 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 a total of six million four hundred and fifty thousand dollars (\$6,450,000) due and owing and payable in full on the Commencement Date, but if not paid in full on the Commencement Date, then the Base Rent amount paid in accordance with this Lease, including pursuant to Article III, below, with four million, one hundred and eight thousand, one hundred and thirty-six dollars (\$4,108,136) being paid to the Agency pursuant to Section 3.1.2 and two million, three hundred and forty-one thousand, eight hundred and sixty-four dollars (\$2,341,864) being paid to the County pursuant to Section 3.1.1.

Address	APN	Size (Acres)	Size (SF)	Land Percentage	Value Allocation
City Owned Site	398-092-14	1.456	63,423	63.69%	\$4,108,136
County Owned Site	398-092-13	0.83	36,155	36.31%	\$2,341,864
<b>Total</b>		<b>2.286</b>	<b>99,578</b>	<b>100.00%</b>	<b>\$6,450,000</b>

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.

1.1.11. **“City”** shall mean the City of Santa Ana, California, a charter city and municipal corporation. **“City”** shall also refer to the Agency where the context dictates, to the effect that the Agency shall have all the rights granted to the City hereunder. **“City Council”** shall mean the City Council of the City of Santa Ana.

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

1.1.13. “**Commencement Date**” shall mean the date on which a Certificate of Occupancy is issued for the Project, and on which the Term shall commence and Base Rent shall become due and payable.

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

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, and shall be the date on which Tenant take possession of the Premises and is entitled to commence construction pursuant to Article V, below.

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

1.1.23. “**Improvements**” shall mean and includes all buildings (including above-ground and below ground portions thereof, and all foundations and supports), building systems and equipment (such as HVAC, electrical and plumbing equipment), physical structures, fixtures, hardscape, paving, curbs, gutters, sidewalks, fences, landscaping and all other improvements of any type or nature whatsoever now or hereafter made or constructed on the Premises. The term Improvements shall mean the Initial Improvements and any replacement improvements constructed in accordance with the terms of this Lease. During the entire Term, the Improvements will be restricted to the following uses:

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

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

1.1.26. “**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 and Improvements.

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. "**Lessor's Interest**" shall mean all of County's and Agency's interests in the real property, the Premises, this Lease as tenants-in-common and their 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. "**Lessor Parties**" shall mean, collectively and individually, the County, the Agency and their 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. "**Net Refinancing Proceeds**" is defined in Section 3.2.

1.1.38. "**Net Syndication Proceeds**" is defined in Section 3.2.

1.1.39. "**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 \$5,000 (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 \$20,000 (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 2.28 acres of undeveloped land in the City, together with all easements, rights and privileges appurtenant thereto, to be leased to Tenant pursuant to this Lease and on which Tenant intends to construct the Improvements. The legal description of the Premises is attached hereto as **Exhibit A**. A rendering showing the approximate boundaries of the Premises is attached hereto as **Exhibit A-1**.

1.1.45. **“Project”** shall mean the Improvements, and all related appurtenances, constructed by Tenant on the Premises.

1.1.46. **“Rent”** shall mean and includes the County Base Rent, the Agency 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 Improvements approved in writing by the Lessor at the closing of the construction financing for the Improvements or as otherwise approved pursuant to Section 17.2, below, (C) payment obligations approved in writing by the Lessor at the closing of the construction financing for the Improvements, (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 Lessor, (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 Lessor, (G) deferred developer fee, and (H) scheduled deposits to reserves approved in writing by the Lessor at the closing of the construction financing for the Improvements (or such higher reserve deposits as may be reasonably required by any Leasehold Mortgage).

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 and the Risk Manager for the City of Santa Ana, 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 Group”** shall mean Tenant and Tenant’s Affiliates, agents, employees, members, officers, directors and attorneys.

1.1.53. **“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 Tenants Amended and Restated Agreement of Limited Partnership dated as of \_\_\_\_\_.

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 construction activity with respect to the Improvements, including permitted future changes, alterations and renovations thereto and also including, without limiting the generality of the foregoing, site preparation, landscaping, installation of utilities, street construction or improvement and grading or filling in or on the Premises.

## ARTICLE II LEASE OF PROPERTY

### 2.1 Lease of Premises.

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

2.1.2. Warranty of Peaceful Possession. Lessor 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 Lessor 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.** The “**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 62nd anniversary of the Commencement Date, unless sooner terminated as a result of Tenant’s non-compliance with any terms, conditions, covenants, restrictions or reservations of this Lease. Notwithstanding the foregoing, the Term shall not exceed sixty five (65) years from the Effective Date.

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

2.4 **Condition of the Premises.** **TENANT HEREBY ACCEPTS THE PREMISES “AS IS”, AND ACKNOWLEDGES THAT THE PREMISES IS IN SATISFACTORY CONDITION. COUNTY AND AGENCY MAKES NO WARRANTY, IMPLIED OR OTHERWISE, AS TO THE SUITABILITY OF THE PREMISES FOR TENANT’S PROPOSED USES. COUNTY AND AGENCY 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 OR AGENCY COVENANT OR WARRANT, IMPLIED OR OTHERWISE, AS TO THE SUITABILITY OF THE PREMISES FOR THE PROPOSED DEVELOPMENT, CONSTRUCTION OR USE BY TENANT. COUNTY AND AGENCY SHALL NOT BE RESPONSIBLE FOR ANY LAND SUBSIDENCE, SLIPPAGE, SOIL INSTABILITY OR DAMAGE RESULTING**

**THEREFROM. COUNTY AND AGENCY 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 Lessor, or any representation or warranty, either express or implied, relating to the nature or condition of the Premises or County’s or Agency’s interest therein.

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

**ARTICLE III  
TOTAL RENT**

**3.1 Base Rent.** Throughout the Term of this Lease, regardless of an earlier termination date Tenant shall pay to the County and the Agency the Base Rent as set forth herein.

**3.1.1 County Base Rent.** Tenant shall make annual payments to County of thirty-three and four-tenths percent (33.4%) of the then available Residual Receipts (defined above), but only to the extent said Residual Receipts are available, until the amount of two million, three hundred and forty-one thousand, eight hundred and sixty-four dollars (\$2,341,864) is fully paid (“**County Base Rent**”). County Base Rent shall only become due after the Tenant has repaid that certain loan from the County awarded under the 2016 Permanent Supportive Housing Notice of Funding Availability, Addendum One, evidenced by a Loan Agreement, Promissory Note and Leasehold Deed of Trust, in the amount of \$2,280,701, which is also being paid out of the same thirty-three and four-tenths percent (33.4%) of the Residual Receipts. On the last day of the Term the then outstanding amount of the County Base Rent shall be paid in full if not already paid by that time. County Base Rent will bear interest commencing on the Commencement Date at the simple rate of three percent (3%) per year until paid in full. Once the County Base Rent has been paid in full with interest, Tenant shall have no further obligation for County Base Rent under this Lease.

**3.1.2 Agency Base Rent.** Tenant shall also make annual payments to Agency of thirty-three and one-third percent (33.3%) of the then available Residual Receipts (defined above), but only to the extent said Residual Receipts are available, until the amount of four million, one hundred and eight thousand, one hundred and thirty-six dollars (\$4,108,136) is fully paid (“**Agency Base Rent**”). Agency Base Rent shall only become due after the Tenant has repaid those two certain loans from the City, each evidenced by a Loan Agreement, Promissory Note, Deed of Trust, and Affordability Restrictions on Transfer of Property dated \_\_\_\_\_, 20\_\_, in the amount of \$3,007,489.00, and dated \_\_\_\_\_, 20\_\_, in the amount of \$963,951, which is also being paid out of the same thirty-three and one-third percent (33.3%) of the Residual Receipts. On

the last day of the Term the then outstanding amount of the Agency Base Rent shall be paid in full if not already paid by that time. Agency Base Rent will bear interest commencing on the Commencement Date at the simple rate of three percent (3%) per year until paid in full. Once the Agency Base Rent has been paid in full, Tenant shall have no further obligation for Agency Base Rent under this Lease.

**3.2 Net Refinancing Proceeds/Net Syndication Proceeds.** Any Net Refinancing Proceeds or Net Syndication Proceeds received by Tenant shall be used to pay any unpaid Base Rent. Additionally, the Tenant's right and obligation to use such net proceeds to pay Base Rent is subject to the rights of Leasehold Mortgagees to control the use of such proceeds pursuant to the terms of their respective loan documents, all of which have been reviewed and reasonably approved by the Lessor and is further subject to the consent of TCAC to the extent required under the applicable regulations or the extended use agreement. Without limiting application of those loan documents and TCAC regulations and requirements, in no case shall Tenant be permitted to retain Net Refinancing Proceeds or Net Syndication Proceeds without the prior written consent of the Lessor, until full satisfaction of the unpaid Base Rent. Notwithstanding the foregoing, this Section 3.2 shall not apply to (i) any Excluded Transfer or (ii) any financing described in Section 17.2.

"Net Refinancing Proceeds" shall be defined as the proceeds from the refinancing of any loan approved by Lessor hereunder, net of all of the following: the amount of the financing which is satisfied out of such proceeds, closing costs, costs to rehabilitate the Project, including the costs necessary to obtain refinancing proceeds (such as consultant, legal and other consultant costs), the soft costs related to the rehabilitation of the Project (such as architecture, engineering and other consultant costs, and all required relocation costs), and all hard costs of the rehabilitation, all of which have been reviewed and reasonably approved by the Lessor.

"Net Syndication Proceeds" shall be defined as syndication proceeds net of final Project hard and soft construction costs, including developer fee, based on a cost certification completed at the end of construction, and syndication costs all of which has been reviewed and reasonably approved by the Lessor.

**3.3 Triple Net Rent.** It is the intent of the Parties that all Rent shall be absolutely net to Lessor 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 or Agency 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.

**3.4 Insufficient Funds.** For purposes of this Section 3.4, 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 and Agency 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 and Agency 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

and Agency shall accept such check or payment without prejudice to County’s and Agency’s right to recover the balance of the Rent or other fees or pursue any other remedy available to the County or Agency in this Lease.

3.5 **Reserved.**

3.6 **Additional Rent.**

3.6.1. **Additional Rent.** During the Term, the Base Rent shall be absolutely net to County and Agency 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 3.6.3 and 3.6.6, below, Tenant has the right to pay under protest the foregoing Additional Rent, as applicable, and defend against the same. Any imposition rebates shall belong to Tenant.

3.6.2. **Taxes.** During the Term, Tenant shall pay directly to the taxing authorities all Taxes (as herein defined) at least ten (10) days prior to delinquency thereof. For purposes hereof, “**Taxes**” shall include any form of assessment, license fee, license tax, business license fee, commercial rental tax, levy, penalty, sewer use fee, real property tax, charge, possessory interest tax, tax or similar imposition (other than inheritance or estate taxes), imposed by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage, flood control, water pollution control, public transit or other special district thereof, as against any legal or equitable interest of County or Agency in the Premises or any payments in lieu of taxes required to be made by County or Agency, 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 Lessor that all such new and increased assessments, taxes, fees, levies, charges and similar impositions be included within the definition of “**Taxes**” for the purpose of this Lease.

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

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

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

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

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

**3.6.4. Payment by Lessor.** 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 3.6.3, and if such amount is not paid by Tenant within fifteen (15) days after receipt of Lessor’s written notice advising Tenant of such nonpayment, County and/or Agency 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 or Agency reimburse County and/or Agency for the full amount paid by County and/or Agency in paying, discharging or adjusting such tax, assessment or other charge, together with interest at the Interest Rate from the date advanced until the date repaid.

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

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

**ARTICLE IV**  
**USE OF PREMISES**

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

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

**4.1.2. Ancillary Services and Uses.** Subject to the prior written approval of Lessor, which approval may be granted or withheld in the sole discretion of the Lessor, 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 Lessor 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 Lessor, which approval may be granted or withheld in the sole discretion of the Lessor.

**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 Lessor.

**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). Lessor may cooperate with Tenant in all reasonable respects in such contest, including joining with Tenant in any such contest if County and/or Agency's joinder is required in order to maintain such contest; provide, however, that any such contest shall be without cost to Lessor, and Tenant shall indemnify, defend (with attorneys acceptable to Lessor), and hold harmless the Lessor 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 and/or Agency acting in their 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 construction, 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 return the Premises to the condition existing prior to the introduction of such Hazardous Materials to the Premises and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of County or Agency 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 Lessor. 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 Lessor.

#### 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 Lessor) Lessor, 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 Lessor.

**4.5 Access by Lessor.** Lessor reserves the right for County, Agency and their 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 or Agency under this Lease. Lessor 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 Lessor 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. Lessor will take all necessary measures not to unreasonably interfere with Tenant's business at the Premises in exercising its rights under this Section.

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

**ARTICLE V  
CONSTRUCTION OF IMPROVEMENTS**

**5.1 Construction of Improvements.**

5.1.1. **Initial Improvements.** Upon the fulfillment of the Preconditions set forth in Section 5.1.2, below, and payment for and issuance of all permits required under the Laws (whether from County or City in their governmental capacity, or otherwise), Tenant shall construct the Initial Improvements.

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

(a) Lessor has provided approval in writing that all the conditions set forth in Section 5 of the Option Agreement have been satisfied;

(b) Tenant has obtained a permit through the City, submitted Project design, conceptual development, plans and special provisions for the construction of Improvements in accordance with the Lessor’s criteria, standard and practices;

(c) Tenant has given Lessor written notice of the proposed commencement of construction of the Premises or the delivery of construction materials in order to allow Lessor 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 Lessor 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 Lessor with assurances sufficient to construct the Initial Improvements in accordance with Section 5.3 below.

5.1.3. **Utilities.** To the extent not already constructed, Tenant, at no cost to Lessor, shall construct or cause to be constructed all 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 and/or Agency in conducting its operations, if any, on or about the Premises. Nothing contained in this Section is to be construed or implied to give Tenant the right or permission to install or to permit any utility poles or communication towers to be constructed or installed on the Premises.

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

allocation thereof, so long as the aggregate available funding continues to be sufficient to pay for Tenant's estimated remaining cost of constructing the Initial Improvements, provided that Tenant shall promptly notify Lessor of any such change.

**5.1.5. Compliance with Laws and Permits.** Tenant shall cause all Improvements made by Tenant to be constructed in substantial compliance with all applicable Laws, including all applicable grading permits, building permits, and other permits and approvals issued by governmental agencies and bodies having jurisdiction over the construction thereof. No permit, approval, or consent given hereunder by County and/or Agency, in their governmental capacity, shall affect or limit Tenant's obligations hereunder, nor shall any approvals or consents given by County and/or Agency, 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 construction of the Initial Improvements, Tenant shall provide Lessor with written construction status reports in the form of AIA No. G702 ("**Application and Certification for Payment**") or comparable form, augmented by oral reports if so requested by County or Agency.

**5.1.7. Certificate of Occupancy.** Tenant shall provide Lessor with a copy of the Certificate of Occupancy promptly following issuance thereof. The date of issuance of the Certificate of Occupancy shall be the Commencement Date hereunder.

**5.1.8. Insurance.** Tenant (or the Contractor, as applicable) shall deliver to Lessor both (i) certificates of insurance evidencing coverage for "builder's risk," as specified in Section 8.1, and (ii) evidence of worker's compensation insurance, which provide the requisite insurance levels in accordance with Article VIII, for all persons employed in connection with the construction of any Improvements upon the Premises and with respect to whom death or bodily injury claims could be asserted against County and/or Agency 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, Agency 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 Lessor, 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/or Agency and hold County and Agency harmless from all claims, losses, demands, damages, cost, expenses, or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Premises, and from the cost of defending against such claims, including reasonable attorneys' fees and costs, but excluding any liability resulting from the gross negligence or willful misconduct of Lessor, and excluding any liens resulting from the actions of, or work performed by, the Lessor.

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

(d) **Lessor'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, Lessor 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 and/or Agency, Tenant shall immediately upon receipt of written request therefor by County or Agency, reimburse County and/or Agency for all sums paid by County and/or Agency under this paragraph together with all County and/or Agency's reasonable attorney's fees and costs, plus interest at the Interest Rate from the date of payment until the date of reimbursement.

5.1.10. **No Responsibility.** Any approvals by County or Agency with respect to any Improvements shall not make County or Agency responsible for the Improvement with respect to which approval is given or the construction thereof. Tenant shall indemnify, defend and hold Lessor 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 resulting from the gross negligence or willful

misconduct of Lessor, and excluding any liens resulting from the actions of, or work performed by, the Lessor.

## 5.2 Construction Contracts.

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

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

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

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

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

5.3.3. Cash deposited with the County or Agency (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 and Agency from an Affiliate of The Related Companies of California, LLC, in a form reasonably acceptable to Lessor, coupled with a repayment guaranty in favor of the senior construction lender for its loan;

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 Lessor. All bonds and letters of credit shall be in a form acceptable to Lessor, County’s Risk Manager and City’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 the construction of improvements within the Premises.

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

#### 5.4 Ownership of Improvements.

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

5.4.2. **During Term.** Title to all Improvements constructed or placed on the Premises by Tenant and paid for by Tenant are and shall be vested in Tenant during the Term of this Lease, until the expiration or earlier termination thereof. 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 Lessor’s property free and clear of all claims to or against them by Tenant and free and clear of all Leasehold Mortgages and any other liens and claims arising from Tenant’s use and occupancy of the Premises, and with Taxes paid current as of the expiration or earlier termination date. Tenant shall upon the expiration or earlier termination of the Term deliver possession of the Premises and the Improvements to Lessor 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.

5.5 **“AS-BUILT” Plans.** Within sixty (60) days following completion of any substantial improvement within the Premises, Tenant shall furnish the Lessor a complete set of reproducibles 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 Lessor, to Lessor’s satisfaction, on Lessor’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 Lessor copy of the final construction costs for the construction of such improvements.

#### 5.6 Capital Improvement Fund.

5.6.1. Tenant shall establish and maintain a reserve fund (the "**Capital Improvement Fund**") during the Term of this Lease (as “Term” is defined in Section 2.2) 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 Lessor agree and acknowledge that the purpose of the Capital Improvement Fund shall be to provide sufficient funds to pay for the costs of major replacements, renovations or significant upgrades of or to the Improvements, including without limitation building facade or structure and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural or roof) that significantly affect the

capacity, efficiency, useful life or economy of operation of the Improvements or their major systems, after the completion of the Initial Improvements (“**Permitted Capital Expenditure(s)**”).

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

5.6.4. All specific purposes and costs for which Tenant desires to utilize amounts from the Capital Improvement Fund shall be at Tenant’s reasonable discretion and subject to Lessor’s written approval as provided for in Section 5.6.9, below. Tenant shall furnish to the Lessor 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 Lessor, 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 Lessor 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 Lessor’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 a monthly deposit to the Capital Improvement Fund in an amount equal to one percent (1%) of total rent collected by Tenant from sub-tenants for the previous month. 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 Lessor’s prior approval of any Capital Improvement Fund disbursements, Tenant shall submit to the Lessor 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**”). Lessor 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 Lessor (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 Lessor for the Lessor'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 Lessor and provide applicable documentation to the Lessor thereafter for approval. If the Lessor disapproves the emergency expenditure which was not previously approved by Lessor, Tenant shall refund the amount taken from the Capital Improvement Fund within thirty (30) days of written notice from the Lessor 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 Lessor of any damage relating to the Premises.

**6.2 Interior Improvements, Additions and Reconstruction of Improvements.** Following the completion of construction of the Initial Improvements, Tenant shall have the right from time to time to make any interior improvements to the Improvements that are consistent with the Lessor's approved use of the Premises as reflected in this Lease, without Lessor's prior written consent, but with prior written notice to the Lessor (except in the event of an emergency, in which case no prior written notice shall be required but Tenant shall notify Lessor of any emergency work done as soon as practicable). With prior written approval of Lessor, Tenant may restore and reconstruct the Improvements, and in that process make any modifications otherwise required by changes in Laws, following any damage or destruction thereto (whether or not required to do so under Article VII); and/or to make changes, revisions or improvements to the Improvements for uses consistent with the Lessor 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 construction of the Initial Improvements, and except as specified in Sections 6.1 and 6.2, any construction, alterations, additions, major repairs, demolition, improvements or reconstruction of any kind shall require the prior written consent of the Lessor, which consent shall not be unreasonably conditioned, delayed or withheld and may require their respective governing body's approval (e.g. Board of Supervisors' and City Council approval). 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, Agency, 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 Lessor Obligations.** Tenant specifically acknowledges and agrees that County, Agency and Lessor 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 Lessor Reservations.** Without limiting Lessor's rights with respect to the Premises, Lessor reserves for themselves, their 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 Lessor deems necessary or desirable to maintain, repair, improve, modify or reconstruct the Premises. The rights reserved to Lessor in this section or any other section of this Lease shall be exercised by the Lessor at their 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 Lessor 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 Lessor given by the later of ninety (90) days after the date of the damage or destruction or thirty (30) days after receipt by

Tenant of any such insurance proceeds, that there are not adequate proceeds to restore the Improvements and/or the Premises to substantially the same condition in which they existed prior to the occurrence of such damage or destruction, then Tenant may terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice. Notwithstanding Section 17.9, if Tenant terminates this Lease pursuant to this Section 7.1, Tenant shall surrender possession of the Premises to the Lessor immediately and assign to the Lessor (or, if same has already been received by Tenant, pay to the Lessor) all of its right, title and interest in and to the proceeds from Tenant's insurance upon the Premises.

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

**7.3 No Rental Abatement.** Tenant shall not be entitled to any abatement, allowance, reduction, or suspension of Rent because part or all of the Improvements become untenable as a result of the partial or total destruction of the Improvements, and Tenant's obligation to keep and perform all covenants and agreements on its part to be kept and performed hereunder, shall not be decreased or affected in any way by any destruction of or damage to the Improvements; 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 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, Agency and Tenant hereby expressly waive the provisions of California Civil Code Sections 1932(2) and 1933(4) with respect to any damage or destruction of the Premises and/or the Improvements and agree that their rights shall be exclusively governed by the provisions of this Article VII.

**7.6 Damage Near End of Term.** If, during the last three (3) years of the 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 Lessor of its election to repair or restore the Improvements as provided in this Article VII; or

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

## 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 or City for the full term of this Lease, the County or City 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

(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
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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 and the Housing Authority of the City of Santa Ana shall be named as Loss Payees 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 their 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, City of Santa Ana, and their 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 from 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 Contactors 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, City of Santa Ana, and their 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, City of Santa Ana, and their 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, City of Santa Ana, and their 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 and City of Santa Ana as both Named Insureds. 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 and City of Santa Ana as Loss Payees. A Loss Payee endorsement shall be submitted with the Certificate of Insurance as evidence of this requirement.

