

Attachment C

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**ATTACHMENT C
DRAFT RESOLUTION**

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

In the matter of the application of:
Eden Housing, Inc. (PLN230321)

RESOLUTION NO.

Resolution of the Board of Supervisors of the County of Monterey Consenting to the Lease Disposition and Development Agreement (**Attachment C1**) Between the County of Monterey Housing and Community Development and Eden Housing, Inc.

a. Find that the Lease Disposition and Development Agreement, which facilitates the project approval, qualifies for an exemption pursuant to CEQA Guidelines section 15183, is consistent with the development density established by the general plan, and there are no project-specific significant effects which are peculiar to the project or project site and the Lease Disposition and Development Agreement and the project it facilitates, qualifies for a Class 32 Categorical Exemption pursuant to CEQA Guidelines section 15332, and no exceptions under section 15300.2 apply;

b. Approve and execute the Lease Disposition and Development Agreement (**Attachment C1**) between the County of Monterey and Eden Housing Inc.;

c. Approve the Regulatory Agreement and Declaration of Restrictive Covenants (**Attachment C1 Exhibit H**) substantially in the form set forth as **Exhibit H** to the Lease Disposition and Development Agreement between the County of Monterey and Eden Housing Inc., authorize the Director of Housing and Community Development negotiate and execute the Regulatory Agreement and Declaration of Restrictive Covenants including

modifications as may be required by Approved Security Interest Holders prior to close of escrow, subject to review and approval as to form by County Counsel;

d. Approve the Ground Lease Agreement (**Attachment C1 Exhibit E**) for one-dollar per year rent and for a term of 99 years substantially in the form set forth as **Exhibit E** to the Lease Disposition and Development Agreement between the County of Monterey and Eden Housing Inc., authorize the Director of Housing and Community Development negotiate and execute the Ground Lease Agreement including modifications as may be required by Approved Security Interest Holders prior to close of escrow, subject to review and approval as to form by County Counsel; and

e. Said decision is to be in substantial conformance with the attached plan and subject to the attached conditions, which are incorporated herein for reference.

I. RECITALS

1. The County of Monterey Board of Supervisors (Board) is authorized and empowered pursuant to the laws of the State of California to enter into agreements for the acquisition, disposition and development of real property. And to make and execute contracts and other instruments necessary or convenient to exercise its powers;
2. The County of Monterey (“County”) is the owner of certain real property, comprised of 85.93 acres and located at 855 East Laurel Drive, Salinas, California (APN 003-851-043-000), of which approximately 5 acres (“Property”) has been made available by the County to develop 100% affordable housing. This property will be leased to Eden Housing, Inc. (“Developer”) through a Ground Lease Agreement (“Lease”) which will be executed separately by the County of Monterey and Eden Housing, Inc.
3. The Property is located within the City of Salinas (“City”). The County and City entered into a Memorandum of Understanding on June 22, 2021 identifying the roles and responsibilities between the County and City for developing affordable housing with a focus on families on the Property, and the County, in partnership with the City, proposed building a one hundred percent (100%) affordable multi-family housing development geared towards very low- and low-income families.

4. On May 6, 2022, the County and City jointly issued a Request for Qualifications ("RFQ") for qualified developers to submit qualifications and proposals to lease from the County the Property in accordance with the terms of a long term ground lease, and to design and develop a one hundred percent (100%) affordable multifamily rental housing development project on the Property.
5. On September 13, 2022, the County adopted Resolution No. 22-171 declaring the Property to be exempt surplus land under the California Surplus Land Act (Government Code 54220 et seq.) in accordance with Government Code Section 54221(f)(1)(F)(i) because the project will restrict one hundred percent (100%) of the residential units to persons and families of low or moderate income, with at least seventy-five percent (75%) of the residential units restricted to lower income households.
6. On October 4, 2022. The County Board of Supervisors adopted Resolution No. 22-383 to select Eden Housing, Inc., jointly with the City of Salinas, to develop the Property with a one hundred percent (100%) affordable housing project. The resolution authorized the County Housing and Community Development Department Director, or designee, to negotiate an Exclusive Negotiating Agreement with the Developer.
7. On February 7, 2023 the Board of Supervisors passed and adopted Resolution No., 23-029 which authorized the Director of Housing and Community Development to negotiate and enter into an "Exclusive Negotiating Agreement" ("ENA").
8. On February 17, 2023, the County and Developer entered into that certain Exclusive Negotiating Agreement (the "ENA"), which provides for the Parties to negotiate toward a Lease Disposition and Development Agreement ("LDDA") with respect to the site. The ENA was amended by that First Amendment dated August 14, 2024, whereby the negotiating period was extended by six (6) months, concluding on February 17, 2025. The ENA was amended by that Second Amendment dated January 9, 2025, whereby the negotiating period was extended by six (6) months, concluding on August 17, 2025.
9. On March 21, 2023, the City approved Resolution No. 22619, to execute an ARPA Grant Funding Agreement providing Eden Housing, Inc. for pre-development costs for the 100% affordable housing project. Resolution No. 22619 further acknowledges the County's willingness to ensure the affordable housing development adheres to City zoning regulations to the fullest extent possible and authorizes a one-time deviation from the City's Zoning Code to allow the County to process entitlements for the Eden Housing, Inc. 100% affordable housing project.
10. In December 2023, Eden Housing Inc. submitted a Preliminary Financing Plan (**Attachment C1 Exhibit G**) to the County of Monterey Housing and Community Development Department.
11. On October 3, 2024, the Developer submitted an application (PLN230321) to the County for the 132 unit Development, of which, 53 units are proposed to be affordable to persons or families of low income, 48 units are proposed to be affordable to persons or families of very low income, 29 units are proposed to be affordable to persons or families of extremely low income, and 2 units are proposed to be dedicated as manager units, two amenity structures ("Project").

The exact affordability mix for each Phase will be determined by Developer prior to Close of Escrow based on the mutual goal of delivering as much affordability as is reasonable and financially feasible. The County deemed the project complete on November 21, 2024.

12. The County of Monterey Housing and Community Development Director executed the Certificate of Compliance (Document ID 2025001816) on January 15, 2025, that allowed the division of 855 East Laurel Drive in compliance with the Subdivision Maps Act. The fueling station located at 855 East Laurel Drive was parceled out to help facilitate financing for affordable housing by removing the restrictions from the non-fueling station portion of the parcel.

13. The County and Eden Housing Inc. have negotiated a LDDA governing the conveyance from the County to Eden Housing Inc. of the Property. The LDDA provides for the conveyance of the Property to the Applicant. The LDDA also requires the Applicant to grade and install infrastructure on the Property for 100 percent affordable housing. The LDDA provides for the development of 132 housing units and 180 parking stalls, two clubhouses, and associated outdoor space. The terms of the LDDA are more fully summarized in the Staff Report which accompanies this Resolution.

14. On March 11, 2025, the County Board of Supervisors at a duly noticed public hearing to approved Resolution No. 25-_____ approving PLN230321 for development of the Project subject to 20 conditions of approval (**Attachment B1**).

15. California Environmental Quality Act (CEQA) section 15183 exempts projects that are consistent with the development density established by the general plan. The Eden Housing Inc. Project, which is facilitated by the LDDA, is proposed to allow the development of a 132 unit affordable housing project at a proposed density of 27 dwelling units per acre. The 2002 City of Salinas General Plan establishes a dwelling unit density of 15 dwelling units per acre for multifamily dwellings in the Public/Semipublic land use designation. However, pursuant to State of California Government Code 65915, the applicant is allowed to obtain an 80% density bonus. The Project is, therefore, consistent with the development density established in the 2002 City of Salinas General Plan, and the modifications to the density standards achieved through Government Code 65915 are consistent with these development standards. There are no project-specific effects that are peculiar to the Project or its site, and there are no project-specific effects that the 2002 City of Salinas General Plan EIR failed to analyze. The Project satisfies the exemption requirements of CEQA Guidelines section 15183.

16. California Environmental Quality Act (CEQA) Guidelines section 15332 categorically exempts infill development projects. The Project, to be facilitated by the LDDA, is proposed to allow the development of a 132 unit affordable housing project on a site of less than 5 acres within the city limits of the City of Salinas and surrounded by urban uses. The Project satisfies CEQA Guidelines section 15332 Criteria (a) exemption in that the Project is consistent with the applicable general plan land use designation and all applicable general plan policies and zoning designation and regulations. The Project has a land use designation of Public/Semipublic, is zoned Public/Semipublic with a Flood overlay and multifamily development in this zoning district must comply with the development and design standards of the R-M-2.9 zoning district. The Project generally conforms to General Plan policies and zoning regulations and development