(d) Tenant shall notify County and City 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 and City. Failure to provide written notice of cancellation may constitute a material breach of the Lease, after which the County or City 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 County and City 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 or City 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, City 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 Lessor, 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 claims arising from the gross negligence or willful misconduct of County or Agency, their officers, agents, employees and contractors. Tenant hereby agrees to indemnify, defend (with counsel approved in writing by Lessor), and hold harmless, County and the Agency, their respective elected and appointed officials, officers, agents, employees and contractors against any and all claims, losses, demands, damages,

cost, expenses or liability for injury to any persons or property, arising out of the operation or maintenance of the Premises, and/or Tenant’s exercise of the rights under this Lease, except for liability arising out of the gross negligence or willful misconduct of County or Agency, their 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 and/or Agency is named as co-defendant in a lawsuit in connection with this Lease, Tenant shall notify Lessor of such fact and shall represent the County and/or Agency in such legal action unless County or Agency undertakes to represent themselves as co-defendant in such legal action, in which event, Tenant shall pay to Lessor their litigation costs, expenses, and reasonable attorneys' fees. If judgment is entered against County and/or Agency and Tenant by a court of competent jurisdiction because of the concurrent active negligence of County and/or Agency and Tenant, County, Agency 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 Lessor’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.** Lessor 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, Lessor shall be liable for injury or damage under this Section 8.3 resulting from County or Agency, their 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, Agency 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, Agency and Tenant. County, Agency 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 Lessor 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 Lessor, 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 Lessor 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, Lessor shall be entitled to receive the entire award for such Partial Taking, except that (i) the proceeds of such Partial Taking shall first be applied towards the cost of Restoring the Premises pursuant to Section 9.4.2 and (ii) Tenant shall be entitled to receive any portion of such award allocated to Tenant's interest in any of

Tenant's Improvements, Personal property and trade fixtures taken, and any part of the award attributable to the low income housing tax credits.

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

10.1.2. Should Lessor 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 Lessor'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 Lessor'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 Lessor's Fee Interest, other than as required by TCAC pursuant to its lease rider, if any, and previously approved by Lessor prior to the Effective Date of this Lease, in connection with the award of low income housing tax credits to Tenant.

**10.3 Excluded Transfers.** Lessor'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 Lessor of such Excluded Transfer at least twenty (20) days prior to the consummation of such Excluded Transfer, and shall provide Lessor 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 Lessor with a written assumption of Tenant’s obligations and liabilities under this Lease executed by such transferee in a form approved by the Lessor, 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 Lessor’s consent is required hereunder, Tenant shall provide Lessor 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 Lessor may reasonably request concerning the proposed transferee. Lessor shall, no later than ninety (90) days after Lessor’s receipt of the information specified above, deliver written notice to Tenant which shall (i) indicate whether Lessor give or withhold consent to the proposed Transfer, and (ii) if Lessor withhold consent to the proposed Transfer, setting forth a detailed explanation of Lessor’s grounds for doing so. If Lessor consents to a proposed Transfer, then Tenant may thereafter effectuate such Transfer to the proposed transferee based upon the specific terms of the Lessor’s approval and after execution of a consent to assignment by Lessor in a form approved by the Lessor, which approval shall not be unreasonably withheld, conditioned or delayed in the event that the assignment is consistent with the terms of this Lease; provided, however, that the provisions of this Section 10.4 shall not apply to any Transfer to a Foreclosure Transferee.

**10.5 Liability of Transferors/Transferees For Lease Obligations.** In the case of an assignment, including an assignment pursuant to Section 17.6.5, each Permitted Transferee and any other assignees or transferees of this Lease shall assume in writing all of Tenant’s obligations thereafter arising under this Lease. All assignees or transferees of any interest in this Lease or the Premises or Improvements (whether or not directly liable on this Lease) shall be subject to the terms, conditions, covenants, restrictions and reservations of this Lease. 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 Lessor evidence of sufficient and adequate assets, including any required insurance policies, subject to approval by Lessor, 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 Lessor 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, Lessor 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 Lessor Consent.**

10.6.1. Lessor may withhold consent to a Transfer (excluding Excluded Transfers which shall not require Lessor 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 construction of the Initial Improvements has not been completed.
- (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 Lessor’s approval of the Transfer have not been disclosed in writing to the Lessor.

**10.7 Transfer of Mortgages of Lessor’s Interest.** Notwithstanding anything to the contrary set forth in this Ground Lease, unless required by statute, court order or operation of law, Lessor shall not transfer, assign, pledge or hypothecate its fee interest in the Premises (other than to entities under common control with Lessor or other governmental entities under applicable law) without the prior written consent of Tenant, Leasehold Mortgagee 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 Lessor encumbering the Lessor’s fee interest in the Premises shall be expressly subject and subordinate to this Lease, to all obligations of Lessor 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 Lessor’s fee interest as a consequence of any conveyance, foreclosure or other transfer shall succeed to all of the obligations of the Lessor hereunder.

**ARTICLE XI  
DEFAULT AND REMEDIES**

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

11.1.1. **Failure to Pay.** Tenant’s failure or omission to pay any Rent or other sum payable hereunder on or before the date due where such failure shall continue for a period of five (5) days after written notice thereof from Lessor to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure §1161 *et seq.*

11.1.2. **Failure to Perform.** The failure or inability by Tenant to observe or perform any of its obligations under this Lease (other than those specified in Sections 11.1.1, 11.1.3, 11.1.6, or 11.1.8 herein, which have their own notice and cure periods), where such failure shall continue for a period of thirty (30) days after written notice thereof from Lessor to Tenant or past any such longer period as reasonably agreed upon by the Tenant, Lessor in writing as may be necessary for completion of its cure; provided, however, that any such notice by Lessor 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 Lessor’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 Lessor.** Tenant’s failure to reimburse the Lessor 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 Lessor of such termination.

**11.1.7. Failure to Provide Evidence of Insurance.**

Tenant's failure to provide Lessor 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. Lessor's Consent and Approval of Transfer.**

Occupancy of the Premises by a prospective transferee, sublessee, or assignee which requires Lessor's consent or approval, before Lessor'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.

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

**11.2.1. Termination of Lease.** Subject to Article 17, as applicable, Lessor 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 Lessor shall elect to so terminate this Lease then Lessor 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 Lessor 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 Lessor may by law hereafter be permitted to recover from Tenant to compensate Lessor 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.** Lessor may continue this Lease in effect without terminating Tenant's right to possession and to enforce all of Lessor'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 Lessor 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.** Lessor 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 Lessor'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, Lessor may at their election, but are 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 Lessor's demand. Tenant's failure to reimburse the County and/or Agency within 30 days of Lessor'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 and/or Agency liable for any loss or damage resulting from the same.

**11.4 Lessor's Default.** Lessor shall not be considered to be in default under this Lease unless Tenant has given Lessor written notice specifying the default, and either (i) as to monetary defaults, Lessor have failed to cure the same within ten (10) business days after written notice from Tenant, or (ii) as to nonmonetary defaults, Lessor have failed to cure the same within thirty (30) days after written notice from Tenant, or if the nature of Lessor'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 and/or Agency 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 and/or Agency 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 Lessor'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 Lessor contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Lessor 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 Lessor.** No delay or omission of Lessor 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 Lessor 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 Lessor's knowledge of such preceding breach or default at the time of acceptance of such rent or sum, or (b) waiver of Lessor's right to exercise any remedy available to Lessor by virtue of such breach or default. No act or thing done by County or Agency's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender shall be valid unless in writing and signed by Lessor.

**11.7 Interest.** Any installment or Rent due under this Lease or any other sums not paid to Lessor 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 Lessor 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 Lessor 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, Lessor 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 Lessor on Tenant's behalf shall not give rise to any responsibility of Lessor 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 Lessor in connection therewith, together with interest at the Interest Rate from the date incurred or paid by Lessor, 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 Lessor, and Tenant's failure to pay the Lessor, 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 Lessor, 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, Lessor 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 Lessor 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 and/or Agency in connection with such eviction action; Tenant shall also indemnify and hold Lessor harmless from all loss or liability or reasonable attorney’s fees and costs, including any claim made by any succeeding tenant, incurred by County and/or Agency 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, Agency 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, Agency 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, Agency, 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 and the Agency 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 and Agency 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 Lessor 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 Lessor 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 Lessor with such budget.

15.1.1. Tenant acknowledges its understanding that any and all of the Financial Statement submitted to the Lessor 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 Lessor. Lessor shall, through their 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 Lessor 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 Lessor 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 Lessor 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 Lessor 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 Improvements, or any applicable portion thereof or interest therein.

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

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

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

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

**17.2 Tenant’s Right to Encumber Leasehold Estate; No Right to Encumber Lessor’s Fee Interest.** Provided that an Event of Default has not occurred and is continuing, Tenant may, at any time during the Term of this Lease (with consent of Lessor after prior written notice providing evidence that all requirements of this Lease have been complied with, which consent shall not be unreasonably withheld, conditioned or delayed), encumber all or any portion of Tenant’s Leasehold Estate with one (1) or more Leasehold Mortgages; provided, however:

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

17.2.2. That Tenant shall not have the power to encumber, and no Leasehold Mortgage shall encumber, Lessor'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 Lessor 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 Lessor'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, any required consent of the Lessor under this Section 17.2 shall not be unreasonably withheld.

**17.3 Notification to Lessor of Leasehold Mortgage.** Tenant or any Leasehold Mortgagee shall, prior to making any Leasehold Mortgage, provide Lessor 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 Lessor 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 Lessor of any change in the identity or address of such Leasehold Mortgagee. Lessor shall be entitled to rely upon the addresses provided pursuant to this Section for purposes of giving any notices required by this Article XVII.

**17.4 Notice and Cure Rights of Leasehold Mortgagees With Respect to Tenant Defaults.** Lessor, 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 Lessor may predicate or claim a default, will promptly deliver a copy of such notice to each Leasehold Mortgagee. Each notice or demand required to be given by Lessor to a Leasehold Mortgagee under this Lease shall be in writing and shall be given by certified or registered mail, postage prepaid, return receipt requested, to such Leasehold Mortgagee at the address(es) provided by such Leasehold Mortgagee, as applicable, to Lessor from time to time in writing and shall be effective upon receipt (or refusal to accept receipt). No notice or demand given by Lessor 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 in accordance with this Lease. From and after the date such notice has been given to any Leasehold Mortgagee, such Leasehold Mortgagee 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, Agency 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). Lessor shall accept any and all performance by

or on behalf of any Leasehold Mortgagee(s), including by any receiver obtained by any Leasehold Mortgagee(s), as if the same had been done by Tenant. Tenant authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option, and hereby authorizes any Leasehold Mortgagee (or any receiver or agent) to enter upon the Premises for such purpose.

**17.5 Limitation on Lessor'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 as allowed under Section 17.4, above), and such failure entitles County and/or Agency to terminate this Lease, Lessor shall have no right to terminate this Lease unless Lessor shall notify in writing each and every Leasehold Mortgagee who has complied with Section 17.3 of Lessor's intent to so terminate at least sixty (60) days in advance of the proposed effective date of such termination. If any Leasehold Mortgagee, within such sixty (60) day period, (i) notifies Lessor of such Leasehold Mortgagee'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 Lessor, at its sole discretion, may permit such additional time as necessary for any Leasehold Mortgagee 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 sixty (60) days as consistent with the conditions of this Section 17.5, Lessor 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 Lessor's notice under Section 17.5 specifies only monetary Events of Default as the basis for Lessor's election to terminate this Lease, and Leasehold Mortgagee has fully paid the monetary amount designated by Lessor in its notice, then such payment shall be deemed to have cured the Event of Default. If Lessor'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 Lessor's election to terminate this Lease, and Leasehold Mortgagee has fully paid the monetary amount designated by Lessor in its notice, as applicable, then the date of termination specified in Lessor'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, 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. 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 Lessor and the Leasehold Mortgagee, Lessor shall enter into such new lease with the Leasehold Mortgagee pursuant to Section 17.7, below, provided Lessor 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 Lessor’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 Lessor 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), Lessor 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 Lessor 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 Lessor to enter into a New Lease, Leasehold Mortgagee shall pay to Lessor 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, Agency 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 Lessor’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 Lessor 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 Lessor 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, Lessor 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 Lessor 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 Lessor may control the same, then the Leasehold Mortgagee under the New Lease shall be entitled to such net income received by Lessor except to the extent that it was applied to cure any default of Tenant.

17.7.4. All rights and claims of Tenant under this Lease shall be subject and subordinate to all right and 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 Lessor 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, Lessor 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 and/or Agency by multiple Leasehold Mortgagees, Lessor may (subject

to any applicable court orders to the contrary) rely on the direction of the Leasehold Mortgagee whose Leasehold Mortgage is recorded first in time in the Official Records of the 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 Lessor'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.

**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.

**17.11 No Waiver.** No payment made to Lessor 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 Lessor pursuant to County and/or Agency'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 Lessor for its reasonable attorneys' fees and costs incurred in connection with Lessor'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, Agency and Tenant, (b) Lessor 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, 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).

**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 Lessor 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 Lessor for review and approval prior to implementation.

18.6 Lessor 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 Lessor, which approval may be withheld in the sole and absolute discretion of the Lessor, 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 Lessor 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 Lessor, within five (5) business days, a good and sufficient deed, in a form as approved by the Lessor, whereby all right, title, and interest of Tenant in the Premises is quitclaimed back to Lessor ("**Quitclaim Deed**"). The Quitclaim Deed shall then be recorded by Lessor to remove any cloud on title created by this Lease. In the event that the Tenant fails to provide such Quitclaim Deed within five (5) additional business days after written demand by either the County or City, the Parties agree that the County and City 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 Quitclaim Deed after such notice and cure period, in addition to any other remedy provided by law or equity, the Tenant shall pay the Lessor \$2,000 per day for every day that passes until a Quitclaim Deed is delivered, which amount shall be deemed to constitute a reasonable estimate of Lessor's damages and not a penalty. Such amount shall become due and payable by Tenant to Lessor for each calendar day that passes beyond the cure period. Notwithstanding the foregoing, if the Tenant has disputed the termination of the Lease by Lessor, 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 Lessor 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 Lessor determines that the records must be turned over, the Lessor 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 Lessor 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 and/or Agency, on behalf of the County and/or Agency, 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 Lessor 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 Lessor, Tenant shall provide to Lessor 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.

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. In any provision relating to the conduct, acts or omissions of Agency, the term “**Agency**” shall include Agency’s agents, employees, contractors, invitees, successors or others using the Premises with Agency’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.

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 Agency permits, constitute the entire agreement

between County, Agency 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, Agency and Tenant. County, Agency 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 Lessor: 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

And to:

Housing Authority of the City of Santa Ana  
20 Civic Center Plaza (M-26)  
P.O. Box 1988  
Santa Ana, California 92702  
Attn: Housing Manager

With a copy to: Office of the City Attorney  
City of Santa Ana  
20 Civic Center Plaza, 7th Floor (M-29)  
Santa Ana, California 92702

If to Tenant: c/o The Related Companies of California, LLC  
19201 Von Karman Avenue, Suite 900  
Irvine, CA 92612  
Attention: President

c/o A Community of Friends  
3701 Wilshire Boulevard, Suite 700  
Los Angeles, CA 90010  
Attention: Dora Leong Gallo, President and Chief Executive Officer

And to:

With a copy to:

Bocarsly Emden Cowan Esmail & Arndt LLP  
633 W. 5th Street, 64th Floor  
Los Angeles, CA 90071  
Attention: Lance Bocarsly, 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 Lessor 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 and/or Agency's option, be deemed to have been transferred to County and/or Agency. County and/or Agency 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 Lessor's option, Lessor 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 Lessor 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 and/or Agency 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 and/or Agency 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, Agency and Tenant. County, Agency and Tenant mutually acknowledge that no business or financial relationship exists between them other than as County, Agency and Tenant, and that County and Agency is not responsible in any way for the debts of Tenant or any other Party.

**19.25 Authorization.** County, Agency 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 Lessor 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 in the event that the Tenant encumbers the leasehold as set forth in Article XVII, a memorandum hereof may be recorded in the form of **Exhibit D** attached hereto (the “**Memorandum**”). The Memorandum may be executed concurrently with this Lease and thereafter recorded in the Official Records of the County Recorder on the Effective Date of this Lease has occurred. Tenant shall be responsible for the payment of all charges imposed in connection with the recordation of the Memorandum, including, without limitation, any documentary transfer tax imposed in connection with this transaction and all recording fees and charges.

19.27 **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: Initial Improvements

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, Agency and/or Tenant the right to take any action, grant any approval or consent, or exercise any discretion, County, Agency 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 and Agency.** County and Agency hereby agree that (a) Agency staff shall be responsible for administering the operation of the Project to insure it is being used in conformance with this Lease, and (b) Agency staff shall serve as administrator of the Lease with the Tenant and coordinate with the County as necessary. County and Agency hereby agree to work cooperatively and expeditiously to provide written consent (or written refusal to provide consent) to Tenant, the Leasehold Mortgagees and Limited Partner hereunder.

[Signatures On Following Pages]

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

	<p><b>TENANT</b></p> <p>WASHINGTON SANTA ANA HOUSING PARTNERS, L.P., a California limited partnership</p> <p>By: Related/Washington Santa Ana Development Co., LLC, a California limited liability company, its Administrative General Partner</p> <p>By: _____ Frank Cardone, President</p> <p>By: Supportive Housing LLC, a California limited liability company</p> <p>By: A Community of Friends, a California nonprofit public benefit corporation, its sole member/manager</p> <p>By: _____ Dora Leong Gallo, President and Chief Executive Officer</p>
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<p>APPROVED AS TO FORM: SONIA CARVALHO AUTHORITY GENERAL COUNSEL</p> <p>By: _____ Ryan O. Hodge, Assistant City Attorney</p> <p>Date _____</p>	<p><b><u>LESSOR</u></b></p> <p>HOUSING AUTHORITY OF THE CITY OF SANTA ANA ACTING AS THE HOUSING SUCCESSOR AGENCY a public body, corporate and politic</p> <p>By: _____ Steven A. Mendoza, Executive Director</p> <p>Date _____</p>
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Attachment: Minute Order and County of Orange staff report (Transfer of RHINA Units from County of Orange to City of Santa Ana)

APPROVED AS TO FORM:  
COUNTY COUNSEL

By: Michelle A. Hunt 2/3/20  
Deputy

Date

COUNTY OF ORANGE, a political subdivision of  
the State of California

\_\_\_\_\_  
Thomas A. Miller, Chief Real Estate Officer  
Orange County, California

Attachment: Minute Order and County of Orange staff report (Transfer of RHINA Units from County of Orange to City of Santa Ana)

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

**Attachment: Minute Order and County of Orange staff report (Transfer of RHINA Units from County of Orange to City of Santa Ana)**

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

Attachment: Minute Order and County of Orange staff report (Transfer of RHINA Units from County of Orange to City of Santa Ana)

**EXHIBIT B**  
**INITIAL IMPROVEMENTS**

The proposed Project includes the development of two residential buildings with 86 units surrounding two interior, landscaped courtyard/amenity spaces. The Project includes 16 studio units, 26 one bedroom units, 22 two-bedroom units, 17 three-bedroom units, and 5 four-bedroom units. All units will be flat apartments located on the first, second, third and fourth floors. In addition, a proposed sound wall is being positioned along the eastern property line adjacent to the US Interstate 5 ramp. Approximately 3,500 square foot of interior community amenities and leasing offices is designed to accommodate supportive and management services.

The Project will be 100% affordable to households earning no more than 30 percent of Area Median Income (AMI) for Orange County of which 43 units will be set-aside for Permanent Supportive Housing (PSH), with one exempt 2-bedroom managers unit. 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 County Loan 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	16			16
One-Bedroom	26			26
Two-Bedroom	1	20	1	22
Three-Bedroom		17		17
Four-Bedroom		5		5
<b>TOTAL</b>	<b>43</b>	<b>42</b>	<b>1</b>	<b>86</b>

**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**  
**MEMORANDUM OF LEASE**

This is a Memorandum of Lease (“**Memorandum**”) made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the County of Orange, a political subdivision of the State of California, the Housing Authority of the City of Santa Ana, a public body, corporate and politic (collectively, the “**Lessor**”) and \_\_\_\_\_, (“**Tenant**”), residing at \_\_\_\_\_, upon the following terms:

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

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

3. **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 be Sixty-Five (65) years from the Effective Date as stated in the written Lease. The Term shall commence on the date hereof and terminate Sixty-Two (62) years from the Commencement Date, which is the date on which a Certificate of Occupancy is issued for the Project, provided, however the Term shall be no longer than sixty five (65) years from the Effective Date.

5. **Duplicate Copies** of the originals of the Lease are in the possession of the Lessor 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 Lessor and Tenant are as follows:

If to Lessor: 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

And to:

Housing Authority of the City of Santa Ana  
20 Civic Center Plaza (M-26)  
P.O. Box 1988  
Santa Ana, California 92702  
Attn: Housing Manager

With a copy to: Office of the City Attorney  
City of Santa Ana  
20 Civic Center Plaza, 7th Floor (M-29)  
Santa Ana, California 92702

If to Tenant: c/o The Related Companies of California, LLC  
19201 Von Karman Avenue, Suite 900  
Irvine, CA 92612  
Attention: President

c/o A Community of Friends  
3701 Wilshire Boulevard, Suite 700  
Los Angeles, CA 90010  
Attention: Dora Leong Gallo

And to:

With a copy to: Bocarsly Emden Cowan Esmail & Arndt LLP  
633 W. 5th Street, 64th Floor  
Los Angeles. CA 90071  
Attention: Lance Bocarsly, 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 Lessor 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: \_\_\_\_\_

**AGENCY:**

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

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

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

**TENANT:**

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

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

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

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

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

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

**CROSSROADS AT WASHINGTON – JOINT POWERS  
AGREEMENT BY AND BETWEEN THE COUNTY OF  
ORANGE AND THE HOUSING AUTHORITY OF THE CITY  
OF SANTA ANA**

This **JOINT POWERS AGREEMENT** (“**Agreement**”) is entered into by and between the County of Orange, a political subdivision of the State of California (“**County**”), and the Housing Authority of the City of Santa Ana, a public body, corporate and politic (“**Agency**”), as of 2/25/20, 2020, and is made on the basis of the following facts, intentions and understandings. County and Agency are at times individually referred to as “**Party**” and collectively as “**Parties**” herein.