standards and satisfies the conditions that are required pursuant to Criteria (a). The Project satisfies CEQA Guidelines section 15332 Criteria (b) exemption in that the Project is within the City of Salinas, and the project site is less than 5 acres and is surrounded by urban uses. The Project satisfies CEQA Guidelines section 15332 Criteria (c) exemption in that the project site is a highly disturbed urban site within the City of Salinas that has no value as habitat for endangered, rare or threatened species. The Project satisfies CEQA Guidelines section 15332 Criteria (d) exemption in that the Project will not result in any significant effects related to traffic, noise, air quality, and water quality. Further, the Project approvals in **Attachment B** are conditioned to ensure that the Project will not have any significant effects. The Project satisfies CEQA Guidelines section 15332 Criteria (e) exemption in that the Project is within an incorporated City that is adequately served by all the required utilities and public services . Further, none of the exemptions under CEQA Guidelines section 15300.2 apply to the project.

17. Developer proposes to develop the Property in accordance with the terms and conditions of the LDDA and other development approvals.

18. The County has determined that the Developer has the necessary expertise, skill, and ability to carry out the commitments set forth in the LDDA.

19. The County desires to lease the Property to the Developer in two phases in accordance with the provisions of the DDA and the Lease in order to facilitate the use of the Property for the Development

20. The Board of Supervisors considered the LDDA and CEQA findings presented during a public hearing on March 11, 2025.

II. DECISION

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors hereby Between the County of Monterey Housing and Community Development and Eden Housing, Inc.:

a. Find that the Lease Disposition and Development Agreement, which facilitates the project approval, qualifies for an exemption pursuant to CEQA Guidelines section 15183, is consistent with the development density established by the general plan, and there are no project-specific significant effects which are peculiar to the project or project site and the Lease Disposition and Development Agreement and the project it facilitates, qualifies for a Class 32 Categorical Exemption pursuant to CEQA Guidelines section 15332, and no exceptions under section 15300.2 apply;

b. Approve and execute the Lease Disposition and Development Agreement (**Attachment C1**) between the County of Monterey and Eden Housing Inc.;

c. Approve the Regulatory Agreement and Declaration of Restrictive Covenants (**Attachment C1 Exhibit H**) substantially in the form set forth as **Exhibit H** to the Lease Disposition and Development Agreement between the County of Monterey and Eden Housing Inc., authorize the Director of Housing and Community Development negotiate and execute the Regulatory Agreement and Declaration of Restrictive Covenants including modifications as may be required

by Approved Security Interest Holders prior to close of escrow, subject to review and approval as to form by County Counsel;

d. Approve the Ground Lease Agreement (**Attachment C1 Exhibit E**) for one-dollar per year rent and for a term of 99 years substantially in the form set forth as **Exhibit E** to the Lease Disposition and Development Agreement between the County of Monterey and Eden Housing Inc., authorize the Director of Housing and Community Development negotiate and execute the Ground Lease Agreement including modifications as may be required by Approved Security Interest Holders prior to close of escrow, subject to review and approval as to form by County Counsel; and

e. Said decision is to be in substantial conformance with the attached plan and subject to the attached conditions, which are incorporated herein for reference.

PASSED AND ADOPTED upon motion of Supervisor _____, seconded by Supervisor _____ and carried this 11th day of March 2025, by the following vote, to wit:

AYES:
NOES:
ABSENT:

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original resolution of said Board of Supervisors duly made and entered in the minutes thereof Minute Book _____ for the meeting on March 11, 2025.

Dated: _____
File Number: _____

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____
Deputy

Attachment C1 - Lease Disposition and Development Agreement

DISPOSITION AND DEVELOPMENT AGREEMENT

BETWEEN

COUNTY OF MONTEREY

AND

EDEN HOUSING, INC.

(855 EAST LAUREL DRIVE)

Dated as of _____, 2025

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LEASE DISPOSITION AND DEVELOPMENT AGREEMENT
(855 East Laurel Drive Salinas, California, 93905)

This Lease Disposition and Development Agreement (the "Agreement") is entered into as of March 11, 2025 (the "Effective Date"), by and between the County of Monterey, a political subdivision of the state of California (the "County"), and Eden Housing, Inc., a California non-profit public benefit corporation (the "Developer"), with reference to the following facts, understandings and intentions of the parties:

RECITALS

A. These Recitals refer to and utilize certain capitalized terms which are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. The County owns that certain property, comprised of approximately 85.93 acres and located at 855 East Laurel Drive, Salinas, California (APN 003-851-043-000), of which approximately 5 acres have been made available by the County to develop as 100% affordable housing and as more particularly described in the attached legal description show on Exhibit A, (the "Property"), which reflects the preliminary agreement between County and Developer as of the Effective Date, with the understanding that the exact legal description for the Property_ will be mutually determined and finalized prior to Close of Escrow.

C. The Property is located within the City of Salinas ("City"). The County and City entered into a Memorandum of Understanding on June 22, 2021 identifying the roles and responsibilities between the County and City for developing affordable housing with a focus on families on the Property, and the County, in partnership with the City, proposed building a one hundred percent (100%) affordable multi-family housing development geared towards very low- and low-income families.

D. On May 6, 2022, the County and City jointly issued a Request for Qualifications ("RFQ") for qualified developers to submit qualifications and proposals to lease from the County the Property in accordance with the terms of a long term ground lease, and to design and develop a one hundred percent (100%) affordable multifamily rental housing development project on the Property which would provide the maximum number of affordable housing units on the project, with a minimum of 50 rental units, affordable to very low and low income households.

E. In response to the RFQ, the Developer submitted a proposal dated June 24, 2022 to lease and develop the Property (the "Proposal"), a copy of which is on file with the County. The Proposal includes the development of at least 132 units of large multifamily and farmworker housing, developed over two phases, proposed to be affordable to persons and families of lower incomes, and other associated amenities and improvements (the "Development").

F. On September 13, 2022, the County adopted Resolution No. 22-171 declaring the Property to be exempt surplus land under the California Surplus Land Act (Government Code 54220 et seq.) in accordance with Government Code Section 54221(f)(1)(F)(i) because the project will restrict one hundred percent (100%) of the residential units to persons and families of low or moderate income, with at least seventy-five percent (75%) of the residential units

restricted to lower income households, as defined in California Health and Safety Code Section 50079.5, with an affordable rent, as defined in Health and Safety Code Section 50053, for a minimum of fifty-five (55) years, and in no event will the maximum affordable rent level be higher than twenty percent (20%) below the median market rents or sales prices for the neighborhood in which the site is located and the lease opportunity has been put out to open competitive bid. The County invited all entities identified in Government Code Section 54222(a) to participate in the competitive bid process.

G. On October 4, 2022, The County Board of Supervisors adopted Resolution No. 22-383 to select Eden Housing, Inc., jointly with the City of Salinas, to develop the Property with a one hundred percent (100%) affordable housing project. The resolution authorized the County Housing and Community Development Department Director, or designee, to negotiate an Exclusive Negotiating Agreement with the Developer.

H. On February 17, 2023, the County and Developer entered into that certain Exclusive Negotiating Agreement (the “ENA”), which provided for an initial negotiating period of eighteen (18) months. The ENA was amended by that First Amendment dated August 14, 2024, whereby the negotiating period was extended by six (6) months, concluding on February 17, 2025. The ENA was amended by that Second Amendment dated January 9, 2025, whereby the negotiating period was extended by six (6) months, concluding on August 17, 2025.

I. On March 21, 2023, the City approved Resolution No. 22619, to execute an ARPA Grant Funding Agreement providing Eden Housing, Inc. for pre-development costs for the 100% affordable housing project. Resolution No. 22619 further acknowledges the County’s willingness to ensure the affordable housing development adheres to City zoning regulations to the fullest extent possible and authorizes a one-time deviation from the City’s Zoning Code to allow the County to process entitlements for the Eden Housing, Inc. 100% affordable housing project.

J. On October 3, 2024, Developer submitted an application (PLN230321) to the County for the 132 unit Development, of which, as of the Effective Date, 53 units are proposed to be affordable to persons or families of low income, 48 units are proposed to be affordable to persons or families of very low income, 29 units are proposed to be affordable to persons or families of extremely low income, and 2 units are proposed to be dedicated as manager units. The exact affordability mix for each Phase will be determined by Developer prior to Close of Escrow based on the mutual goal of delivering as much affordability as is reasonable and financially feasible. The County deemed the project complete on November 21, 2024.

K. The County desires to lease the Property to the Developer in two phases in accordance with the provisions of this Agreement and the Ground Lease attached hereto in order to facilitate the use of the Property for the Development.