**RECITALS**

- A. County and Agency are owners of contiguous parcels of land totaling approximately 2.28 acres located in Santa Ana, California, comprised of the two following lots: Assessor’s Parcel Number 398-092-14 (“**Agency Property**”), more particularly described in **Exhibit A**; and Assessor’s Parcel Number 398-092-13 (“**County Property**”), more particularly described in **Exhibit B**. The Agency and County desire to merge these two parcels for the purpose of executing an option agreement (“**Option Agreement**”) and ground lease (“**Lease**”) for the combined property to a developer, 2/25/20, L.P., a California limited partnership (“**Partnership**”), to create an affordable housing project (“**Project**”). These properties are collectively depicted in **Exhibit C** (Pre-Grant Assessor’s Parcel Map) and are referred to collectively as the “**Joint Property**,” which is further defined, below.
- B. All development and use of the Joint Property for the Project shall be subject to and in conformance with restrictions on the use of the “**Joint Property**,” as that term is defined by this Agreement.
- C. The Parties agree that the development of this Project will promote affordable housing development that will benefit the public and constitute a significant benefit to both County and Agency in that the facility is available for use by members of the general public that meet the affordability income qualifications established for this Project and the special needs qualifications for the permanent supportive housing component of the Project.
- D. The Parties deem it to be to the mutual advantage of the Parties hereto and in the public interest to treat the above-described County Property and Agency Property as a single parcel to assist with development of the Project.
- E. In order to facilitate development of the Project, the Parties agree to deed their respective properties entirely into a jointly owned parcel (“**Joint Property**”), as described on **Exhibit D**, attached hereto, to be held as tenants-in-common with respective interests as follows:

County of Orange, 36.3%, undivided interest

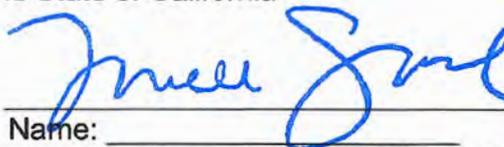
Housing Authority of the City of Santa Ana, 63.7%, undivided interest

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their respective governing bodies on the dates set forth opposite their signatures.

**COUNTY:**

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

Dated: 2/25/20

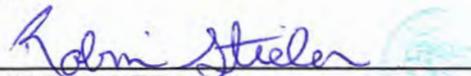
By:   
Name: \_\_\_\_\_  
Title: Chairwoman, Board of Supervisors

**APPROVED AS TO FORM:**  
OFFICE OF COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

By:  2/25/20  
Deputy

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRWOMAN OF THE BOARD PER GC § 25103, RESO. 79-1535

Attest:

  
ROBIN STIELER  
Clerk of the Board of Supervisors  
of Orange County, California

Attachment: Minute Order and County of Orange staff report (Transfer of RHINA Units from County of Orange to City of Santa Ana)

**MEMORANDUM OF AGREEMENT  
BETWEEN THE COUNTY OF ORANGE AND THE CITY OF SANTA ANA  
REGARDING REGIONAL HOUSING NEEDS ALLOCATIONS FOR FUTURE  
HOUSING ELEMENT PLANNING PERIODS**

This Memorandum of Agreement ("**MOU**") between the County of Orange, a political subdivision of the State of California ("**County**") and the City of Santa Ana, a chartered city and municipal corporation ("**City**"), is dated, for the convenience of the parties, as the first date upon which it is executed by both the County and the City, as shown by the signatures of their authorized representatives below, and the various obligations established hereby shall take effect as provided herein.

**RECITALS**

A. The City and County have entered into a Joint Powers Agreement dated as of \_\_\_\_\_, 2020 ("**Agreement**") regarding the future development of multiple parcels of land in the City of Santa Ana comprising approximately 2.28 acres and commonly referred to as the Crossroads at Washington site (APNs 398-092-13 and 398-092-14, as and hereafter, the "**Property**"). The Property is depicted in greater particularity on Exhibit A hereto. The City has approved a development proposal for the Property (the "**Project**") which proposal is more particularly described in those certain documents entitled "PRE-COMMITMENT LETTER" dated July 2, 2019.

B. To further support of this Project, Orange County Board of Supervisors approved a loan in the amount of \$2,280,701 on February 25, 2020, toward the completion of 43 units within the Project.

C. The Orange County Board of Supervisors, acting as the Board of Commissioners to the Orange County Housing Authority, also approved the use of 43 Project-Based Housing Choice Vouchers on February 25, 2020, to further assist in the success of this Project.

D. The County desires to rely on housing proposed as part of the Project to meet certain affordable housing obligations imposed on the County by state law. Pursuant to Article 10.6 (the "**Housing Element Law**") (Government Code sections 65580 - 65589.8) of Chapter 3 of the Planning and Zoning Law, the Southern California Association of Governments ("**SCAG**") periodically adopts and assigns a Regional Housing Needs Assessment ("**RHNA**") allocation for each county and city in the County of Orange, including Orange County and the City of Santa Ana. Under the Housing Element Law, each city and county must periodically revise the housing element of its general plan utilizing the latest RHNA allocation adopted by SCAG. The next required revision to the housing elements of the City and County is designated as the sixth required revision by Government Code Section 65588, and is identified by SCAG as the 2021-2029 housing element planning period ("2021-29 Planning Period").

E. The Agreement between the City and County provides in Section 6 that the City and County may enter into a RHNA allocation transfer agreement as allowed under Government Code Section 65584.07 or any successor statute ("**Section 65584.07**") providing for

the transfer to the City of Santa Ana of some share of the County's RHNA allocation obligation for the sixth housing element planning period, provided that certain requirements of the Agreement are satisfied. This MOU is intended by the County and the City to serve as the RHNA allocation transfer agreement contemplated by Section 6 of the Agreement as may be amended pursuant to Section 14 of this agreement and to attain approval by SCAG.

- F. Approval of the Project and successful implementation of the MOU will allow the County to meet its RHNA for the 2021-29 Planning Period and obtain a certified housing element. This MOU provides for RHNA allocation transfers from the County to the City in the 2021-29 Planning Period.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, the Parties hereto mutually agree as follows:

1. Housing Site. The City has identified the specific portion of the Property zoned Transit Village (TV) in the Transit Zoning Code (the "**Housing Site**"), as shown in Exhibit B hereto, as an available site for housing in its 2021-2029 housing element, and intends to issue, upon application, residential building permits for construction of 85-units of extremely low-income housing on the Housing Site during the 2021-29 Planning Period, while the Housing Site remains in the City's jurisdiction, in order to satisfy the City's RHNA allocation obligation for the 2021-29 Planning Period. The City will receive RHNA credit for all of the units on the Housing Site.

2. Transfer of RHNA Allocation Shares.

- a. Very Low-Income Unit Transfer. For the 2021-29 RHNA Planning Period (or as that planning period may be adjusted by SCAG, the Department of Housing and Community Development, or statute), upon SCAG's adoption of a final RHNA, the County and City shall jointly apply to SCAG to transfer 20 units from the County's RHNA allocation to the City. This would result in a reduction of the County's RHNA allocation of very-low units by 20 units and an increase to the City's RHNA allocation of very-low units by 20 units, as provided for and in conformance with the requirements of Government Code section 65584.07. Accordingly, upon SCAG's approval, the City's RHNA allocation of very -low units will increase by 20 units and the County's RHNA allocation of very -low units shall decrease by 20 units, as allowed under Government Code section 65584.07. For purposes of this paragraph, "very low-income units" shall mean units where the household income for eligibility to live in the unit does not exceed 30% of the local area median income (AMI) as established by state and federal law.
- b. Moderate Unit Transfer. Additionally, the County's RHNA allocation of moderate-income units shall be reduced proportionally in conformance with the requirements of Government Code section 65584.07. To fulfill the obligations set forth in Government Code section 65584.07, the County and City shall jointly apply to SCAG to transfer 22 moderate units from the County's RHNA allocation to the City. This would result in a reduction of to reduce the County's RHNA

allocation of moderate units by 22 units and to an increase to the City's RHNA share allocation of moderate units by 22 units of the County's original RHNA allocation. Accordingly, upon SCAG's approval, the City's share of its RHNA allocation of moderate units will increase by 22 units of the County's original allocation and the County's RHNA allocation of moderate will decrease by 22 units of the County's original allocation. For purposes of this paragraph, "moderate units" shall mean units where the household income for eligibility to live in the unit does not exceed 120% of the local area median income (AMI) as established by state and federal law.

- c. The Parties agree that the land and financial commitments found in the Recitals to assist in the success of the Project is full and adequate consideration for the RHNA allocation transfers contemplated in this Section 2.

3. RHNA Methodologies; Parties Obligations. SCAG may determine the City and County's RHNA for the 2021-2029 Planning Period and subsequent revisions of the housing element in one of two ways. SCAG may make the determination based on its methodology adopted under Government Code Section 65584.04. Upon SCAG's adoption of a final RHNA, the County and City shall jointly apply to SCAG to reduce the County's RHNA allocation as described in Section 2., above, and to increase the City's RHNA allocation as described in Section 2., above.

4. Cooperation. The City and County shall take all steps reasonably necessary to comply with the Government Code section 65584.07 to implement this MOU, including but not limited to, providing the appropriate documentation to SCAG or any other agency, as required. The parties agree to work together to obtain SCAG and any other approval where required to effectuate this MOU. City further agrees that it will utilize the revised RHNA allocation that includes the transfer of RHNA shares contemplated by this MOU in preparing the City's 2021-2029 Planning Period and subsequent housing element revisions, as applicable.

5. Indemnification. City shall, to the extent permitted by law, indemnify, defend, and hold harmless the County and its officers, agents, and employees, from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon the negligence or wrongful act or omission of City or its City Council, boards and commissions, officers, agents, volunteers, or employees, in approving this MOU.

County shall, to the extent permitted by law, indemnify, defend, and hold harmless the City and its officers, agents, and employees, from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorney's fees), resulting from, arising out of, or based upon the negligence or wrongful act or omission of County or its Board of Supervisors, committees and commissions, officers, agents, volunteers, employees, in approving this MOU.

6. Time. Time is of the essence in this MOU.

7. Management. Except as otherwise provided in this MOU, the approval of both the City and County shall be required for decisions regarding management and disposition of the Joint Property.

8. Successors and Assigns. This MOU shall be binding upon and shall inure to the benefit of the County and City and their respective heirs, personal representatives, successors and assigns. Neither Party shall have the right to assign this MOU or any interest or right under this MOU without the prior written consent of the other Party.

9. No Attorneys' Fees. In any action between the Parties to interpret, enforce, award, modify or rescind any of the terms or provisions of this MOU, or any action otherwise commenced or taken in connection with this MOU, both Parties shall be responsible for their respective litigation costs and attorneys' fees, except as provided in Section 5, above, regarding indemnity.

10. Jurisdiction and Venue. This MOU shall be construed under the laws of the State of California in effect at the time of the signing of this MOU. The Parties consent to the jurisdiction of the California courts with venue in County of Orange.

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

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

13. No Waiver. A waiver by either Party of a breach of any of the covenants, conditions or agreements under this MOU to be performed by the other Party shall not be construed as a waiver of any such breach or succeeding breach or of the same or other covenants, agreements, restrictions or conditions of this MOU.

14. Modifications. Any alteration, change or modification of or to this MOU, to become effective, shall be made in writing and in each instance signed on behalf of each Party.

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

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

17. Counterparts. This MOU may be signed in multiple counterparts which, when signed by all Parties, shall constitute a binding agreement.

18. Notices. Any notice requirement set forth herein shall be in writing and delivered to the appropriate party at the address listed in this subparagraph. Addresses for notice may be changed from time to time by written notice to the other party. All communications shall be effective when actually received; provided, however, that nonreceipt of any communication as the result of a change in address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

To County: County of Orange  
Attn: County Executive Office, Real Estate  
333 W. Santa Ana Boulevard, 3<sup>rd</sup> Floor  
Santa Ana, CA 92701

To City: City of Santa Ana  
Attn: Housing Manager  
20 Civic Center Plaza (M-26)  
P.O. Box 1988  
Santa Ana, California 92702

IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be executed by their respective governing bodies on the dates set forth opposite their signatures.

**COUNTY:**

COUNTY OF ORANGE, a political  
subdivision of the State of California

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

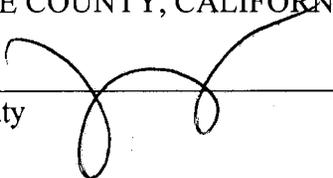
Dated: \_\_\_\_\_

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

Title: Director of OC Public Works

APPROVED AS TO FORM:  
OFFICE OF COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

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

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, written over a horizontal line.

Attachment: Minute Order and County of Orange staff report (Transfer of RHINA Units from County of Orange to City of Santa Ana)

**CITY:**

CITY OF SANTA ANA, a municipal corporation and charter city

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

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

By: \_\_\_\_\_  
City Attorney

ATTEST:

By: \_\_\_\_\_  
City Clerk

Attachment: Minute Order and County of Orange staff report (Transfer of RHINA Units from County of Orange to City of Santa Ana)

**Exhibit A**  
**[PROPERTY LEGAL DESCRIPTION]**

Attachment: Minute Order and County of Orange staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

**Exhibit B**  
**[HOUSING SITE DESCRIPTION]**

Attachment: Minute Order and County of Orange staff report (Transfer of RHNA Units from County of Orange to City of Santa Ana)

**GOVERNMENT CODE - GOV**

**TITLE 7. PLANNING AND LAND USE [65000 - 66499.58]** ( *Heading of Title 7 amended by Stats. 1974, Ch. 1536. )*

**DIVISION 1. PLANNING AND ZONING [65000 - 66301]** ( *Heading of Division 1 added by Stats. 1974, Ch. 1536. )*

**CHAPTER 3. Local Planning [65100 - 65763]** ( *Chapter 3 repealed and added by Stats. 1965, Ch. 1880. )*

**ARTICLE 10.6. Housing Elements [65580 - 65589.11]** ( *Article 10.6 added by Stats. 1980, Ch. 1143. )*

**65584.07.** (a) During the period between adoption of a final regional housing needs allocation and the due date of the housing element update under Section 65588, the council of governments, subregional entity, or the department, whichever assigned the county's share, shall reduce the share of regional housing needs of a county if all of the following conditions are met:

- (1) One or more cities within the county agree to increase its share or their shares in an amount equivalent to the reduction.
  - (2) The transfer of shares shall only occur between a county and cities within that county.
  - (3) The county's share of low-income and very low income housing shall be reduced only in proportion to the amount by which the county's share of moderate- and above moderate-income housing is reduced.
  - (4) The council of governments, subregional entity, or the department, whichever assigned the county's share, shall approve the proposed reduction, if it determines that the conditions set forth in paragraphs (1), (2), and (3) have been satisfied. The county and city or cities proposing the transfer shall submit an analysis of the factors and circumstances, with all supporting data, justifying the revision to the council of governments, subregional entity, or the department. The council of governments or subregional entity shall submit a copy of its decision regarding the proposed reduction to the department.
- (b) (1) The county and cities that have executed transfers of regional housing needs pursuant to subdivision (a) shall use the revised regional housing need allocation in their housing elements and shall adopt their housing elements by the deadlines set forth in Section 65588.
- (2) A city that has received a transfer of a regional housing need pursuant to subdivision (c) shall adopt or amend its housing element within 30 months of the effective date of incorporation.
  - (3) A county or city that has received a transfer of regional housing need pursuant to subdivision (d) shall amend its housing element within 180 days of the effective date of the transfer.
  - (4) A county or city is responsible for identifying sites to accommodate its revised regional housing need by the deadlines set forth in paragraphs (1), (2), and (3).
  - (5) All materials and data used to justify any revision shall be made available upon request to any interested party within seven days upon payment of reasonable costs of reproduction unless the costs are waived due to economic hardship. A fee may be charged to interested parties for any additional costs caused by the amendments made to former subdivision (c) of Section 65584 that reduced from 45 to 7 days the time within which materials and data were required to be made available to interested parties.
- (c) (1) If an incorporation of a new city occurs after the council of governments, subregional entity, or the department for areas with no council of governments, has made its final allocation under Section 65584.03, 65584.04, or 65584.06, a portion of the county's allocation shall be transferred to the new city. The city and county may reach a mutually acceptable agreement for transfer of a

portion of the county's allocation to the city, which shall be accepted by the council of governments, subregional entity, or the department, whichever allocated the county's share. If the affected parties cannot reach a mutually acceptable agreement, then either party may submit a written request to the council of governments, subregional entity, or to the department for areas with no council of governments, to consider the facts, data, and methodology presented by both parties and determine the number of units, by income category, that should be transferred from the county's allocation to the new city.

(2) Within 90 days after the date of incorporation, either the transfer, by income category, agreed upon by the city and county, or a written request for a transfer, shall be submitted to the council of governments, subregional entity, or to the department, whichever allocated the county's share. A mutually acceptable transfer agreement shall be effective immediately upon receipt by the council of governments, the subregional entity, or the department. A copy of a written transfer request submitted to the council of governments shall be submitted to the department. The council of governments, subregional entity, or the department, whichever allocated the county's share, shall make the transfer effective within 180 days after receipt of the written request. If the council of governments allocated the county's share, the transfer shall be based on the methodology adopted pursuant to Section 65584.04. If the subregional entity allocated the subregion's share, the transfer shall be based on the methodology adopted pursuant to Section 65584.03. If the department allocated the county's share, the transfer shall be based on the considerations specified in Section 65584.06. The transfer shall neither reduce the total regional housing needs nor change the regional housing needs allocated to other cities by the council of governments, subregional entity, or the department. A copy of the transfer finalized by the council of governments or subregional entity shall be submitted to the department. The council of governments, the subregional entity, or the department, as appropriate, may extend the 90-day deadline if it determines an extension is consistent with the objectives of this article.

(d) (1) If an annexation of unincorporated land to a city occurs after the council of governments, subregional entity, or the department for areas with no council of governments, has made its final allocation under Section 65584.03, 65584.04, or 65584.06, a portion of the county's allocation may be transferred to the city. The city and county may reach a mutually acceptable agreement for transfer of a portion of the county's allocation to the city, which shall be accepted by the council of governments, subregional entity, or the department, whichever allocated the county's share. If the affected parties cannot reach a mutually acceptable agreement, then either party may submit a written request to the council of governments, subregional entity, or to the department for areas with no council of governments, to consider the facts, data, and methodology presented by both parties and determine the number of units, by income category, that should be transferred from the county's allocation to the city.

(2) (A) Except as provided under subparagraph (B), within 90 days after the date of annexation, either the transfer, by income category, agreed upon by the city and county, or a written request for a transfer, shall be submitted to the council of governments, subregional entity, and to the department. A mutually acceptable transfer agreement shall be effective immediately upon receipt by the council of governments, the subregional entity, or the department. The council of governments, subregional entity, or the department for areas with no council of governments, shall make the transfer effective within 180 days after receipt of the written request. If the council of governments allocated the county's share, the transfer shall be based on the methodology adopted pursuant to Section 65584.04. If the subregional entity allocated the subregion's share, the transfer shall be based on the methodology adopted pursuant to Section 65584.03. If the department allocated the county's share, the transfer shall be based on the considerations specified in Section 65584.06. The transfer shall neither reduce the total regional housing needs nor change the regional housing needs allocated to other cities by the council of governments, subregional entity, or the department for areas with no council of governments. A copy of the transfer finalized by the council of governments or subregional entity shall be submitted to the department. The council of governments, the subregional entity, or the department, as appropriate, may extend the 90-day deadline if it determines an extension is consistent with the objectives of this article.

(B) If the annexed land is subject to a development agreement authorized under subdivision (b) of Section 65865 that was entered into by a city and a landowner prior to January 1, 2008, the revised determination shall be based upon the number of units allowed by the development agreement.

(3) A transfer shall not be made when the council of governments or the department, as applicable, confirms that the annexed land was fully incorporated into the methodology used to allocate the city's share of the regional housing needs.

*(Amended by Stats. 2019, Ch. 844, Sec. 2. (SB 235) Effective January 1, 2020.)*

RESOLUTION OF THE BOARD OF SUPERVISORS OF  
ORANGE COUNTY, CALIFORNIA

February 25, 2020

WHEREAS, California Government Code section 26227 (“Section 26227”) authorizes the Board of Supervisors to expend money from the general fund of the County to establish County programs deemed by the Board of Supervisors to be necessary to meet the social needs of the population of the county, including but not limited to, the areas of health, law enforcement, public safety, rehabilitation, welfare, education, and legal services, and the needs of physically, mentally and financially handicapped persons and aged persons; and

WHEREAS, Section 26227 further authorizes officers and employees to use County resources and property to carry out any such program established by the Board of Supervisors; and

WHEREAS, the County, and the City of Santa Ana (“City”), working in conjunction with The Related Companies of California, LLC (“Developer”) have developed a plan for an affordable housing project on property to be owned jointly by the City and County located at 1126 E. Washington Avenue, Santa Ana (“Project”); and

WHEREAS, the Project consists of new construction of a four-story apartment community consisting of 86 units (85 rental units), of which 43 units are set aside for formerly homeless households; and

WHEREAS, the co-Developer and lead service provider for the Project, A Community of Friends (“ACOF”), is a 501(c)(3) nonprofit affordable housing developer, manager and service provider with over 30 years of experience, and will along with the Developer construct, develop, operate and maintain the Project pursuant to a 65-year Ground Lease with the County and the City;

WHEREAS, Developer and ACOF have formed Washington Santa Ana Housing Partners, L.P., a California limited partnership, to develop the Project;

WHEREAS, the Project will assist the County in fulfilling its mission of providing affordable and permanent supportive housing to the residents of Orange County.

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby:

1. Find the activities described in the Option Agreement and Ground Lease and the approval of the Option Agreement and Ground Lease, meet the social needs of the population of the County and therefore will further the goals of the County by providing affordable and permanent supportive housing to the residents of Orange County.
2. Deem the programs proposed by the Project to be necessary to assist in meeting the aforementioned needs of the County.
3. Approve the Option Agreement and Ground Lease for a 65-year term, for the construction, entitlement, operation, maintenance, and management of The Crossroads at Washington on County and City owned property located at 1126 E. Washington Avenue, Santa Ana, and authorize the Chief Real Estate Officer or designee to execute the Option Agreement and Ground Lease in substantial conformance with the attached form, with approval of County Counsel.
4. Authorize the use of County resources, including, but not limited to, property and employee administration of such programs, to support the above described services and the Project.

The foregoing was passed and adopted by the following vote of the Orange County Board of Supervisors, on February 25, 2020, to wit:

AYES: Supervisors: ANDREW DO, LISA A. BARTLETT, DONALD P. WAGNER  
DOUG CHAFFEE, MICHELLE STEEL  
NOES: Supervisor(s):  
EXCUSED: Supervisor(s):  
ABSTAINED: Supervisor(s):

  
\_\_\_\_\_  
CHAIRWOMAN

STATE OF CALIFORNIA )  
  )  
COUNTY OF ORANGE )

**I, ROBIN STIELER, Clerk of the Board of Orange County, California, hereby certify that a copy of this document has been delivered to the Chair of the Board and that the above and foregoing Resolution was duly and regularly adopted by the Orange County Board of Supervisors.**

**IN WITNESS WHEREOF, I have hereto set my hand and seal.**

  
\_\_\_\_\_  
ROBIN STIELER  
Clerk of the Board  
County of Orange, State of California



Resolution No: 20-008  
Agenda Date: 02/25/2020  
Item No: 7



I certify that the foregoing is a true and correct copy of the Resolution adopted by the Board of Supervisors, Orange County, State of California

Robin Stieler, Clerk of the Board of Supervisors

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

Attachment: Minute Order and County of Orange staff report (Transfer of RHINA Units from County of Orange to City of Santa Ana)

MAY 03 2021

INSURANCE NOT REQUIRED  
WORK MAY PROCEED  
COUNCIL

Return ORIGINAL  
executed copy to COTC,  
M-30

A-2020-033

D: CDA (2) (Judson FA  
Bunn)

**MEMORANDUM OF AGREEMENT  
BETWEEN THE COUNTY OF ORANGE AND THE CITY OF SANTA ANA  
REGARDING REGIONAL HOUSING NEEDS ALLOCATIONS FOR FUTURE  
HOUSING ELEMENT PLANNING PERIODS**

This Memorandum of Agreement ("MOU") between the County of Orange, a political subdivision of the State of California ("County") and the City of Santa Ana, a chartered city and municipal corporation ("City"), is dated, for the convenience of the parties, as the first date upon which it is executed by both the County and the City, as shown by the signatures of their authorized representatives below, and the various obligations established hereby shall take effect as provided herein.

**RECITALS**

A. The City and County have entered into a Joint Powers Agreement dated as of February 25, 2020 ("Agreement") regarding the future development of multiple parcels of land in the City of Santa Ana comprising approximately 2.28 acres and commonly referred to as the Crossroads at Washington site (APNs 398-092-13 and 398-092-14, as and hereafter, the "Property"). The Property is depicted in greater particularity on Exhibit A hereto. The City has approved a development proposal for the Property (the "Project") which proposal is more particularly described in those certain documents entitled "PRE-COMMITMENT LETTER" dated July 2, 2019.

B. To further support of this Project, Orange County Board of Supervisors approved a loan in the amount of \$2,280,701 on February 25, 2020, toward the completion of 43 units within the Project.

C. The Orange County Board of Supervisors, acting as the Board of Commissioners to the Orange County Housing Authority, also approved the use of 43 Project-Based Housing Choice Vouchers on February 25, 2020, to further assist in the success of this Project.

D. The County desires to rely on housing proposed as part of the Project to meet certain affordable housing obligations imposed on the County by state law. Pursuant to Article 10.6 (the "Housing Element Law") (Government Code sections 65580 - 65589.8) of Chapter 3 of the Planning and Zoning Law, the Southern California Association of Governments ("SCAG") periodically adopts and assigns a Regional Housing Needs Assessment ("RHNA") allocation for each county and city in the County of Orange, including Orange County and the City of Santa Ana. Under the Housing Element Law, each city and county must periodically revise the housing element of its general plan utilizing the latest RHNA allocation adopted by SCAG. The next required revision to the housing elements of the City and County is designated as the sixth required revision by Government Code Section 65588, and is identified by SCAG as the 2021-2029 housing element planning period ("2021-29 Planning Period").

E. The Agreement between the City and County provides in Section 6 that the City and County may enter into a RHNA allocation transfer agreement as allowed under Government Code Section 65584.07 or any successor statute ("Section 65584.07") providing for

Attachment: Memorandum of Agreement (Transfer of RHNA Units from County of Orange to City of Santa Ana)

the transfer to the City of Santa Ana of some share of the County's RHNA allocation obligation for the sixth housing element planning period, provided that certain requirements of the Agreement are satisfied. This MOU is intended by the County and the City to serve as the RHNA allocation transfer agreement contemplated by Section 6 of the Agreement as may be amended pursuant to Section 14 of this agreement and to attain approval by SCAG.

F. Approval of the Project and successful implementation of the MOU will allow the County to meet its RHNA for the 2021-29 Planning Period and obtain a certified housing element. This MOU provides for RHNA allocation transfers from the County to the City in the 2021-29 Planning Period.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, the Parties hereto mutually agree as follows:

1. Housing Site. The City has identified the specific portion of the Property zoned Transit Village (TV) in the Transit Zoning Code (the "Housing Site"), as shown in Exhibit B hereto, as an available site for housing in its 2021-2029 housing element, and intends to issue, upon application, residential building permits for construction of 85-units of extremely low-income housing on the Housing Site during the 2021-29 Planning Period, while the Housing Site remains in the City's jurisdiction, in order to satisfy the City's RHNA allocation obligation for the 2021-29 Planning Period. The City will receive RHNA credit for all of the units on the Housing Site.

2. Transfer of RHNA Allocation Shares.

a. Very Low-Income Unit Transfer. For the 2021-29 RHNA Planning Period (or as that planning period may be adjusted by SCAG, the Department of Housing and Community Development, or statute), upon SCAG's adoption of a final RHNA, the County and City shall jointly apply to SCAG to transfer 20 units from the County's RHNA allocation to the City. This would result in a reduction of the County's RHNA allocation of very-low units by 20 units and an increase to the City's RHNA allocation of very-low units by 20 units, as provided for and in conformance with the requirements of Government Code section 65584.07. Accordingly, upon SCAG's approval, the City's RHNA allocation of very -low units will increase by 20 units and the County's RHNA allocation of very -low units shall decrease by 20 units, as allowed under Government Code section 65584.07. For purposes of this paragraph, "very low-income units" shall mean units where the household income for eligibility to live in the unit does not exceed 30% of the local area median income (AMI) as established by state and federal law.

b. Moderate Unit Transfer. Additionally, the County's RHNA allocation of moderate-income units shall be reduced proportionally in conformance with the requirements of Government Code section 65584.07. To fulfill the obligations set forth in Government Code section 65584.07, the County and City shall jointly apply to SCAG to transfer 22 moderate units from the County's RHNA allocation to the City. This would result in a reduction of to reduce the County's RHNA

allocation of moderate units by 22 units and to an increase to the City's RHNA share allocation of moderate units by 22 units of the County's original RHNA allocation. Accordingly, upon SCAG's approval, the City's share of its RHNA allocation of moderate units will increase by 22 units of the County's original allocation and the County's RHNA allocation of moderate will decrease by 22 units of the County's original allocation. For purposes of this paragraph, "moderate units" shall mean units where the household income for eligibility to live in the unit does not exceed 120% of the local area median income (AMI) as established by state and federal law.

c. The Parties agree that the land and financial commitments found in the Recitals to assist in the success of the Project is full and adequate consideration for the RHNA allocation transfers contemplated in this Section 2.

3. RHNA Methodologies: Parties Obligations. SCAG may determine the City and County's RHNA for the 2021-2029 Planning Period and subsequent revisions of the housing element in one of two ways. SCAG may make the determination based on its methodology adopted under Government Code Section 65584.04. Upon SCAG's adoption of a final RHNA, the County and City shall jointly apply to SCAG to reduce the County's RHNA allocation as described in Section 2., above, and to increase the City's RHNA allocation as described in Section 2., above.

4. Cooperation. The City and County shall take all steps reasonably necessary to comply with the Government Code section 65584.07 to implement this MOU, including but not limited to, providing the appropriate documentation to SCAG or any other agency, as required. The parties agree to work together to obtain SCAG and any other approval where required to effectuate this MOU. City further agrees that it will utilize the revised RHNA allocation that includes the transfer of RHNA shares contemplated by this MOU in preparing the City's 2021-2029 Planning Period and subsequent housing element revisions, as applicable.

5. Indemnification. City shall, to the extent permitted by law, indemnify, defend, and hold harmless the County and its officers, agents, and employees, from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon the negligence or wrongful act or omission of City or its City Council, boards and commissions, officers, agents, volunteers, or employees, in approving this MOU.

County shall, to the extent permitted by law, indemnify, defend, and hold harmless the City and its officers, agents, and employees, from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorney's fees), resulting from, arising out of, or based upon the negligence or wrongful act or omission of County or its Board of Supervisors, committees and commissions, officers, agents, volunteers, employees, in approving this MOU.

6. Time. Time is of the essence in this MOU.

7. Management. Except as otherwise provided in this MOU, the approval of both the City and County shall be required for decisions regarding management and disposition of the Joint Property.

8. Successors and Assigns. This MOU shall be binding upon and shall inure to the benefit of the County and City and their respective heirs, personal representatives, successors and assigns. Neither Party shall have the right to assign this MOU or any interest or right under this MOU without the prior written consent of the other Party.

9. No Attorneys' Fees. In any action between the Parties to interpret, enforce, award, modify or rescind any of the terms or provisions of this MOU, or any action otherwise commenced or taken in connection with this MOU, both Parties shall be responsible for their respective litigation costs and attorneys' fees, except as provided in Section 5, above, regarding indemnity.

10. Jurisdiction and Venue. This MOU shall be construed under the laws of the State of California in effect at the time of the signing of this MOU. The Parties consent to the jurisdiction of the California courts with venue in County of Orange.

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

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

13. No Waiver. A waiver by either Party of a breach of any of the covenants, conditions or agreements under this MOU to be performed by the other Party shall not be construed as a waiver of any such breach or succeeding breach or of the same or other covenants, agreements, restrictions or conditions of this MOU.

14. Modifications. Any alteration, change or modification of or to this MOU, to become effective, shall be made in writing and in each instance signed on behalf of each Party.

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

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

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To County: County of Orange  
Attn: County Executive Office, Real Estate  
333 W. Santa Ana Boulevard, 3<sup>rd</sup> Floor  
Santa Ana, CA 92701

To City: City of Santa Ana  
Attn: Housing Manager  
20 Civic Center Plaza (M-26)  
P.O. Box 1988  
Santa Ana, California 92702

IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be executed by their respective governing bodies on the dates set forth opposite their signatures.

COUNTY:

COUNTY OF ORANGE, a political  
subdivision of the State of California

By: James Treadaway  
Dated: 5-5-2021  
Name: James Treadaway  
Title: Director of OC Public Works

APPROVED AS TO FORM:  
OFFICE OF COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

Jacqueline  
By: Guzman  
Deputy

Digitally signed by Jacqueline Guzman  
DN: cn=Jacqueline Guzman, o=County of Orange,  
ou=Office of the County Counsel,  
email=jacqui@ocgov.com, cn=US  
Date: 2021.05.04 09:14:13 -0700

Attachment: Memorandum of Agreement (Transfer of RHNA Units from County of Orange to City of Santa Ana)

ATTEST:

CITY OF SANTA ANA

  
Daisy Gomez  
Clerk of the Council

  
Kristine Ridge  
City Manager

Dated: 5-8-2021

Dated: 4/24/21

APPROVED AS TO FORM:  
SONIA R. CARVALHO, City Attorney

By:   
Ryan O. Hodge  
Assistant City Attorney

Dated: April 22, 2021

RECOMMENDED FOR APPROVAL:

  
Steven A. Mendoza  
Executive Director  
Community Development Agency

**Exhibit A**  
**[PROPERTY LEGAL DESCRIPTION]**

**Exhibit A**  
**Legal Description of the Premises**

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

That certain parcel of land situated in the City of Santa Ana, County of Orange, State of California, being that portion of Parcel 1 of Parcel 73035 described in the Grant Deed recorded July 24, 1991, Instrument No. 91-387576 of Official Records, together with that portion of Parcel 73034 described in the Grant Deed recorded November 15, 1991, Instrument No. 91-626431 of Official Records, lying southwesterly and westerly of those three (3) courses and the Northwesterly extension of course Three (3) thereof, in the State Right of Way as shown on a map filed in Book 194, pages 28 through 36 inclusive of Record of Surveys in said Office of said County Recorder, said Three (3) courses being shown on sheet 2 of said map as:

- 1) North 21° 00' 58" West 286.98';
- 2) North 32° 46' 23" West 157.90';
- 3) North 25° 03' 45" West 62.42'.

**EXCEPTING THEREFROM:** That portion of above said Parcel 1, lying within the limits of the Washington Avenue Cul-De-Sac as shown on said Sheet 2 of said Map.

**APN: 398-092-14**

That portion of the land allotted to Maria Ygnacia Alvarado De Moreno, as described in the final decree of partition of the Rancho Santiago De Santa Ana, which was entered September 12, 1868 in Book "B" Page 410 of Judgments of the District Court of the 17th Judicial District, in and for Los Angeles County, California, described as follows:

Beginning at a point 1584.0 feet north and 301.05 feet west of an iron axle set at the intersection of the centerlines of Fourth Street and Grand Avenue; thence North 717.80 feet; thence West 606.90 feet; thence South 717.80 feet; thence East 606.90 feet to the point of beginning.

**EXCEPTING THEREFROM:** That portion lying southeasterly of the northwesterly line of that certain 104.00 foot strip of land described in Parcel A of Deed to the City of Santa Ana, recorded June 25, 1970 in Book 9327, page 72 of Official Records.

**ALSO EXCEPTING THEREFROM:** That portion described as Parcel C in said Deed to the City of Santa Ana.

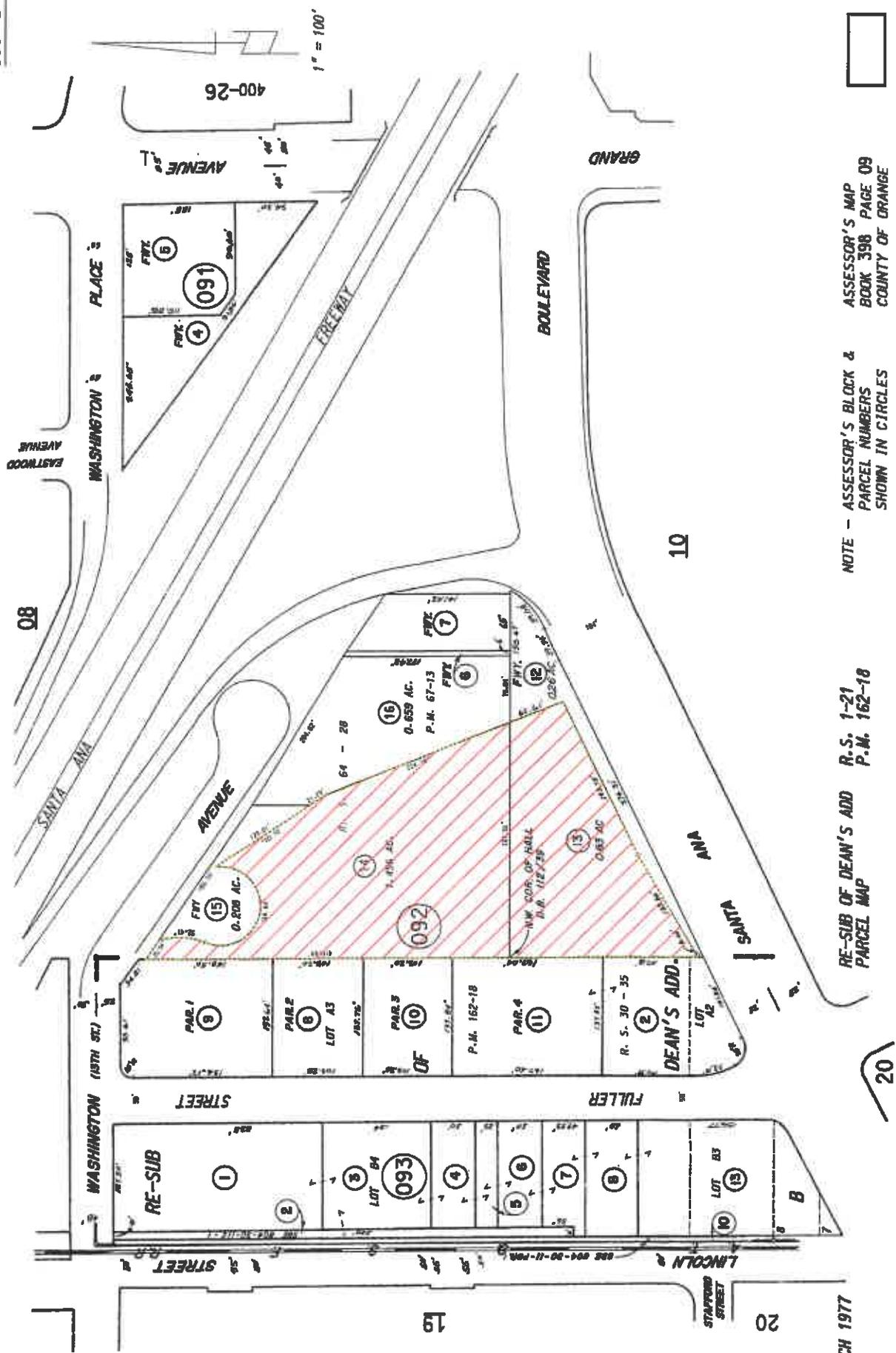
**ALSO EXCEPTING THEREFROM:** That portion conveyed in the deed to the State of California recorded January 10, 1992, Instrument 92-15188 of Official Records.

**APN: 398-092-13**

**Exhibit B**  
**[HOUSING SITE DESCRIPTION]**

Attachment: Memorandum of Agreement (Transfer of RHNA Units from County of Orange to City of Santa Ana)

POR. S 1/2, NE 1/4, SEC. 7, T 5 S, R 9 W



NOTE - ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES

ASSESSOR'S MAP BOOK 398 PAGE 09 COUNTY OF ORANGE

RE-SUB OF DEAN'S ADD R.S. 1-21 P.M. 162-18  
 PARCEL MAP

MARCH 1977



Southern California Association of Governments  
Remote Participation Only  
June 3, 2021

**To:** Community Economic & Human Development Committee (CEHD)  
Energy & Environment Committee (EEC)  
Transportation Committee (TC)  
Regional Council (RC)  
**From:** Sarah Dominguez, Senior Regional Planner  
(213) 236-1918, dominguezs@scag.ca.gov  
**Subject:** Climate Action Plan for Transportation Infrastructure (CAPTI) Comment  
Letter

EXECUTIVE DIRECTOR'S  
APPROVAL

**RECOMMENDED ACTION:**

Receive and File

**STRATEGIC PLAN:**

This item supports the following Strategic Plan Goal 2: Advance Southern California’s policy interests and planning priorities through regional, statewide, and national engagement and advocacy.

**EXECUTIVE SUMMARY:**

*SCAG submitted a comment letter to the California State Transportation Agency (CalSTA) regarding the draft Climate Action Plan for Transportation Infrastructure (CAPTI). The CAPTI is a framework for aligning state transportation investments with the state’s climate, health, and social equity goals. The framework includes overarching guiding principles as well as investment strategies to guide the corresponding actions. This is founded in a “fix-it-first” approach established in Senate Bill (SB) 1 and builds on Executive Orders N-19-19 and N-79-20. SCAG’s letter emphasized the common goals between the CAPTI and SCAG’s Regional Transportation Plan/Sustainable Communities Strategy, Connect SoCal, and made specific suggestions to ensure that implementing the CAPTI supports SCAG’s implementation of Connect SoCal.*

**BACKGROUND:**

CalSTA developed the draft CAPTI, which was released on March 10, 2021. The CAPTI is framework and set of strategies to align the state’s discretionary transportation investment spending with the state’s climate, health and social equity goals. This is a multi-agency effort from the state, reflecting coordination between CalSTA, the California Transportation Commission (CTC), California Air Resources Board (CARB), California Department of Housing and Community Development (HCD), the Strategic Growth Council (SGC) and the Office of Planning and Research (OPR).

With CAPTI, where feasible and within existing funding program structures, the state will invest discretionary transportation funds in infrastructure projects that align with its climate, health, and social equity goals. The CAPTI is rooted in Executive Orders N-19-19 and N-79-20 which are targeted at reducing greenhouse gas (GHG) emissions from transportation in order to achieve the state's ambitious climate goals. The CAPTI acknowledges that, as outlined in SB 1, California will continue the "fix-it-first" approach to maintaining the state's highways, roads and bridges.

The draft plan has 10 guiding principles:

- Building toward an integrated, statewide rail and transit network;
- Investing in networks of safe and accessible bicycle and pedestrian infrastructure;
- Including investments in light-, medium- and heavy-duty zero-emission vehicle infrastructure;
- Strengthening the commitment to social and racial equity by reducing public health and economic harms and maximizing community benefits;
- Making safety improvements to reduce fatalities and severe injuries of all users toward zero;
- Assessing physical climate risk for transportation infrastructure projects;
- Promoting projects that do not substantially increase passenger vehicle travel;
- Promoting compact infill development while protecting residents and businesses from displacement;
- Developing a zero-emission freight transportation system; and
- Protecting natural and working lands.

These are then reflected in the key actions for each of the seven CAPTI strategies:

**Strategy 1.** Cultivate and Accelerate Sustainable Transportation Innovation by Leading with State Investments

**Strategy 2.** Support a Robust Economic Recovery by Revitalizing Transit, Supporting Zero Emissions Vehicles (ZEV) Deployment, and Expanding Active Transportation Investments

**Strategy 3.** Elevate Community Voices in How We Plan and Fund Transportation Projects

**Strategy 4.** Advance State Transportation Leadership on Climate and Equity through Improved Planning & Project Partnerships

**Strategy 5.** Support Climate Resilience through Transportation System Improvements and Protections for Natural and Working Lands

**Strategy 6.** Support Local and Regional Innovation to Advance Sustainable Mobility

**Strategy 7.** Strengthen Transportation-Land Use Connections

The full draft CAPTI<sup>1</sup> and a Frequently Asked Question page<sup>2</sup> can be found on the CalSTA website.

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<sup>1</sup> <https://calsta.ca.gov/-/media/calsta-media/documents/capti-2021-calsta.pdf>

SCAG submitted a comment letter on May 19, 2021 to voice the region’s perspective on the proposed action plan. While the goals of the action plan largely aligned with similar goals in Connect SoCal, SCAG offered comments to strengthen the alignment of specific strategies with our regional plans to achieve reductions sooner. SCAG staff worked with local partners to reflect a diversity of perspectives across the region within the letter.

CalSTA expects to adopt a final version no later than July 15, 2021 and then submit the final Plan to the Governor and the Legislature by July 15, 2021. SCAG staff are committed to working with state agency staff in the coming weeks and months as impacted programs are revised or reassessed.

**FISCAL IMPACT:**

Work associated with this item is included in the current Fiscal Year 2020.21 Overall Work Program (Connect SoCal Implementation 290.4871.01).

**ATTACHMENT(S):**

1. SCAG CAPTI Comment Letter

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<sup>2</sup> <https://calsta.ca.gov/subject-areas/climate-action-plan/faq>

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SOUTHERN CALIFORNIA  
ASSOCIATION OF GOVERNMENTS  
900 Wilshire Blvd., Ste. 1700  
Los Angeles, CA 90017  
T: (213) 236-1800  
www.scag.ca.gov

May 19, 2021

Mr. David S. Kim  
Secretary  
California State Transportation Agency  
915 Capitol Mall, Suite 350B  
Sacramento, CA 95814

**Subject: Climate Action Plan for Transportation Infrastructure**

Dear Secretary Kim:

On behalf of the Southern California Association of Governments (SCAG), we want to thank you for the opportunity to comment on the Climate Action Plan for Transportation Infrastructure (CAPTI). This document represents a significant opportunity to align the State’s transportation investments with the goals for reducing greenhouse gas emissions (GHG) and providing for a more equitable future. In the interest of having a strong and successful action plan, we offer the following suggestions based on over a decade of sustainable regional transportation planning in Southern California.