L. On March 11, 2025, the County Board of Supervisors found that the Lease and Disposition Development Agreement qualifies for an exemption pursuant to CEQA Guidelines section 15183, is consistent with the development density established by the general plan, and there are no project-specific significant effects which are peculiar to the project or project site and the LDDA qualifies for a Class 32 categorical exemption pursuant to CEQA Guidelines section 15332 and that no exceptions under section 15300.2 apply.

M. On March 11, 2025, the County Board of Supervisors approved Resolution No. 25-____ approving PLN230321. Land use approvals are incorporated in this Agreement as Exhibit I.

N. The County has determined that the Developer has the necessary expertise, skill, and ability to carry out the commitments set forth in this Agreement.

O. To effectuate the development of the Development on the Property, upon the Developer's satisfaction of the conditions set forth below, the County will convey the leasehold interest in the Property to the Developer pursuant to the Ground Lease.

THEREFORE, the Parties agree as follows:

AGREEMENT

The foregoing recitals are hereby incorporated by reference and made part of this Agreement.

ARTICLE 1. **DEFINITIONS AND EXHIBITS**

Section 1.1 Definitions.

In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply throughout this Agreement.

(a) "Approved Plans" means all designs for the Improvements approved by action of the Board of Supervisors of the County, attached hereto as Exhibit D.

(b) "Assignment of Documents" means the Assignment of Agreements, Plans and Specifications, and Approvals, substantially in the form attached as Exhibit F.

(c) "Board of Supervisors " means the board of supervisors of the County.

(d) "Building Permit" means the building permit and all other ministerial construction permits required from the County and other governmental agencies to construct the Improvements, or any Phase thereof.

(e) "CEQA" means the California Environmental Quality Act (Public Resource Code 21000 et seq.), and its implementing regulations.

(f) "Certificate of Occupancy" means a final certificate of occupancy issued by the County for any Phase of the Improvements, or equivalent final inspection.

(g) "City" means the City of Salinas, a municipal corporation.

(h) "Close of Escrow" means the date on which the leasehold interest in the Property for each Phase is conveyed to the Developer by the County pursuant to the Ground Lease.

(i) "Construction Plans" means the final construction plans for the construction of each Phase of the Improvements as approved by the County in accordance with Section 2.4.

(j) "County" means the County of Monterey, a body public and politic and a subdivision of the State.

(k) "County Approvals" means all approvals required to be obtained from the County for entitlement of the Development or any Phase thereof. County Approvals, along with conditions of approval, are attached hereto and incorporated herein as Exhibit I.

(l) "County Documents" means, collectively, this Agreement, the Ground Lease for each Phase, the Assignment of Documents, all documents executed by the Developer in favor of the County in accordance with this Agreement, and all other documents required by the County to be executed by the Developer in connection with the transaction contemplated by this Agreement. "County Document" means any of the County Documents.

(m) "Default" has the meaning set forth in Section 6.3.

(n) "Developer" means Eden Housing, Inc. and its successors and assigns as permitted by this Agreement.

(o) "Developer Event of Default" has the meaning set forth in Section 6.3.

(p) "Development" means the Developer's design, planning and construction of each Phase of the Improvements in accordance with the terms of this Agreement and the Lease.

(q) "Development Schedule" means the schedule attached as Exhibit B, as approved by the County setting forth the anticipated schedule for the Developer's acquisition of the leasehold interest in the Property and the development of the Improvements.

(r) "Effective Date" means the date this Agreement is entered into by the Parties as first written above.

(s) "ENA" means that certain Exclusive Negotiating Agreement dated as of February 17, 2023, by and between the County and the Developer, and as amended on August 14, 2024 and January 9, 2025.

(t) "Financing Plan" means, with respect to each Phase, the Developer's plan for financing the design, engineering and construction of each such Phase of the Improvements, including a detailed development budget, construction and permanent financing commitment letters, to be approved by the County pursuant to Section 2.3, and which may be revised from time to time with the approval of the County pursuant to Section 2.3.

(u) "Ground Lease" means the ground lease, substantially in the form attached as Exhibit E, to be executed by the County and the Developer at the Close of Escrow for each Phase of the Development.