First, it is important to point out that the guiding principles articulated for the CAPTI largely reflect the strategies, investments and goals of Connect SoCal, SCAG’s recently adopted 2020 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS). Connect SoCal is a product of our continued efforts to align transportation investments across six counties and 191 cities to reduce GHG and improve air quality, while also meeting the mobility needs of a growing population and economy. Rooted in the 2008 RTP and 2012 RTP/SCS plans, Connect SoCal’s “core vision” centers on maintaining and better managing the transportation network we have, while expanding mobility choices by locating housing, jobs and transit closer together and increasing investment in transit and complete streets.

This core vision enabled the SCAG region to achieve its 2020 greenhouse gas reduction target yielding the changes envisioned under SB 375, including a significant change in the projects our regional partners fund through local sales tax measures. The State’s ongoing partnership, including the financial support for the Active Transportation Program and Senate Bill (SB) 1 programs, has also been essential to moving this core vision forward. In the last five years alone, more than 500 bikeway miles have been added to the region’s active transportation network. The

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- Transportation  
Sean Ashton, Downey

Attachment: SCAG CAPTI Comment Letter (Climate Action Plan for Transportation Infrastructure (CAPTI) Comment Letter)

transit backbone has been expanded to include the Metro Gold Line Foothill Extension in Los Angeles County and the Downtown San Bernardino Passenger Rail Project in San Bernardino County. Major strides were made in establishing a regional express lane network with the addition of the I-10 and I-110 Express Lanes in Los Angeles County and the expansion of the SR-91 Express Lanes between Orange and Riverside Counties. Complementary land-use changes, which have been supported through SCAG's Sustainable Communities Program, contributed to continued progress toward more compact development patterns as envisioned in our plan. Since Senate Bill 375 passed in 2008, nearly 60 percent of new household growth have occurred in high quality transit areas.

To meet higher GHG reduction targets, Connect SoCal expands upon this core vision to explore new strategies enabled through advancements in technology. Referred to as our "key connections," these new strategies account for thirty percent of the reductions needed to achieve our 2035 target. They include creating "smart cities" where virtual access reduces the need to travel for work and services; optimizing "mobility as a service" through better management of curb space and public right-of-way to encourage shared mobility; deploying next generation commute reduction strategies in job centers; leveraging parking policies and infrastructure investments to stimulate housing production in priority growth areas; and accelerating electrification and clean mobility through incentives and infrastructure. Beyond helping achieve our SB 375 GHG reduction targets, which focus on reductions from passenger vehicles, many of the key connections also address criteria pollutant emissions from goods movement sources that account for more than half of all mobile source emissions in the SCAG region.

**As the evolution of our regional planning demonstrates, meeting the challenges of climate change requires a broad set of interconnected strategies to reduce greenhouse gas emissions. To achieve this level of connectivity in a rapidly changing mobility landscape, the development and implementation of local and regional plans has never been more critical.** Our networks and operating systems must become more granular to facilitate seamless transitions at the curb, not just the on-ramp. Land-use plans must align with transportation networks at the neighborhood scale to make walking or rolling the easiest way to start every trip. While CAPTI recognizes that state transportation goals require local action, the emphasis of the plan on state-wide tools and metrics to inform project-level decisions ignores the local context and will require close coordination with regional agencies to ensure state efforts support, rather than constrain, local and regional plans. The State rightfully established a system under SB 375 of achieving greenhouse gas reductions that is bottom-up, not top-down, where state-established, regional performance metrics drive regional planning organizations to find innovative solutions that can be implemented in the context of California's diverse communities. For this model to be successful, regions need certainty that the State will be a funding partner in delivering innovative solutions and plans. The development of CAPTI provides this opportunity, though more time and a stronger engagement process is needed to ensure a successful outcome.

We offer the following overarching recommendations, followed by specific comments, to strengthen the alignment between CAPTI and regional plans with the aim of not only supporting

the implementation of Connect SoCal but also accelerating the implementation of strategies to achieve reductions sooner.

- **Recognize and support projects that restore and sustain transit as the backbone of sustainable mobility:** Transit serves as the backbone of Connect SoCal, a key strategy for meeting the region’s mobility and sustainability goals, supporting existing and future transit-oriented communities and providing a lifeline service to our most vulnerable populations. The COVID-19 pandemic has both amplified existing trends in ridership decline and brought new challenges. While CAPTI includes key transit-supportive actions including the California Integrated Travel Project and funding to help transit operators meet the State’s Innovative Clean Transit mandate for zero emission fleets, more must be done to support transit recovery and revitalization. CAPTI acknowledges that frequent, reliable and convenient transit systems are vital for advancing more livable and equitable communities. With nearly 80 percent of every transit trip in the SCAG region carried on buses, support and investment in road infrastructure and technology that prioritize transit—such as adding dedicated bus lanes and managed lanes—is critical
- **Expand—don’t limit—funding eligibility for systemic change and impact:** Our region is concerned that fixating on VMT analysis at the project level, as a proxy for GHG reduction, undermines long-term mitigation and runs counter to the State’s goals of advancing sustainable solutions that balance mobility, safety, economic and equity goals. When SCAG prepares the RTP/SCS, we balance these multiple goals alongside our GHG reduction targets. We encourage the CAPTI to take a similarly balanced approach and to respect the plans, programs and projects in the RTP/SCS that collectively support our regional goals, objectives and GHG target achievement. More specifically, the issue of “advancing the SCS” as mentioned in Strategy 6.3 runs counter to our understanding of the RTP/SCS as an integrated regional plan.. This strategy could result in the deprioritizing of projects, like our express lane network, that enjoy regional consensus and are critical to transit and pricing strategies that drive emission reductions in our plan.

SCAG would welcome more conversation and focus on opportunities to expand funding eligibility for more innovative solutions, like our “key connections.” A guiding principle of CAPTI is to promote projects that do not significantly increase passenger vehicle travel, including the use of technology to optimize operations. Yet, none of the CAPTI strategies truly address technology, aside from clean vehicles. Connect SoCal includes transportation systems management (TSM) and transportation demand management (TDM) strategies that use existing and innovative technology to achieve cost-effective mobility and sustainability benefits. SCAG is investing over \$2 million in planning and pilot development for curb space management over the next few years, and there are many examples of pilot demonstrations across the State that show the potential benefits of innovative new transportation options. CAPTI should more explicitly support technology and innovation, including as eligible components of capital projects. There is perhaps no clearer linkage between transportation infrastructure, technology, and GHG reduction

than in broadband deployment. Dig once/dig smart investments in broadband are critical not only to prepare us for an increasingly connected future, but also to ensure that all Californians benefit from new technologies that improve digital access to education, health care and employment, while reducing the need for travel.

- Plan for Transition:** For more than a decade the State has required regions to develop plans to meet greenhouse gas reduction targets. To achieve even greater reductions from transportation, the region supports and is encouraged by efforts to put more resources into regional and local planning and pilot programs. We will go further together by doing the hard work of engaging communities to find solutions. To this end, we support efforts like the “Highways to Boulevards” Conversion Pilot Program, both in terms of the vision and the piloting process proposed to advance this strategy. SCAG is currently seeking federal funding to pursue a similar project to conduct a regional assessment to address longstanding inequities in environmental justice areas, disadvantaged communities and communities of concern. We also strongly support the emphasis of CAPTI on equity and on community engagement as foundational to achieving more equitable outcomes. SCAG’s governing board, the Regional Council, recently adopted resolutions on equity<sup>1</sup> and resilience<sup>2</sup> to highlight the importance of meaningfully advancing justice, equity, diversity, and inclusion and commit to promoting regional climate adaptation, mitigation, and decarbonization in the transportation realm. SCAG endeavors to improve our RTP/SCS development and implementation by elevating community voices. Our Go Human program focuses on making changes at the neighborhood-level, to promote safe streets and healthy communities. These highly local conversations lead to local plans, and then percolate into county plans and regional plans, which result in projects that are put forward to the State for funding. We are encouraged by the State’s efforts to improve community engagement and conversations and look forward to resources flowing to the local level for meaningful engagement and community-driven change.
- No one-size-fits-all:** We greatly appreciate that the draft CAPTI recognizes the principle of “no one-size-fits-all” (page 15, first paragraph). How that principle is operationalized is of great interest to SCAG and our partners, given the size, geographic diversity, and economic diversity of our region and the diversity of our residents and businesses across the region. While the region is largely considered to be urbanized, well over half the region, by land area, is rural. There is also a great deal of diversity even within the urbanized portions, based on historical land use patterns and environment. Our request would be that the state recognize the wide range of needs and varying degrees of ability to achieve VMT reduction. We would request additional acknowledgement of this point in the final CAPTI document.

To advance these priorities, we offer the following recommendations to strengthen CAPTI:

<sup>1</sup> [https://scag.ca.gov/sites/main/files/file-attachments/rcresolution206232\\_0.pdf?1605039926](https://scag.ca.gov/sites/main/files/file-attachments/rcresolution206232_0.pdf?1605039926)

<sup>2</sup> <https://scag.ca.gov/sites/main/files/file-attachments/rc010721resolution21-628-1.pdf?1610072923>

- Strategy 1.1 Prioritize Solutions for Congested Corridors Program (SCCP) Projects:** Updating the Solutions for Congested Corridors Program (SCCP) guidelines to prioritize projects that enable travelers to opt out of congestion is a praise-worthy goal. It highlights the importance of critical regional initiatives, such as express lanes, designed to improve travel times and reduce congestion, while generating revenues for reinvestment in the corridor. CAPTI, however, over-emphasizes VMT reduction as the primary metric, potentially impacting the funding and completion of many critical regional express lane projects that serve bus rapid transit and offer travelers important mobility choices.
- Strategy 1.4 Mainstream Zero-Emission Vehicle Infrastructure within the Trade Corridor Enhancement Program (TCEP):** With the Trade Corridor Enhancement Program guidelines development, it should be recognized that many of the near-term ZEV infrastructure projects will be private sector led initiatives—on private property. Currently the freight industry functions with minimal state funding. Public infrastructure buildout will require significant planning to better understand where the opportunities are and demand is on public rights-of-way and it will need to explore the potential for public-private-partnerships. Although the CAPTI proposal acknowledges that it is limited to the funding programs overseen by CalSTA, a zero-emission fueling/charging network developed and adopted by CalSTA and the CTC should be coordinated, in a transparent way, with funding decisions made by CARB and the CEC. Accordingly, the CTC should recognize regions like Southern California that proactively plan and develop blueprints for ZEV infrastructure. Similarly, Strategy 4.6 should take into account efforts at the regional level. Partnering with California’s ports on identifying a zero-emission freight network would further recognize the critical role of freight to the state’s economy and access to essential goods.
- Strategy 2.2 Identify A Long-Term Strategic Funding Pathway Across All Funding Opportunities to Realize the State Rail Plan:** In building from the State Rail Plan to prioritize statewide transit and intercity rail investments, it will be important to use a context sensitive evaluation to equally support the diverse range of communities across the State. In addition to the need for infrastructure investments, CAPTI must consider the funding needs of transit agencies and work to identify reliable support for their ongoing, operations and maintenance.
- Strategy 2.4 Increase Funding to Active Transportation Program (ATP):** We support the proposal to increase funding to the Active Transportation Program for high performing projects. Despite recent investments into the program, including \$100 million annually from SB 1, the ATP is significantly oversubscribed.
- Strategy 3.1 Elevate Community Voices:** We encourage the California Transportation Commission (CTC) and Caltrans to help state and local agencies pursue partnerships with community-based organizations (CBO) by identifying funding mechanisms to pay for CBO staff time. For example, SCAG leveraged Senate Bill 1 funding to compensate our CBO

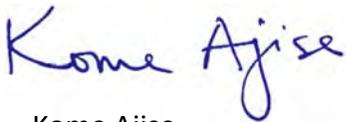
partners for their time during our 2020 RTP/SCS outreach process. Similarly, one way to improve local public engagement is to offer childcare. Related to Strategy 3.1, we recommend that the CalSTA, Caltrans and the CTC fund the community representatives you find to participate in the panel and ensure representation from across the State.

- **Strategy 4 Advance State Transportation Leadership on Climate and Equity through Improved Planning & Project Partnerships:** Given the robust policy framework created under SB 375 to reduce greenhouse gas emissions and better align housing development with transportation investments, we strongly encourage reconsideration of strategies that add new VMT or GHG project-level targets or thresholds. This includes revisiting Strategies 4.1 Caltrans Strategic Investment Strategy and 4.5 Caltrans Climate Action Plan to consider whether these actions add value or would only serve to overly complicate the delivery of projects that have already been vetted as part of a sustainable transportation strategy for a region. We believe Strategy 4.4 is a far more productive approach to advance state leadership and look forward to partnering with Caltrans to develop a strong pipeline of innovative sustainable transportation solutions through better planning, particularly along conventional freeways that run through the heart of so many of our communities.
- **Strategy 6.2 Convene a Roadway Pricing Working Group to Provide State Support for Implementation of Local and Regional Efforts.** SCAG supports efforts to provide meaningful engagement opportunities and collaboration between the state and regional efforts. In the convening of a working group about roadway pricing, there needs to be a consideration of how roadway pricing may impact local toll collection. We are concerned about the state inhibiting or impeding toll pricing activities established by local independent authorities, like those in the SCAG region. Doing so could jeopardize the financial stability of a regional tolling operator. Additionally, local agencies that manage these programs should retain local authority to make operational decisions.
- **Strategy 6.3 Develop Interagency Framework for Project Evaluation Around Advancing Sustainable Communities.** This strategy runs counter to our understanding of the RTP/SCS as an integrated regional plan. SCAG is concerned that state efforts at prioritization of projects within an RTP/SCS could lead to increased project costs and delays. SCAG would welcome the opportunity to work with CalSTA and other key state partners on this effort.
- **Strategy 7.3 Explore a “Highways to Boulevards” Conversion Pilot Program:** SCAG supports the “Highways to Boulevards” Conversion Pilot Program, as mentioned previously, and is currently seeking “Member Designated Project” funding at the federal level to conduct a comprehensive study on this topic in our region. SCAG suggests that CTC consider the incorporation of transit and active transportation modes for these projects, where feasible.

- **Additional Strategies:** In addition to the discussion of zero emission vehicle (ZEV) freight and transit fleets outlined in the strategies, the CAPTI should work to address ZEV barriers at the consumer level, particularly regarding ZEV charging permit streamlining (consistent with AB 1236) and tools for accelerated ZEV adoption for consumers. This would be consistent with supporting and ensuring the success of Executive Order N-79-20. Please also consider how the State can identify, encourage and support synergies between zero emission freight and zero emission transit investments. Similar to the comment made above for strategy 2.2, SCAG would welcome the state’s leadership in identifying funding sources for long term transit operating funds for all transit, not just rail. Supporting capital investments or leveraging existing infrastructure through expanded or more frequent service in order to achieve reductions in VMT and GHGs is dependent on transit agencies having sufficient and sustainable operating funds.

In conclusion, SCAG and our partner agencies support the vision and principles reflected in CAPTI as consistent with the goals and strategies of our own regional plans, but want to ensure that the resources directed by the State live up to these stated principles. Thank you for working in a collaborative manner that is respectful of the varying starting points of cities and counties across the State, including those in Southern California. If you have any questions or require additional information on any of the ideas discussed above, please do not hesitate to contact me directly, or Ms. Sarah Dominguez, Sustainable Communities Strategy Program Manager, at [dominguezs@scag.ca.gov](mailto:dominguezs@scag.ca.gov).

Sincerely,



Kome Ajise  
Executive Director



Southern California Association of Governments  
Remote Participation Only  
June 3, 2021

**To:** Community Economic & Human Development Committee (CEHD)  
Transportation Committee (TC)

EXECUTIVE DIRECTOR'S  
APPROVAL

**From:** Philip Law, Manager of Mobility Planning and Management  
(213) 236-1841, law@scag.ca.gov

**Subject:** Future of the Office After COVID-19

**RECOMMENDED ACTION FOR CEHD AND TC:**

Information Only – No Action Required

**STRATEGIC PLAN:**

This item supports the following Strategic Plan Goal 1: Produce innovative solutions that improve the quality of life for Southern Californians.

**EXECUTIVE SUMMARY:**

*Ms. Amber Schiada, of Jones Lang LaSalle (JLL), will provide the committee with an update on the future of the office with particular focus on the SCAG region. This update builds upon her presentation to the Community, Economic and Human Development Committee (CEHD) and Transportation Committee (TC) at their October 1, 2020 meetings, where she discussed the economic landscape, retail disruptions, office trends and the future of work. Ms. Schiada is a Senior Director, Insight & Advisory for JLL's Southwest Region, and specializes in real estate economics, industry trends and real estate forecasting.*

**BACKGROUND:**

As reported in the October 1, 2020 staff report to CEHD and TC, the increased rates of telework and other online activities that have occurred over the course of the COVID-19 pandemic may push the digitalization of our economies and society even further, and potentially alter our transportation and land use needs.

Much has changed with the course of the pandemic since October 2020. After a difficult winter surge, almost 14.5 million people, or 45.5% statewide, have been fully vaccinated as of May 10, 2021 (<https://covid19.ca.gov/vaccination-progress-data/>). An additional 5.3 million, or 16.5%, are partially vaccinated. Governor Newsom has announced that California will fully open its economy on June 15, provided there is a sufficient vaccine supply and stable and low hospitalization rates.

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A statewide survey of 1,650 California residents aged 18 and older, released in April 2021 by the University of Southern California (USC) and the California Emerging Technology Fund (CETF), shows significant use of telecommuting, telehealth and distance learning during the COVID-19 pandemic (<https://pressroom.usc.edu/pandemic-pushes-california-into-new-age-of-telehealth-and-telecommuting/>). Nearly 91% of California residents have internet access at home; 85% have internet access through a computer, laptop or tablet, while 6% are limited to access via smartphone. Of workers with broadband access, 38% have been working from home full time and 17% part time. Over half of survey respondents accessed telehealth during the pandemic. One-third indicated they have taken an online class or training.

As noted in the October 1, 2020 staff report, when considering a return to the office, workers have indicated they expect greater flexibility and opportunity to work from home than existed prior to the pandemic. This sentiment bears out in the USC/CETF survey. Regarding future expectations for telework, less than 20% of those respondents currently working from home expect a full, in-person return to the workplace. Of those currently working from home full time, almost 42% prefer to remain fully remote, and almost 70% of those currently working from home part time prefer to continue doing so.

Such employee sentiment is influencing how employers approach reopening. On May 5, 2021, Google announced a hybrid model that allows its employees to choose between coming back to their office a few days a week, working out of a Google office in a different location, or permanently working from anywhere if their role allows (<https://blog.google/inside-google/life-at-google/hybrid-approach-work>).

Also noted back in October was the trend of increasing vehicle miles traveled (VMT) in the region, despite double-digit unemployment rates, restrictions for what businesses could be open, and most schools closed for in-person instruction. SCAG's analysis of StreetLight data suggests that as of late February/early March 2021, VMT in the six-county SCAG region stands at about 72 percent of pre-pandemic levels. At the same time, regional transit ridership has not recovered to the same extent and remains at only half of pre-pandemic levels.

It must be noted that the USC/CETF survey confirms that working from home and online access is uneven across racial/ethnic and income categories. While 73% of those in the highest income category reported working from home, only 32% reported doing so in the lowest income category. Among households with annual incomes at or below 200% of the Federal Poverty Line based on the number of household members, about a quarter report no broadband access or only having access via smartphone. Using the Census defined race and ethnicity categories, over half of Asian and Hispanic respondents and 44% of Black respondents did not access telehealth at all. Lack of affordability is cited as the most significant barrier to internet access, reaffirming the urgency for addressing the digital divide.

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**FISCAL IMPACT:**

None.

**ATTACHMENT(S):**

1. PowerPoint Presentation - Future of Office\_SCAG\_June 2021

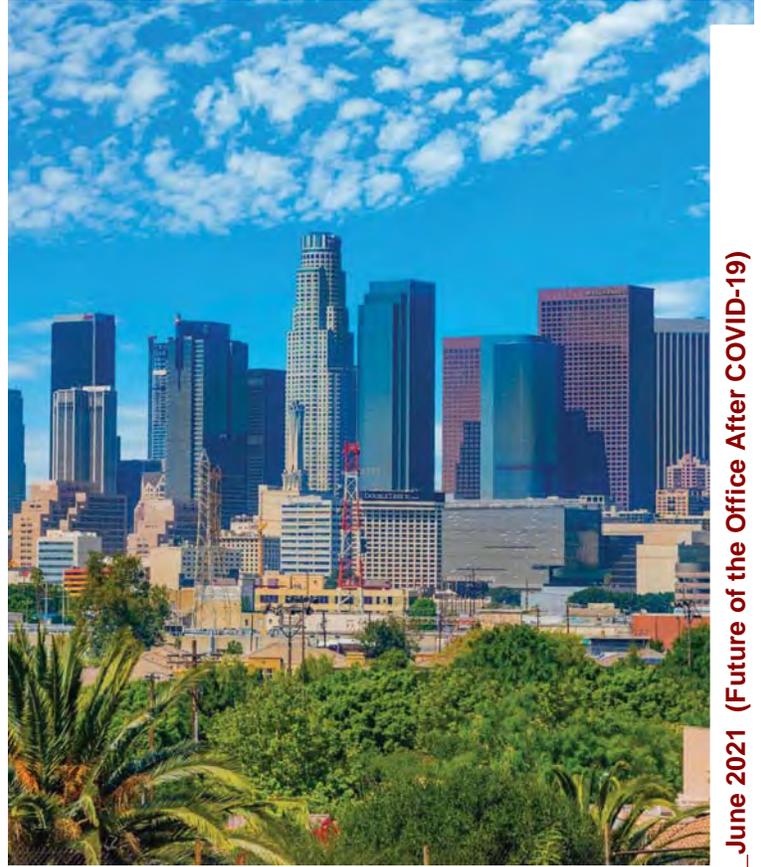


# The future of the office

Prepared for SCAG  
June 3, 2021

**Amber Schiada**  
Senior Director, Research

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## Key trends influencing the future of the office



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**New workplace models will accommodate hybrid work**

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**Location choice will continue to expand for corporates and talent**

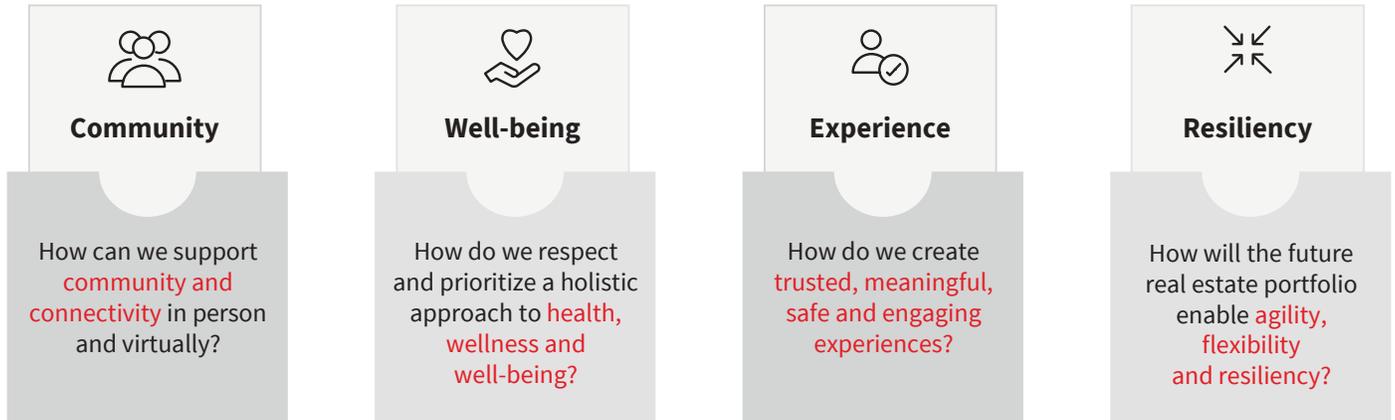
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**Critical office functions won't be easily replaced by virtual work**

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2

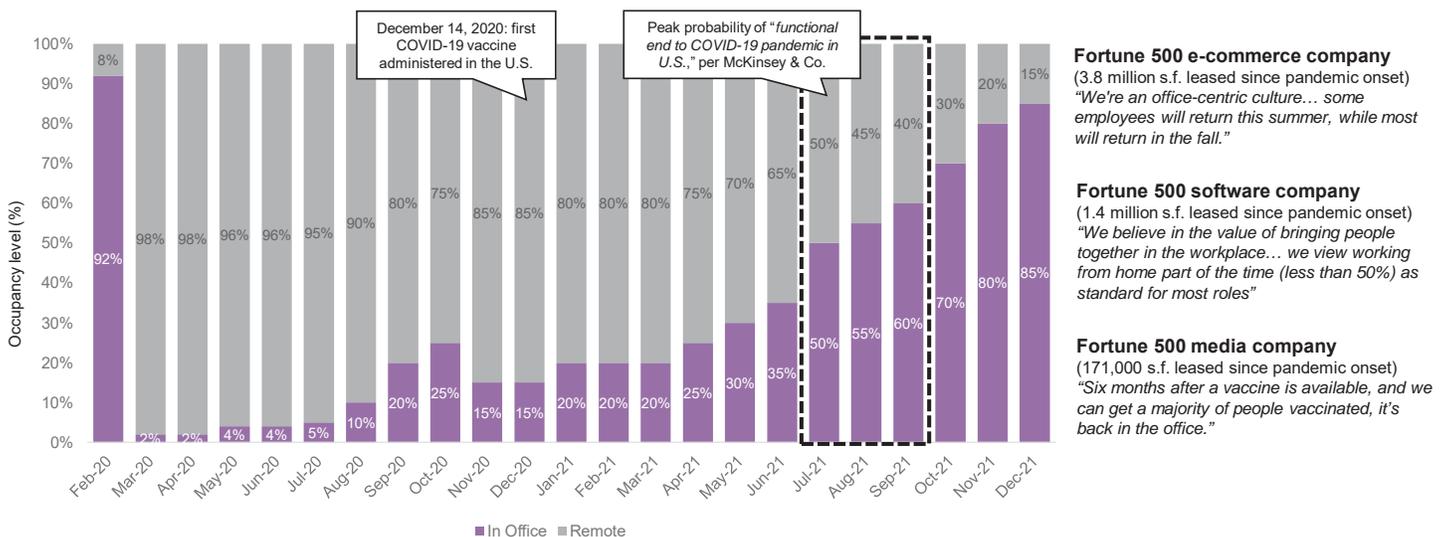
# Future of work priorities for corporate occupiers



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3

# Observed and projected U.S. office re-entry timeline



**Fortune 500 e-commerce company**  
 (3.8 million s.f. leased since pandemic onset)  
 "We're an office-centric culture... some employees will return this summer, while most will return in the fall."

**Fortune 500 software company**  
 (1.4 million s.f. leased since pandemic onset)  
 "We believe in the value of bringing people together in the workplace... we view working from home part of the time (less than 50%) as standard for most roles"

**Fortune 500 media company**  
 (171,000 s.f. leased since pandemic onset)  
 "Six months after a vaccine is available, and we can get a majority of people vaccinated, it's back in the office."

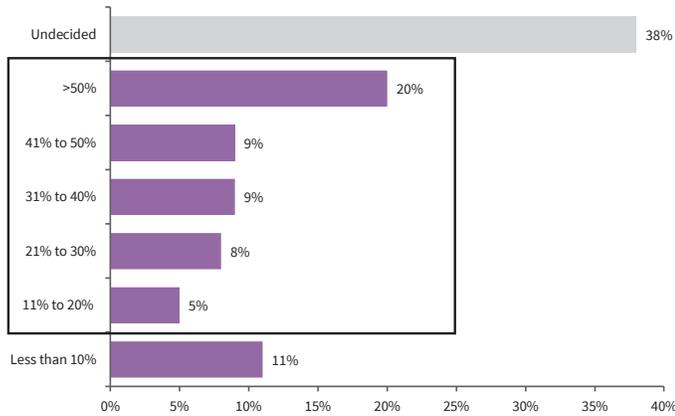
**Most companies are targeting Q3 2021 for large-scale employee re-entry**

Source: JLL Strategic Consulting Group survey of Fortune 500 office users, WSJ, McKinsey & Co.

4

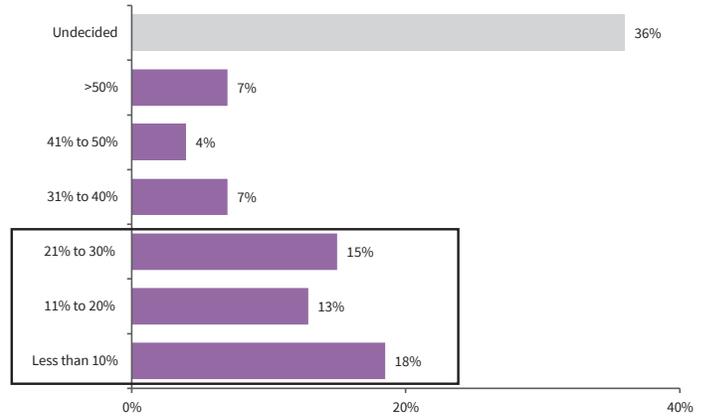
# Corporate real estate strategies are shifting given COVID

Post COVID-19 what percentage of employees does your organization expect will work in a hybrid model?



51% of corporate leaders surveyed expect 10% or more of their workforce will work in a hybrid model post-COVID.

Post COVID-19, what percentage of employees do you expect will work from home on a permanent basis?

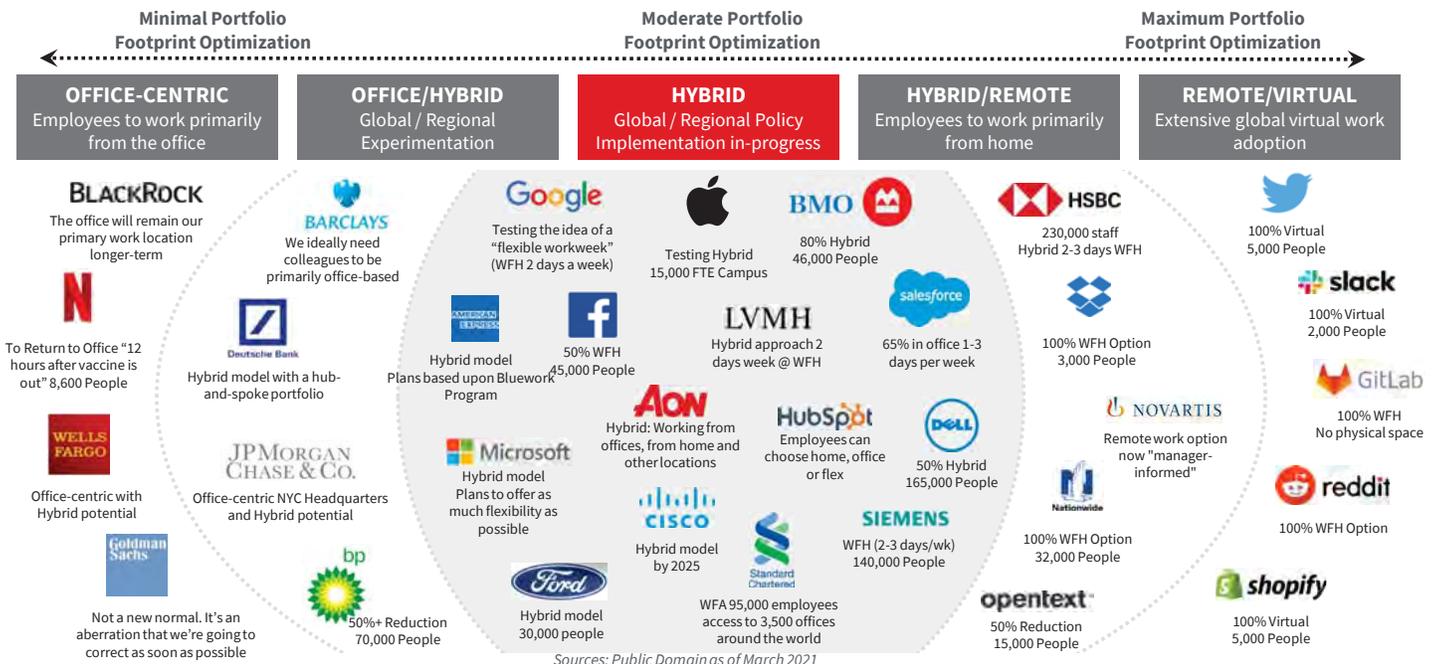


46% of corporate leaders anticipate less than 30% of their workforce will be permanently remote post-COVID.

Source: JLL CS Pulse survey, February 2021. N = 836 responses

5

## Global corporate occupier workplace continuum



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Attachment: PowerPoint Presentation - Future of Office\_SCAG\_June 2021 (Future of the Office After COVID-19)

# What should my workplace look like now?



Corporate occupiers see the value of a workplace that offers more than an individual desk or office and provides a place to gather

## The changing composition of the office:

### Historical office/workplace allocation



**60–70%**  
Individual & Support spaces

**30–40%**  
Collaboration & Social spaces

### Future office/workplace allocation



**50–70%**  
Collaboration & Social spaces

**30–50%**  
Individual & Support spaces

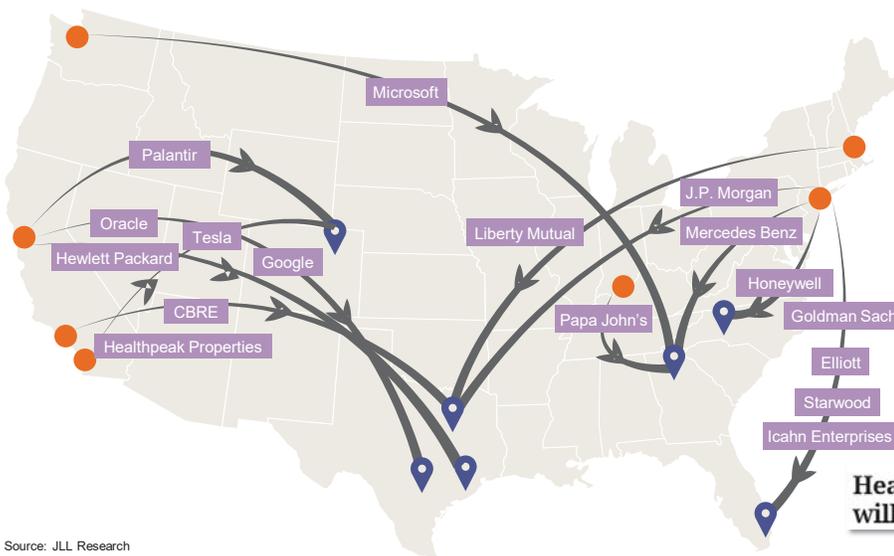
The workplace of the (near) future should incorporate spaces that empower and encourage connection. Offices must inspire collaboration and innovation through their design.

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7

# The pandemic accelerated relocation and expansion decisions

Cost savings and greater talent acquisition are main motivators



**Oracle moving from California to Texas, joins Tesla, Hewlett Packard**

**From Elon Musk to Oracle — the coronavirus accelerates California exodus**

Real estate brokerage CBRE moves headquarters from Los Angeles to Dallas

**Hewlett Packard Enterprise is the latest tech company to leave Silicon Valley, and is moving to Houston**

Healthpeak Properties confirms its headquarters will move from California to Denver

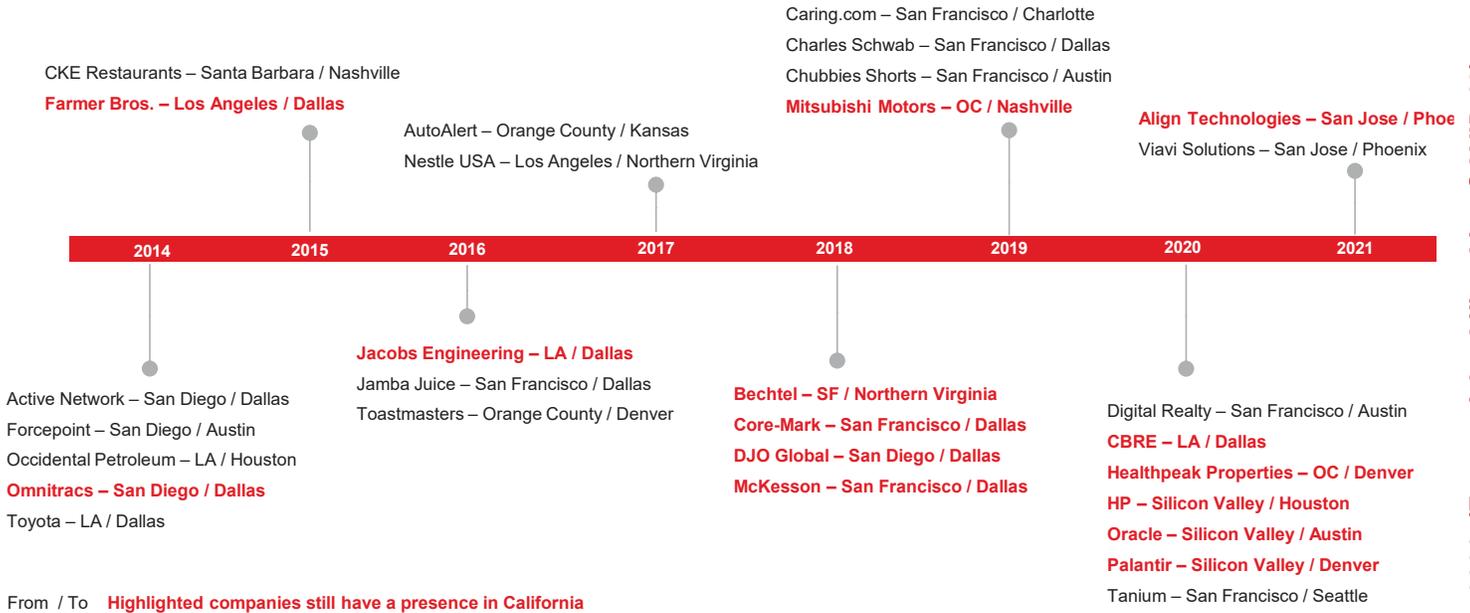
Source: JLL Research

**Pro-business and low-cost-of-living markets have benefitted from corporate migration**

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# Most companies that relocated their headquarters out of California in recent years maintained a presence in the state



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Attachment: PowerPoint Presentation - Future of Office\_SCAG\_June 2021 (Future of the Office After COVID-19)

## Migration shifts are occurring throughout the U.S.

Corporate and talent movement to new markets is being driven by several factors



<p><b>Affordability</b></p>	<p><b>Quality of life</b></p>	<p><b>Health &amp; Safety</b></p>
<p><b>Business environment</b></p>	<p><b>Taxes &amp; governance</b></p>	<p><b>Culture &amp; amenities</b></p>

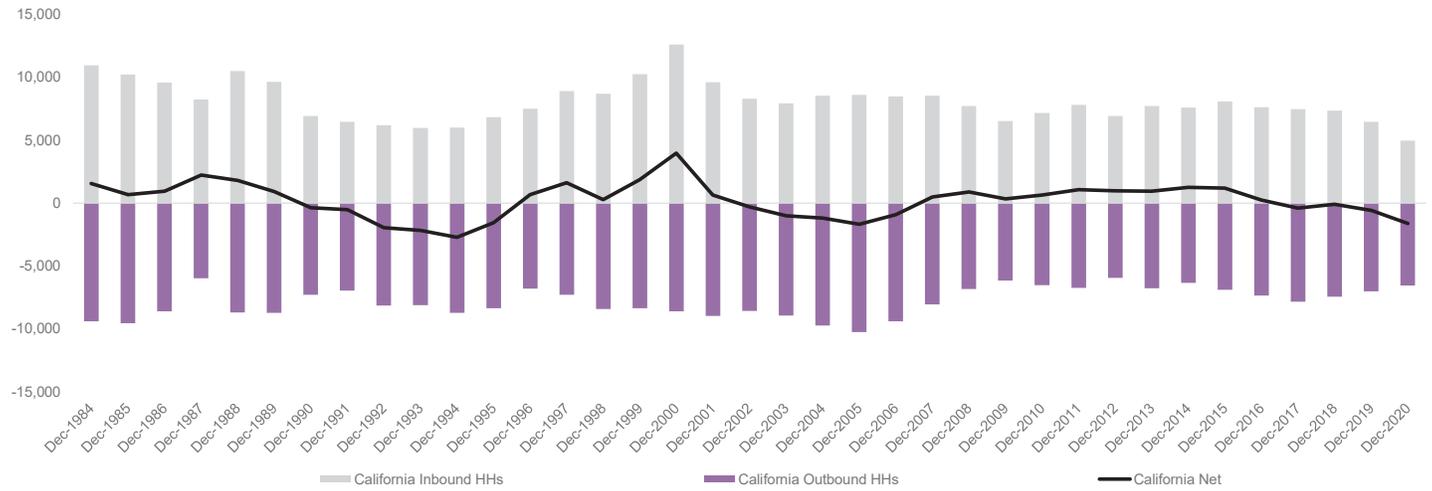
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10

# More households are moving out of California than moving in, but the trend isn't new



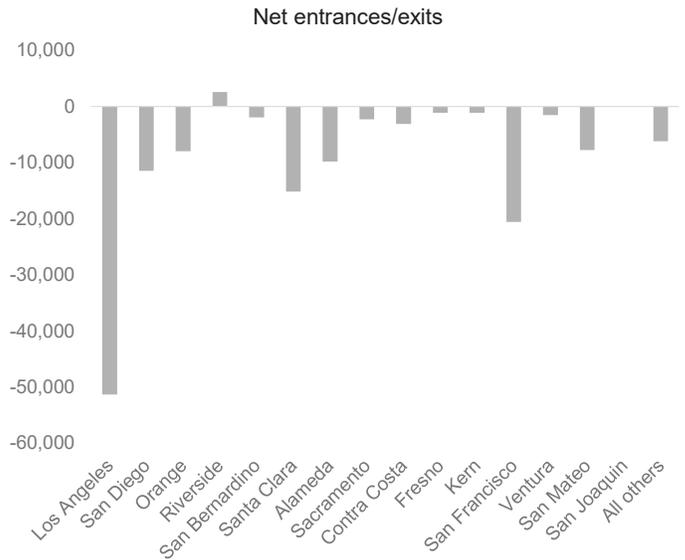
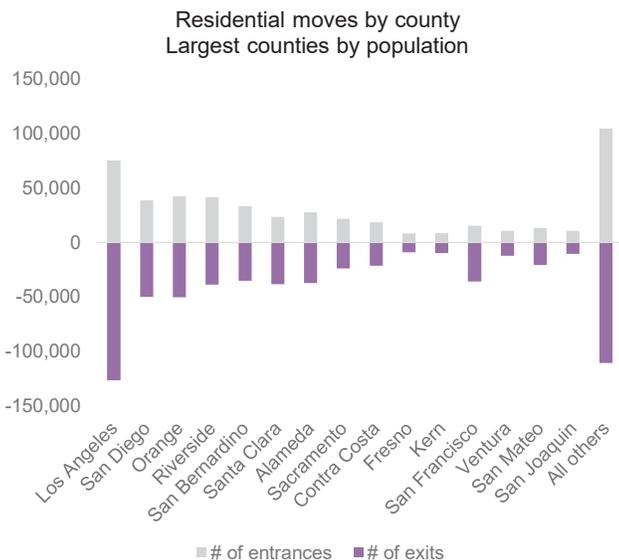
California Household Migration Trends



Source: JLL Research, Atlas Van Lines

11

# Most California counties witnessed negative net domestic migration in Q4 2020, with total move-outs outpacing move-ins by 22%



Source: California Policy Lab. Data based on Californians with credit history.  
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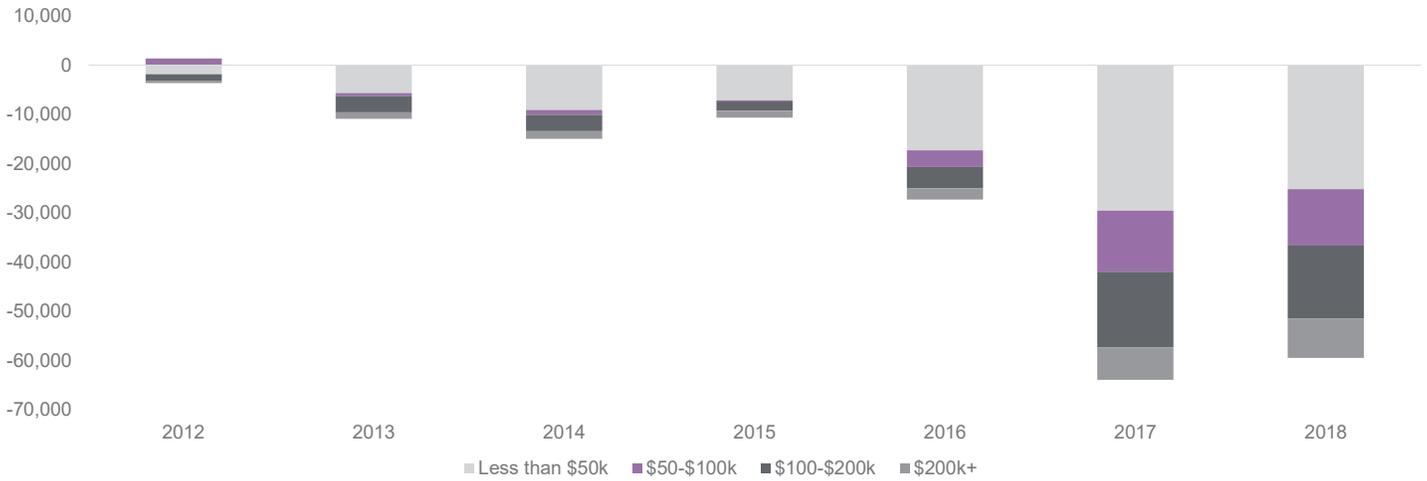
12