(v) "Hazardous Materials" means: any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14) or Section 25281(d) or 25316 of the California Health and Safety Code as amended from time to time;

(1) any "hazardous waste," "infectious waste" or "hazardous material" as defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code as amended from time to time;

(2) any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA (42 U.S.C. Section 9601 et seq.), Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clear Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 39000 et seq.), or California Water Code (Section 13000 et seq.) as amended from time to time; and

(3) any additional wastes, substances, or materials which at such time are classified, considered, or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Property or the Improvements.

The term "Hazardous Materials" shall not include: (i) construction materials, gardening materials, household products, office supply products, art supplies, or janitorial supply products customarily used in the construction, maintenance, construction, or management of art facilities, or typically used in office activities, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Sections 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Property, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine.

(w) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders, and directives pertaining to Hazardous Materials in, on or under the Property or the Improvements or any portion thereof.

(x) "Improvements" means the 132 housing units, 180 parking spaces, and related site improvements to be constructed on the Property, or as otherwise approved in substantial conformity, in accordance with this Agreement, the Scope of Development and the Phasing Plan attached as Exhibit C, and County Approvals attached as Exhibit I.

(y) "Memorandum of Ground Lease" means the memorandum of the Ground Lease to be recorded against the applicable Phase at the Close of Escrow.

(z) "Official Records" means the official land records of the County.

(aa) "Parties" means, collectively, the County, and the Developer. "Party" shall refer to either of the Parties.

(bb) "Phase" means each of the buildings that constitute the Development, to be developed during a specified time within the Development Schedule.

(cc) "Phasing Plan" means the plan included within Exhibit C setting for the two Phases of the Development, the approximate units within each Phase and proposed unit size and affordability restrictions within each Phase.

(dd) "Property" means the real property to be developed by the Developer pursuant to this Agreement, which real property is more particularly described in Exhibit A.

(ee) "Regulatory Agreement" means with respect to each Phase, that Regulatory Agreement and Declaration of Restrictive Covenants to be recorded against the Phase at the Close of Escrow substantially in the form of Exhibit H attached.

(ff) "Scope of Development" means the description of the basic physical characteristics of the Development which, serves as a basis for the Developer's application for the County Approvals and for the preparation of the Construction Plans for each Phase. The Scope of Development is attached to this Agreement as Exhibit C.

(gg) "Term" means the term of this Agreement, which shall consist of the period commencing as of the Effective Date and continuing until the earlier of (1) the date that is ten (10) years from the Effective Date, or (2) conveyance of the Ground Lease for the final phase of the Development.

(hh) "Title Company" means Old Republic Title Company, or such other title company as the Parties may mutually select.

(ii) "Title Report" means that certain title report at Close of Escrow, issued by the Title Company for the Property.

(jj) "Transfer" has the meaning set forth in Section 5.1.

Section 1.2 Exhibits.

The following exhibits are attached to and incorporated in the Agreement:

- Exhibit A: Legal Description of the Property
- Exhibit B: Development Schedule
- Exhibit C: Scope of Development
- Exhibit D: Approved Plans
- Exhibit E: Ground Lease
- Exhibit F: Assignment of Documents
- Exhibit G: Preliminary Financing Plan
- Exhibit H: Regulatory Agreement
- Exhibit I: County Approvals

ARTICLE 2.
PREDISPOSITION REQUIREMENTS FOR
CONVEYANCE OF THE LEASEHOLD INTEREST IN THE PROPERTY

Section 2.1 Conditions Precedent to Disposition of the Leasehold Interest in the Property.

The requirements set forth in this Article 2 are conditions precedent to the County's obligation to convey the leasehold interest in each Phase of the Property to the Developer pursuant to the Ground Lease. The County shall have no obligation to convey any Phase of the leasehold interest in the Property to the Developer unless the Developer has satisfied the conditions precedent set forth in this Article 2 with respect to such Phase in the manner set forth below and within the timeframe set forth in the Development Schedule.

Section 1.1 County Approvals.

With respect to each Phase, no later than the date set forth in the Development Schedule, the Developer shall obtain all of the County Approvals. All applications shall conform to the description of the Improvements for such Phase set forth in the Scope of Development and the Approved Plans, unless a variation has been previously approved by the County in writing. The County shall cooperate with the Developer's efforts to obtain such entitlement and shall sign necessary applications or other consents to applications, provided however, the County shall not be obligated to incur any costs associated with such cooperation.

Section 2.2 Financing Plan.