Attachment: PowerPoint Presentation - Future of Office\_SCAG\_June 2021 (Future of the Office After COVID-19)

# The question is, who's moving? Housing affordability presents many challenges in California, particularly for lower income earners



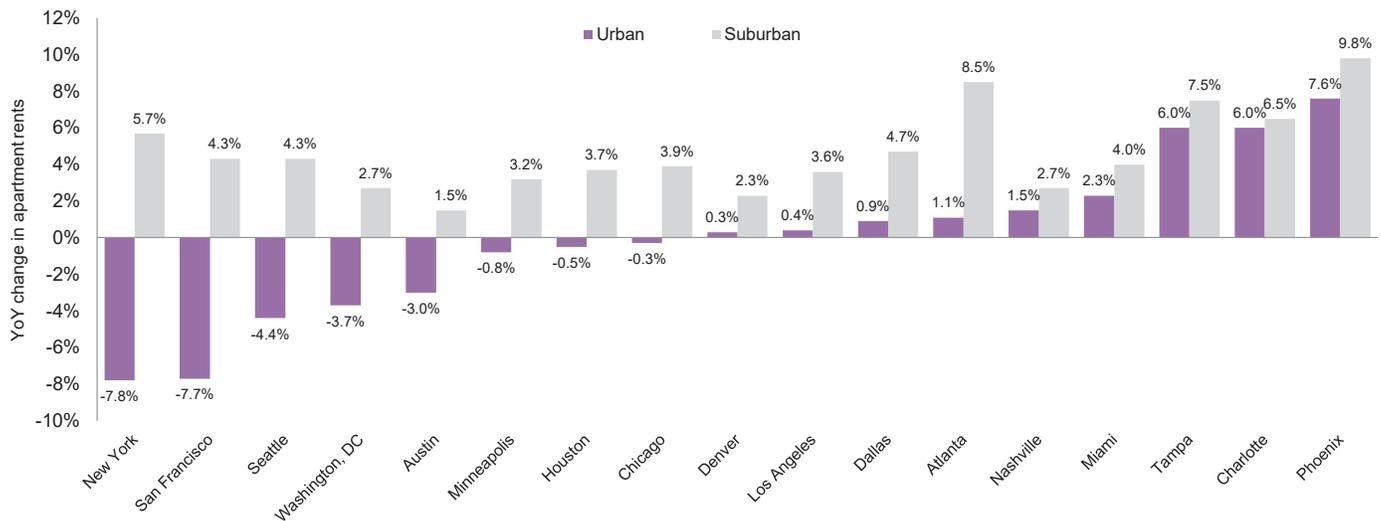
California net population flow by income



Source: United States IRS, latest data available

13

# Apartment rents reflect shifting demand from high-cost urban markets to emerging markets and suburbs



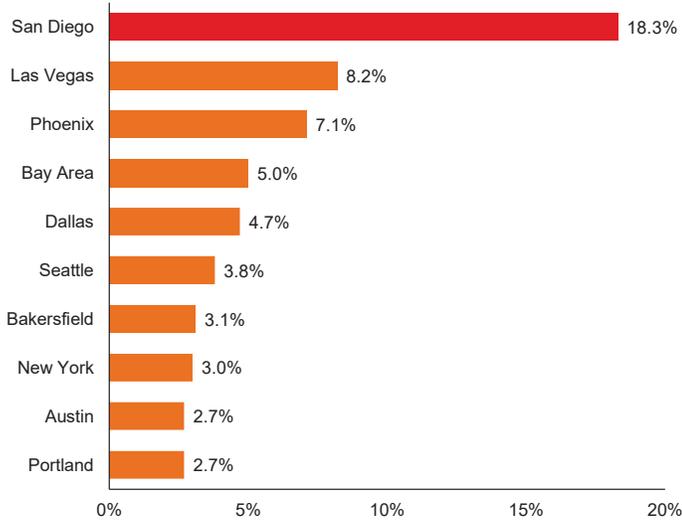
Source: Zillow

Attachment: PowerPoint Presentation - Future of Office\_SCAG\_June 2021 (Future of the Office After COVID-19)

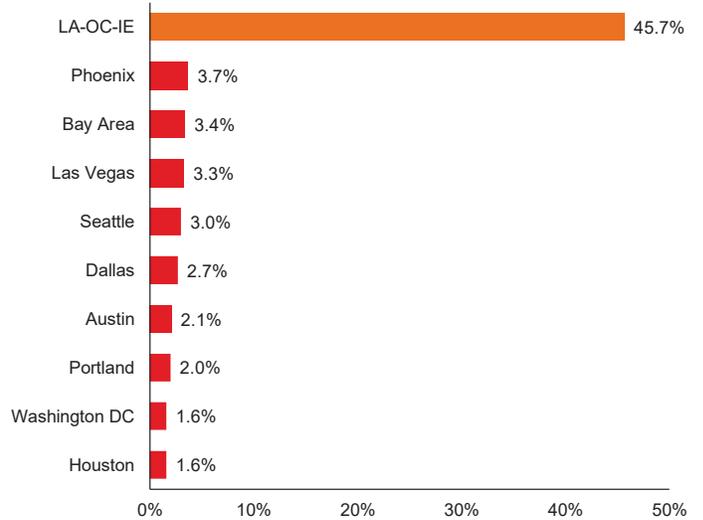
# SoCal home search data reveals most buyers prefer to stay close to home



**81.6%** of LA-OC-IE-based potential buyers are looking locally, but top destinations outside the market include



**73.6%** of San Diego-based potential buyers are looking in San Diego, but top destinations outside the market include

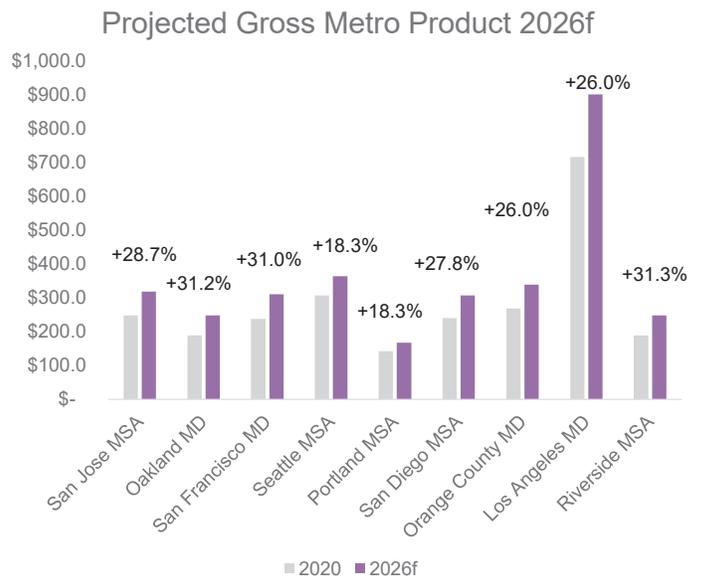
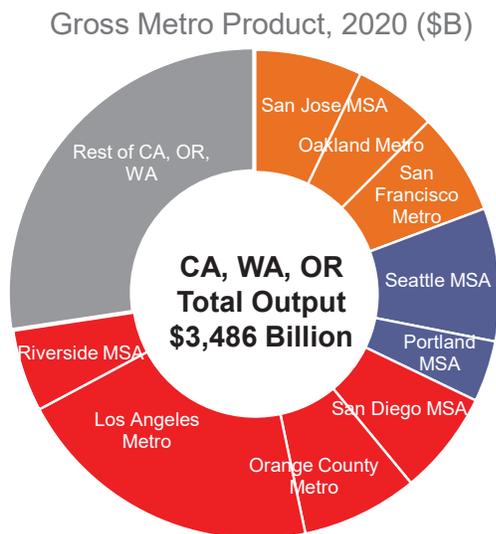


Source: JLL Research, Redfin user search data as of Q1 2021

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# Southern California is the West Coast's economic powerhouse

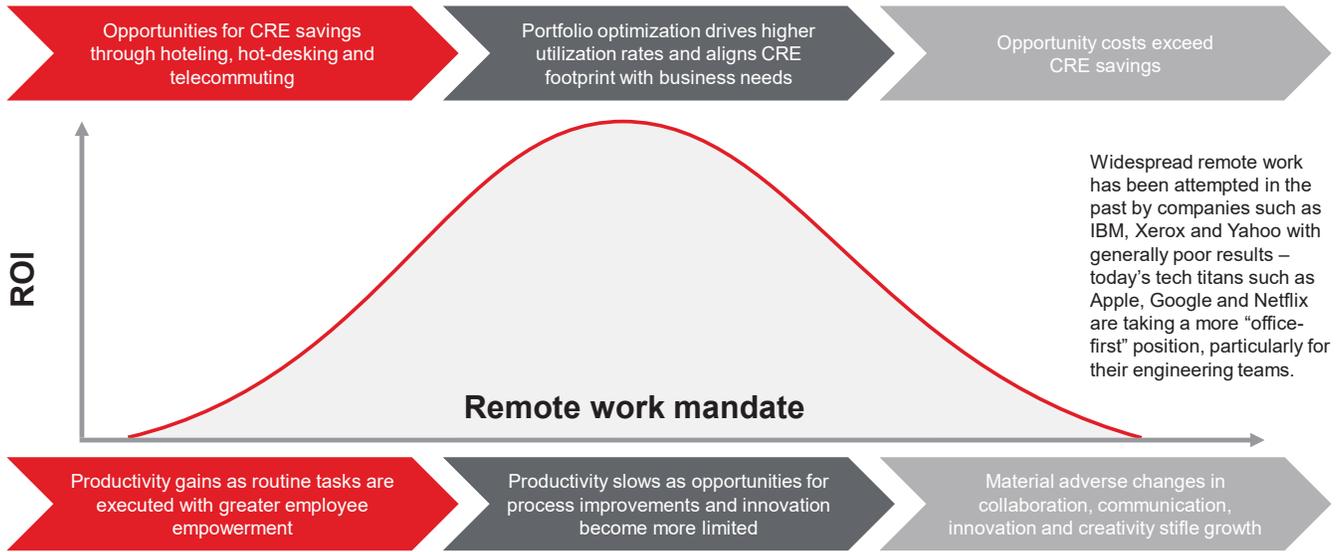
The region accounts for 40.5% of total output for California, Oregon and Washington combined, and accounts for 51.8% of California's total output



Source: JLL Research, Moody's economy.com

Attachment: PowerPoint Presentation - Future of Office\_SCAG\_June 2021 (Future of the Office After COVID-19)

# Diminishing returns of work-from-home policies

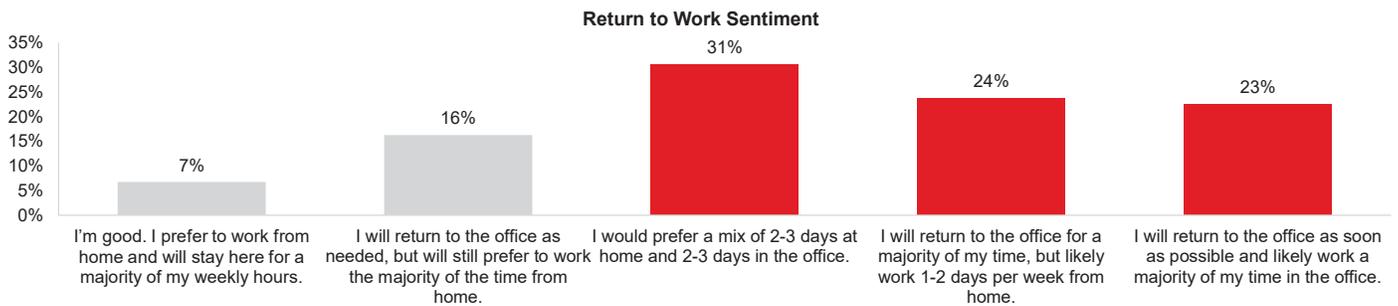


**Remote work should augment, not replace, physical office space**

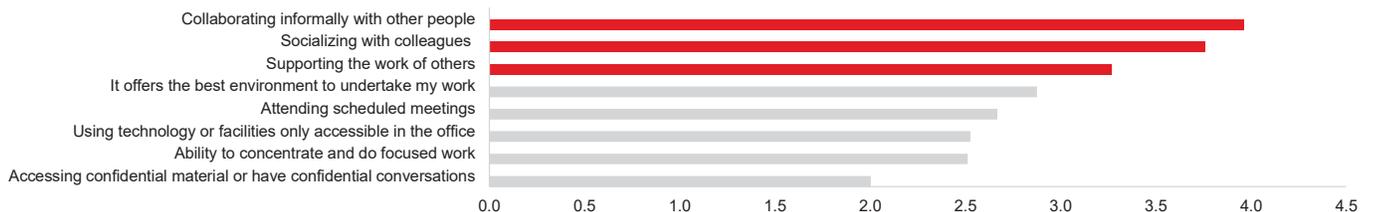
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# Employee sentiment on remote work highlights potential risks to company culture and collaboration



## What do you miss most about coming into the office?

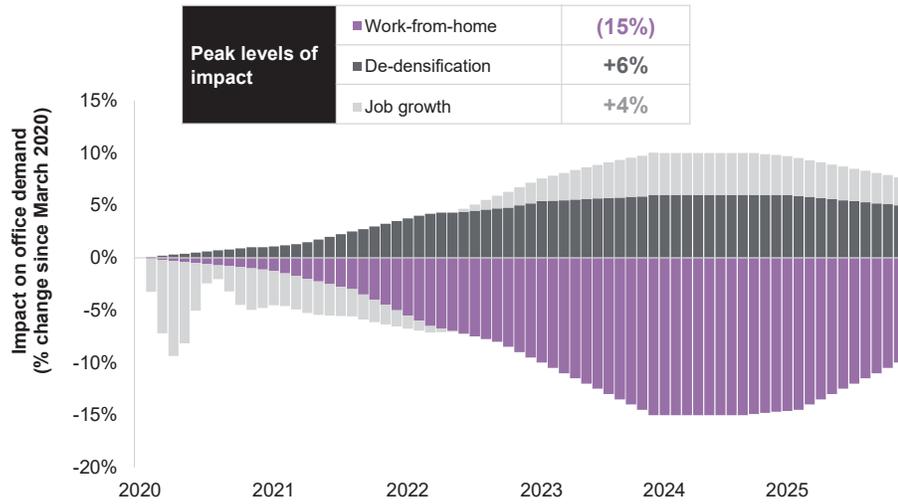


Source: JLL Workplace Employee Survey. Responses from more than 1,200 employees in 20 industries collected from April to July.

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# Structural and cyclical shifts will coalesce to shape future office demand



  
 Expected shift from 10% to 25% WFH, with potential reversion given likely impairment to productivity and innovation.

  
 Stimulus measures and broad-based economic growth to bolster renewed confidence in long-term business plans.

  
 Larger collaboration spaces and use of "office-as-a-perk" spur modest levels of office de-densification.

**Future job creation and de-densification will counterbalance the impact of expanded work-from-home programs**

Source: JLL Research forecasts, Bureau of Labor Statistics, Moody's

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# Thank you

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Southern California Association of Governments  
Remote Participation Only  
June 3, 2021

To: Community, Economic and Human Development Committee (CEHD)

EXECUTIVE DIRECTOR'S  
APPROVAL

From: Kevin Kane, Senior Regional Planner  
(213) 236-1828, kane@scag.ca.gov

Subject: Census 2020 Apportionment Counts and State Estimates Released

**RECOMMENDED ACTION:**

Information only - No Action Required

**STRATEGIC PLAN:**

This item supports the following Strategic Plan Goal 1: Produce innovative solutions that improve the quality of life for Southern Californians. 3: Be the foremost data information hub for the region.

**EXECUTIVE SUMMARY:**

*The first data to be released from the 2020 Census, the state apportionment counts, were made available on April 26<sup>th</sup>. During the 2010s, California's population grew by 6.1% to 39,538,223 people, which for the first time was below the US population growth rate, which was 7.4% for the decade. The state Department of Finance's January 2021 population estimates were released on May 7<sup>th</sup> and indicate that the state population dropped during 2020 by 182,083 residents due to continuing declines in natural increase (birth rates) and foreign immigration as well as excess mortality due to COVID-19; however, a slight population gain is expected in 2021. Similar to the state, the SCAG region's slight population decline in 2020 contrasts with a 0.67 percent increase in total housing units, which represents a slight acceleration in production from 2019 despite the pandemic. Available data suggests that the region's slowing growth can be explained by a continuation of long-range trends, but was also substantially disrupted in the near-term by COVID-19. While more SCAG residents do move to other parts of the country than vice-versa, domestic migration is only part of the story about Southern California's evolution; understanding who-comes versus who-goes will be important in planning for the region's future.*

**BACKGROUND:**

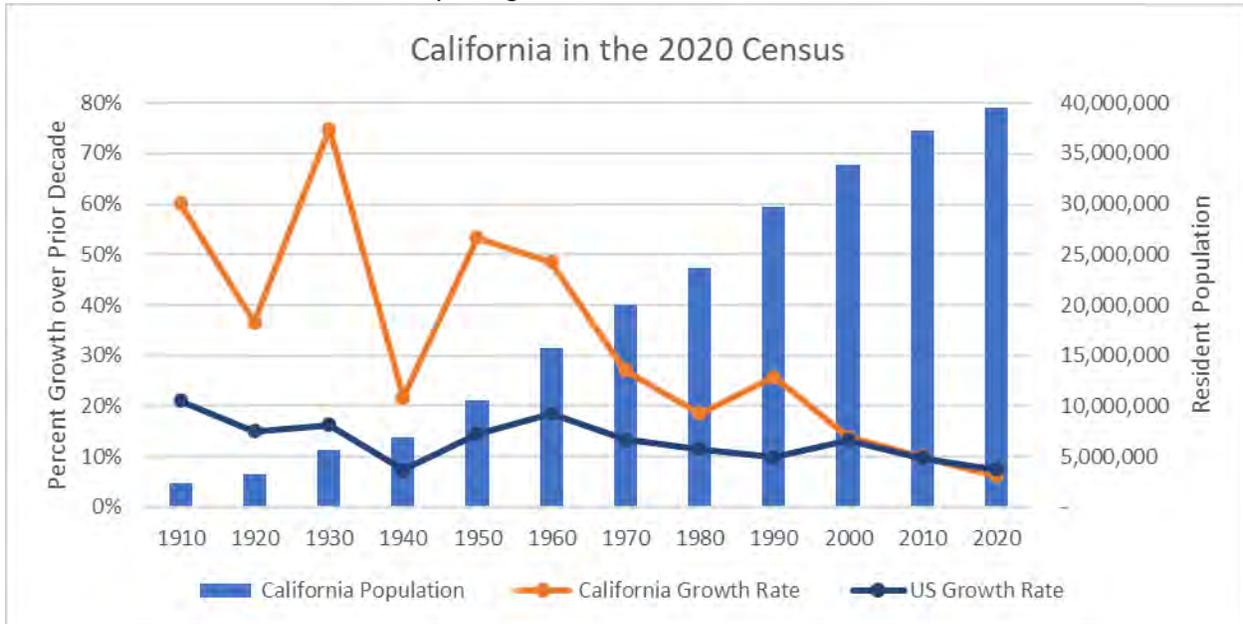
**Our First Look at Census 2020: California in the Last Decade**

On April 26<sup>th</sup>, the Census Bureau released the state apportionment count data for the 2020 Census. These are the first data of any kind released by the Census Bureau from the 2020 Census and only provide the total resident and overseas population of each state. These counts are used to

apportion seats in the US House of Representatives to the 50 states. As had been widely expected, California’s number of seats dropped from 53 to 52. A loss of seats reflects slower population growth than the nation as a whole.

California’s population grew by 6.1% during the 2010s to 39,538,223, below the US growth rate of 7.4% and ranking 24<sup>th</sup> amongst US states. During the 2000s, California’s population grew by 10%, slightly above the US growth rate of 9.7%.

California has been at or near the top of national growth rates for most of the 20<sup>th</sup> century and the 2010s are the first decade during which the rate of growth in the state was slower than growth nationally. However, even with a slower growth rate, the state added 2,273,168 residents (roughly the population of New Mexico) during the 2010s which ranked behind only Texas and Florida. As SCAG heads into the growth forecast development process for the next regional plan, a recurrent theme is that even a slower growth rate still means more people to plan for and an opportunity to focus on the needs of those already living here.



**Our Next Look at Census 2020**

The next Census 2020 release is known as the redistricting file, or P.L. 94-171, and will be released in portions during August and September 2021. This will be the first file to contain any counts below the state level and will contain race, Hispanic origin, adult population, housing units, and group quarter population data as small as the census block level. These data will provide a more accurate picture of trends in the SCAG region as well as provide a basis for growth forecasting in our next regional plan. Complete data, which will include specific age categories, household types, and housing tenure, are not expected until May 2022.

Alongside the release of the state apportionment counts, the Census Bureau released a variety of quality indicators. These primarily indicate where residents self-responded to the Census and the steps taken by the Bureau in areas where follow-up was required. While there is no comprehensive measure of the quality of the Census count and more comprehensive evaluations are merited and forthcoming, the data released indicate that self-response rates were higher in California than the US as a whole by a margin of 69.6% versus 67.0%. In the SCAG region, Ventura and Orange counties led self-response with 77%, Riverside County at 67%, San Bernardino County at 66%, Los Angeles County at 65%, and Imperial County at 63%. Recognizing the challenge of counting California’s population, state funding and programs as well as various local complete count efforts were undertaken in the leadup to Census 2020 in order to ensure a complete count.

**DOF January 2021 Estimates: California and the SCAG Region in the Last Year**

On May 7<sup>th</sup>, the state Department of Finance’s (DOF) Demographic Research Unit released its January 1, 2021 estimates. While the April 1, 2020 Census is the only complete count of population and occurs every ten years, DOF’s January estimates are a timely source of year-over-year change in population and housing units and are available at the jurisdictional level.

While the Census indicated that growth in California was slowing yet still positive during the 2010s, DOF estimates indicate that the state lost 182,083 residents (-0.46 percent) during 2020 due to continuing declines in natural increase and foreign immigration, and excess mortality from COVID-19. It is expected that changes to federal immigration policy and reduction in excess deaths are expected to move the state back into positive growth for 2021. The SCAG region’s population declined by 0.59 percent to 18,849,841 – slightly greater than the rate of California’s population decline – however, not enough to appreciably change the region’s share of the state population which remained at 47.8 percent.

<b>1/1/2020 – 1/1/2021</b>	<b>Total Population Change</b>	<b>Total Housing Unit Change</b>
Imperial County	+6,011	+500
Los Angeles County	-91,156	+24,235
Orange County	-26,727	+7,356
Riverside County	+13,734	+7,952
San Bernardino County	+485	+3,836
Ventura County	-5,996	+890
<b>SCAG Region</b>	<b>-103,649</b>	<b>+44,769</b>
<i>State of California</i>	<i>-182,083</i>	<i>+99,917</i>

*CA DOF E-5 Population and Housing Estimates for Cities, Counties, and the State, updated 5/7/2021*

Contrasting with the decline in population, the SCAG region’s net increase in housing units during 2020 was 44,769 units (0.67 percent) which slightly exceeds the net increase during 2019 of 42,056

units. The City of Los Angeles accounts for 17,851 of these units—the city led the state in housing production by a wide margin during 2020, with San Francisco in 2<sup>nd</sup> place with 4,048 net new units and unincorporated Riverside County ranking 2<sup>nd</sup> in the SCAG region with an increase of 2,125 units. Considering that regional population growth has exceeded housing growth by wide margins historically, that housing growth accelerated (albeit slightly) during the pandemic is encouraging from the perspective of regional plan objectives.

### **Separating Trends from Aberrations in the SCAG Region**

DOF's July 1<sup>st</sup>, 2021 estimates will be available in December and will include detailed information on births, deaths, immigration, and domestic migration for each county. Currently available data can provide some insight into how trends may be expected to continue versus the excess declines which might be attributable to COVID-19.

Natural increase had been the primary source of population gain in the region and is clearly downward-trending. DOF estimates from July 2019 to July 2020 recorded 203,595 births and 131,194 deaths in the region (an addition of 72,401). This figure is down from 112,335 three years prior, reflecting long-term patterns of declining fertility and slightly more deaths due to an ageing population.

California Department of Public Health data indicate that deaths increased 24% in the SCAG region during 2020—far greater than the 1.2% average annual increase in deaths seen in the past three years. Comparing 2020 to the recent trend puts an estimate of “excess deaths” due to COVID-19 in the region at 28,787.

Similarly, births in the SCAG region have been dropping an average of 2.4% per year since their recent peak in 2007 —until they dropped by 8% in 2020. Again assuming the trend for the past three years were to have continued, the aberration of 2020 resulted in 9,110 “missing births” in Southern California.

Foreign immigration is heavily influenced by federal policy, but was also impacted by the pandemic. DOF estimates from July 2019 to July 2020 show the region gaining 59,519 residents from outside the country, but down from 82,492 three years prior.

### **Examining Domestic Migration: Are we Seeing a “CalExit” or “SCAGexit?”**

A popular narrative emerging from the Census apportionment counts and DOF estimates is that various forms of crisis related to the economy, inequality, housing, congestion, regulation, or other factors are causing a reversal of fortunes in the state. Population growth is slower than historical trends and the state lost more people than it gained in 2020; however, this was not unexpected and is explained by several components of population change. In contrast to much of the 20<sup>th</sup> century,

more residents leave the state and region than arrive here from other parts of the country, but the data indicate a more complex dynamic than one of residents “leaving in droves.”

In the SCAG region, the most recent American Community Survey data (2019) show a net loss of -106,807 residents to other parts of the state and nation—an increase from -72,512 in 2012. However, lost in the net figure is a dynamic of 411,842 SCAG residents leaving yet another 305,035 moving here from other parts of the state or country.

In 2012, Texas, Arizona, and Nevada topped the list of SCAG residents’ destinations—these were also the top three states where new SCAG residents came from. In that year, while 66,686 Southern Californians moved to these nearby Sunbelt destinations, 50,577 arrived to the region from those same places.

By 2019, Texas, Arizona, and Nevada still were the favorite destinations for out-of-state movers – 79,947 SCAG residents moved to those places. However, the source of in-migrants had changed, with the top three states being New York, Texas, and Virginia – from which 44,585 residents arrived. While the region experienced a net loss in residents, the *exchange* in population between Southern California and other parts of the country evolved.

In addition to being from different places, in-migrants and out-migrants tend to have different characteristics, such as the rate of those aged over 25 who hold a bachelor’s degree or above. In 2012, in-migrants had a slight advantage in college education rate over out-migrants (45% vs. 40%); however, by 2019 this gap had widened substantially (55% vs. 43%).

Domestic migrants represent only about 2% of the region’s population each year, so an indicator like the region’s education rates may not dramatically shift through the process of migration. However, the dynamic of who-comes versus who-goes provides an important sign of who SCAG will be planning for in the 2024 Regional Transportation Plan/Sustainable Communities Strategy.

**FISCAL IMPACT:**

This work is funded by OWP item 055.4856.01, Regional Growth and Policy Analysis.

**ATTACHMENT(S):**

1. PowerPoint Presentation - Census 2020 Apportionment CEHD June 2021

# Census 2020 Apportionment Counts and State Estimates

A Demographic Preview

Kevin Kane, PhD

Department of Sustainability

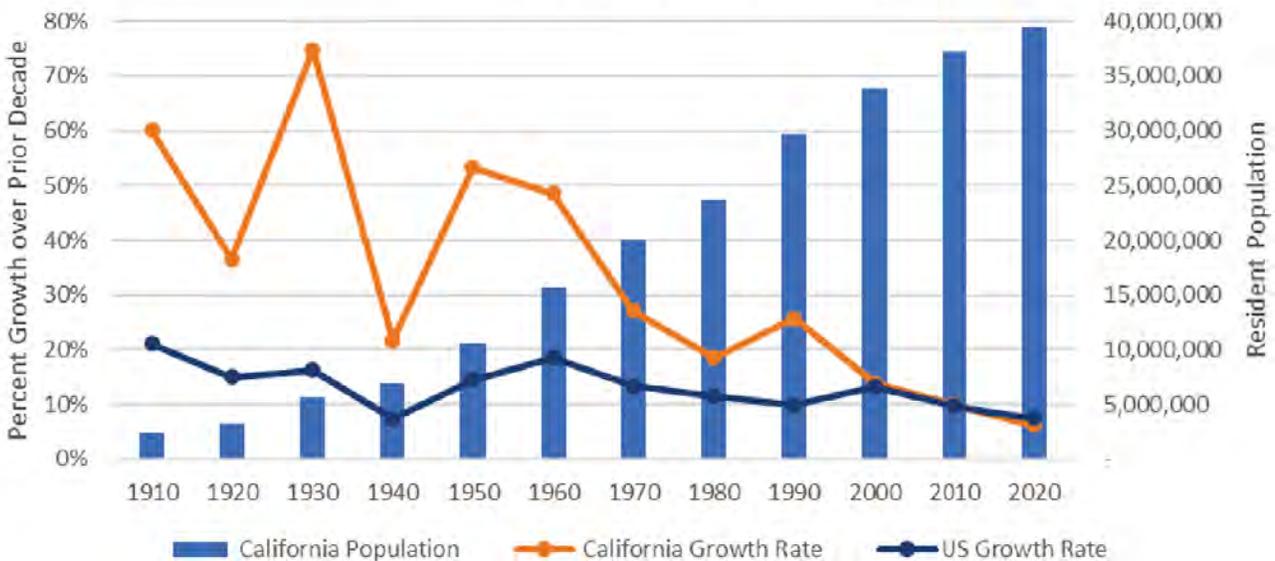
June 3, 2021

[www.scag.ca.gov](http://www.scag.ca.gov)



## Our first look at Census 2020: California in the last decade

California in the 2020 Census



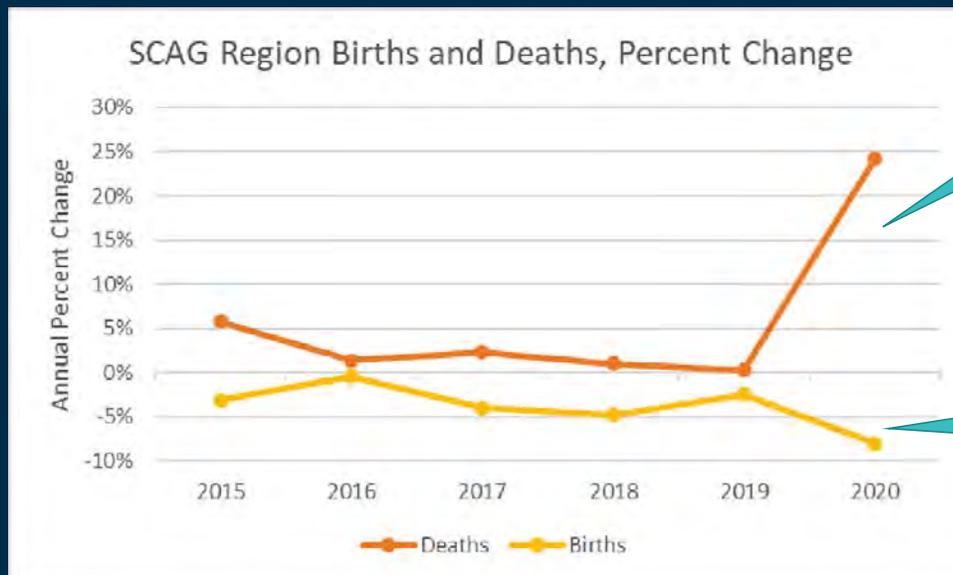
## DOF January 2021 estimates: California & SCAG last year

- State population declined during 2020
  - Continuing declines in natural increase
  - Continuing declines in foreign immigration
  - Excess mortality from COVID-19

1/1/2020 – 1/1/2021	Total Population Change	Total Housing Unit Change
Imperial County	+6,011	+500
Los Angeles County	-91,156	+24,235
Orange County	-26,727	+7,356
Riverside County	+13,734	+7,952
San Bernardino County	+485	+3,836
Ventura County	-5,996	+890
<b>SCAG Region</b>	<b>-103,649</b>	<b>+44,769</b>
State of California	-182,083	+99,917

CA DOF E-5 Population and Housing Estimates for Cities, Counties, and the State, updated 5/7/2021

## Separating trends from aberrations as we look forward

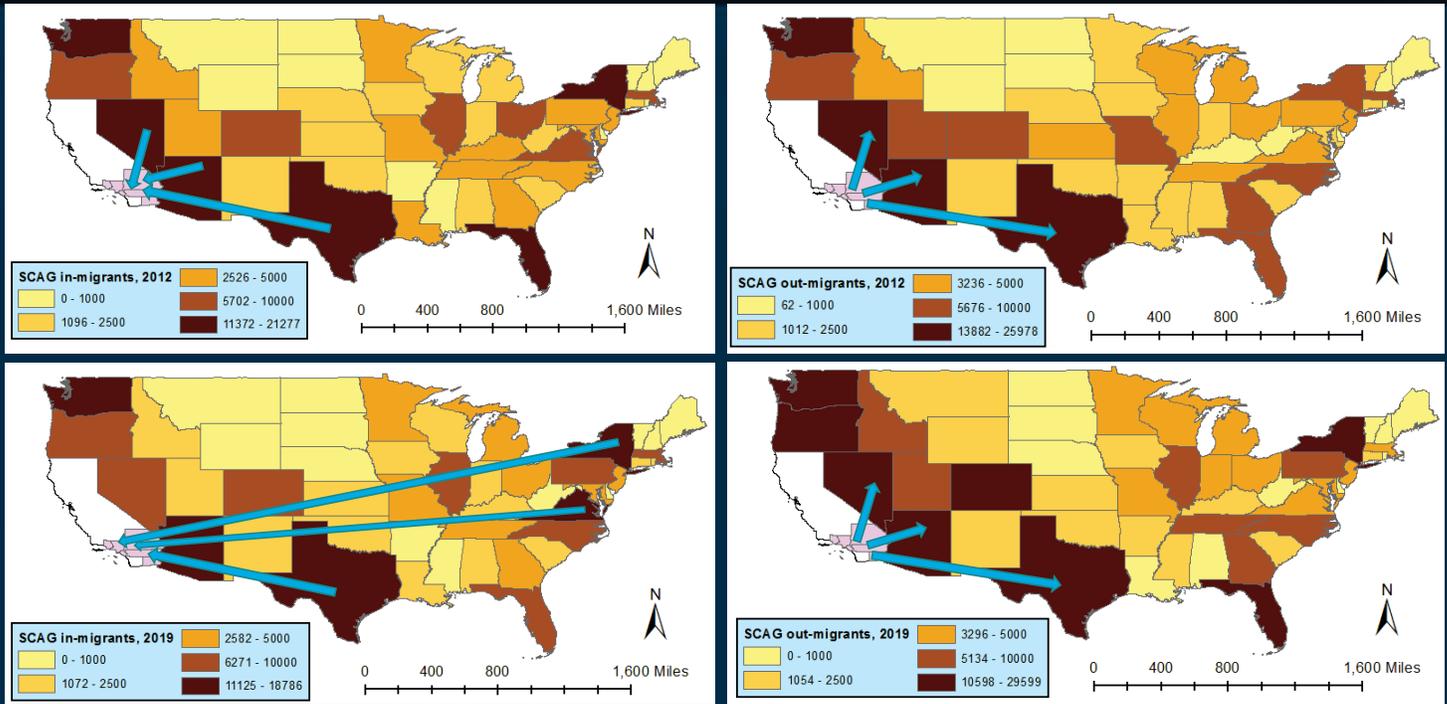


24% increase in deaths in 2020

8% decrease in births in 2020

# CalExit? SCAGexit?

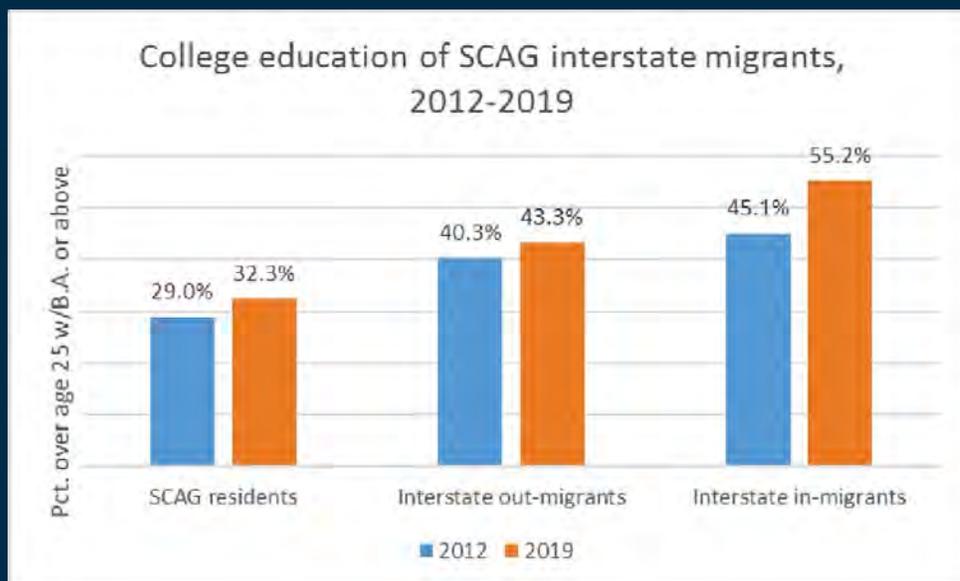
No, the sky isn't falling but it may be a different shade of blue.



Source: ACS PUMS 2012 and 2019 1-year samples. Top 3 states for migration shown in each map.

# CalExit? SCAGexit?

No, the sky isn't falling but it may be a different shade of blue.



Source: ACS PUMS 2012 and 2019 1-year samples.

## Conclusions

- 2020 Census: California grew slower during the 2010s
- DOF: During 2020 the state and region lost population
  - However, 2020 regional housing growth slightly exceeded 2019
- Learning to differentiate long-term trends vs. COVID aberration
  - Gap between departures and arrivals is widening, but details reflect a changing region!



**SCAG**  
INNOVATING FOR A BETTER TOMORROW

**USC Price**  
Sol Price School  
of Public Policy

32<sup>ND</sup> ANNUAL DEMOGRAPHIC WORKSHOP

# THE **POST-PANDEMIC** CITY

Kevin Kane, PhD  
Department of Sustainability  
kane@scag.ca.gov

**PART 1**  
JUNE 8, 2021  
1:30 P.M. – 4:45 P.M.

**PART 2**  
JUNE 15, 2021  
1:30 P.M. – 4:45 P.M.

[scag.ca.gov/demographics](http://scag.ca.gov/demographics)



Southern California Association of Governments  
Remote Participation Only  
June 3, 2021

To: Community, Economic and Human Development Committee (CEHD)

EXECUTIVE DIRECTOR'S  
APPROVAL

From: Jenna Hornstock, Deputy Director of Planning  
(213) 630-1448, hornstock@scag.ca.gov

Subject: Catalyst Housing Group (Catalyst)/California Community Housing Agency  
(CalCHA) Middle Income Housing Financing Program

**RECOMMENDED ACTION:**

Information Only – No Action Required

**STRATEGIC PLAN:**

This item supports the following Strategic Plan Goal 1: Produce innovative solutions that improve the quality of life for Southern Californians.

**EXECUTIVE SUMMARY:**

*Catalyst Housing Group ("Catalyst") was founded in 2015 to combat rising income inequality in California by offering greater affordability to the middle-income essential workforce. In January 2019, Catalyst partnered with the California Community Housing Agency ("CalCHA") to assemble the middle-income housing program, which finances the acquisition, development, and management of rent-restricted apartment communities through the issuance and sale of tax-exempt governmental revenue bonds. Jordan Moss, founder of Catalyst Housing Group, will provide a presentation highlighting how the Joint Powers Authority (JPA) exemplifies a scalable middle-income housing solution through a focus on the intersection of housing, innovation, and social impact.*

**BACKGROUND:**

The COVID-19 Pandemic has highlighted the importance of the essential workforce, such as those working in healthcare, education, transportation, and delivery services. However, in communities across California essential workers are struggling to keep up with the rising cost of living, while earning too much to qualify for traditional affordable housing. A lack of middle-income housing is a common shortfall in many jurisdictions and can lead to ripple effects in the form of congestion and pollution. While programs exist for the creation of low-income housing development, few subsidies or financial motivations had encouraged the production of middle-income housing before 2019, when the California Community Housing Agency's (CalCHA) middle-income housing program was founded. Catalyst and CalCHA have since acquired over \$1.3 billion of multifamily rental

communities throughout Northern California.<sup>1</sup> These formerly market-rate rental units are now perpetually rent restricted to middle income households earning no more than 120% area median income (AMI), allowing essential workers to live, work and thrive within the communities they serve.<sup>2</sup>

CalCHA's middle-income housing program is a California JPA (Joint Powers Authority) that finances acquisitions of multifamily rental communities through the issuance and sale of tax-exempt governmental revenue bonds. This direct governmental ownership offers two significant benefits: 100% leverage tax-exempt financing and 100% property tax exemption. Furthermore, whereas value-add investment opportunities often result in significantly higher rents and displacement of the existing tenant population, Catalyst's unique partnership with CalCHA protects existing tenants from the threat of displacement and guarantees the future affordability of that housing by placing a 4% cap on annual rental increases.<sup>3</sup> By acquiring and offering middle-income units, Catalyst and CalCHA are quickly providing long-term affordable housing solutions to a critical segment of the population without diminishing state resources targeting lower-income LIHTC development or triggering displacement within communities.

Converting existing market-rate properties to permanently affordable units offers a much cheaper and faster way to add new income-restricted housing to communities than new "value-add" development. Housing preservation can be seen as a critical complement to other housing production strategies for jurisdictions looking to meet their Regional Housing Needs Allocation (RHNA) goals. However, there are currently very few incentives for jurisdictions to implement preservation models like Catalyst's. A proposed Assembly Bill (AB 787), the Housing Preservation and Stabilization Act, would allow local jurisdictions to receive a 1-1 credit toward their affordable housing RHNA in their Annual Progress Reporting (APRs) for converting market-rate units to rent-restricted very low-, low- and moderate-income units.<sup>4</sup>

Jordan Moss is the CEO and founder of Catalyst Housing Group, the housing investor based in Larkspur, California. Mr. Moss will present on how Catalyst's innovative housing preservation model is driving incremental affordability at the June 3, 2021 CEHD Committee meeting.

**FISCAL IMPACT:**

None.

**ATTACHMENT(S):**

1. PowerPoint Presentation - Catalyst Housing Group

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<sup>1</sup> [Catalyst and CalCHA Acquire Two Additional Essential Housing Communities](#)

<sup>2</sup> [Middle-Income Housing Created in Livermore as Catalyst and CalCHA Acquire The Arbors](#)

<sup>3</sup> [Middle-Income Housing Created in Livermore as Catalyst and CalCHA Acquire The Arbors](#)

<sup>4</sup> [Bill Text - AB-787 Planning and zoning: housing element: converted affordable housing units. \(ca.gov\)](#)

# Essential Housing Program

*Affordably housing California's essential middle-income workforce*



## Catalyst Mission



***We work tirelessly to enhance...***

- The lives of our residents
- The cohesiveness of our communities
- The durability of our workforce
- The sustainability of our environment
- The diversity of our industry



# A Growing Crisis

**Pricing Out** – Nurses, teachers, first responders & civil servants earn in excess of traditional affordable housing income limits, yet are increasingly priced out of the communities they serve

**Housing Affordability** – Housing costs continue to increase, especially in job-rich areas like Southern California

**Ripple Effects** – Ripple effects of housing shortfalls include congestion, pollution, crime, homelessness, health impacts, congestion & social dislocation



# Our Solution

Created in 2019, the **California Community Housing Agency** (CalCHA) is the first joint powers authority created with the sole purpose of furthering middle-income housing production throughout the State

Through its **middle-income housing program**, CalCHA acquires and develops rental housing through the issuance and sale of its own governmental revenue bonds, and **without** the use of tax credits, private activity bonds or other traditional affordable housing subsidies

CalCHA's properties are **rent-restricted** to Low-Income, Median-Income, and Moderate-Income households earning no more than 120% of AMI.



# Governmental Ownership

CalCHA's direct governmental ownership of multifamily rental communities provides two powerful **by-right** benefits:

- 100% property tax exemption
- 100% leverage tax-exempt financing

Leveraging low-cost financing and property tax savings allows CalCHA to subsidize rents for <120% households without any direct local subsidy



# Public Benefit

- Immediate reduction in rental rates for new qualifying tenants
- No displacement of existing tenants
- 4% cap on annual rent increases
- All surplus economics granted to the underlying jurisdiction



# City Participation

Local approvals for the Essential Housing Program are obtained through **the adoption of a single resolution:**

1. CalCHA Membership (no cost, no liability)
2. Authorization of CalCHA bond issuance (no cost, no liability)
3. Acceptance of surplus economics (project-specific agreement)



# Catalyst Portfolio

- Annadel Apartments, Santa Rosa, CA (390 units)
- Verdant at Green Valley, Fairfield, CA (286 units)
- Serenity at Larkspur, Larkspur, CA (342 units)
- The Arbors, Livermore, CA (162 units)
- Creekwood, Hayward, CA (309 units)
- Next on Lex, Glendale, CA (494 units)
- Brio, Glendale, CA (205 units)
- Mira Vista Hills, Antioch, CA (280 units)
- Aster, Dublin, CA (313 units)



# Expanding our Impact

- RHNA Reform
- Essential Housing Fund
- Catalyst Innovation Lab
- New Construction
- Teacher Housing

Q&A