The Developer's preliminary plan for the financing of each Phase of the Development ("Preliminary Financing Plan") is attached hereto as Exhibit G and incorporated herein. The Preliminary Financing Plan identifies potential financing sources including City of Salinas American Rescue Plan Act Pre-Development Loan (received), Local Funding from the City of Salinas, California Department of Housing and Community Development (Multifamily Housing Program, Affordable Housing and Sustainable Communities and/or Joe Serna), Low Income Housing Tax Credit Equity, Permanent Financing leveraging both tenant rents and Project Based Vouchers, and Deferred Developer Fees. The Parties acknowledge that certain proposed forms of funding for each Phase as set forth in the Preliminary Financing Plan are available through competitive funding programs, and that the Development may not be successful in actually obtaining one or more of such forms of financing. The Parties anticipate that the types and amounts of financing for each phase of the Development will change and be refined during the period between the Effective Date and the Close of Escrow for each Phase. Accordingly, no later than the date set forth in the Development Schedule for each Phase, the Developer shall submit to the County an updated and revised financing plan ("Final Financing Plan") for each Phase which shall include a development budget, updated amounts for each of the foregoing funding sources and any other funding sources obtained, and copies of written commitments for each funding source. The County shall approve or disapprove the Final Financing Plan for each Phase in writing within sixty (60) days after the County's receipt. If the Final Financing Plan is disapproved by the County, the Developer shall have thirty (30) days from the date of the Developer's receipt of the County's notice of disapproval to submit a revised Final Financing Plan for that particular Phase. In the event the County disapproves the second submission, the County and the Developer agree to negotiate in good faith to develop a submission that is reasonably acceptable to both the County and the Developer within a reasonable period of time. If the County fails to approve or disapprove the Final Financing Plan within the sixty (60) day period, it shall be deemed approved. Immediately prior to the Close of Escrow for each Phase, the Developer shall provide the County with an update to the Final Financing Plan ("Closing Financing Plan") that will include the final amounts of all funding sources and uses and will replace the Final Financing Plan for that Phase. All financing necessary for the construction of

each Phase of the Development, as approved by the County in the Final Financing Plan for that Phase (not including permanent financing) and updated in the Closing Financing Plan, shall be closed by the Developer prior to, or simultaneously with, the conveyance of the applicable Phase of leasehold interest in the Property by the County to the Developer.

The Developer shall not rely on the County's approval of the Final Financing Plan or the Closing Financing Plan as a representation of any kind, including but not limited to the business advantage of the terms of any of the Financing or any documentation thereof. The County's approval shall merely constitute satisfaction of the condition set forth in this Section.

Section 2.3 Construction Plans and Permits.

(a) The Developer shall prepare construction plans for the construction of each Phase the Improvements. The final construction plans for each Phase of the Improvements shall consist of all construction documentation upon which the Developer and its contractors shall rely in building that Phase of the Improvements. Such construction plans shall include (without limitation) final architectural drawings, grading and erosion control plans, landscaping plans and specifications, final elevations, building plans and specifications, mechanical, plumbing and HVAC (also known as "working drawings"). The construction plans shall be based upon the Approved Plans, the County Approvals and consistent with the Scope of Development and shall not materially deviate from them without the written consent of the County.

(b) No later than the date set forth in the Development Schedule with respect to each Phase, the Developer shall apply for construction permits for each Phase of the Improvements from the County, including with the application submittal construction plans as described in Section 2.4(a) above. After submitting applications for construction permits as set forth above, the Developer shall diligently pursue and obtain the construction permits for the particular Phase of the Improvements, no later than the date set forth in the Development Schedule.

(c) As approved and permitted by the County, these construction plans for the applicable Phase of the Improvements shall be referred to as the "Construction Plans". Following the Close of Escrow, any proposed change to the Construction Plans for that Phase shall be governed by the Ground Lease.

Section 2.4 Construction Contract.

(1) With respect to each Phase, no later than the date set forth in the Development Schedule, the Developer shall submit to the County for its limited approval the proposed construction contract for each Phase of the Improvements. The County's review and approval shall be limited exclusively to a determination whether: (i) the guaranteed maximum construction cost, or stipulated sum, set forth in the construction contract is consistent with the approved applicable Final Financing Plan; (ii) the construction contract is with a contractor duly licensed by the State of California and reasonably acceptable to the County; (iii) the construction contract contains provisions consistent with this Agreement and the Ground Lease; (iv) the construction contract requires a retention of ten percent (10%) of hard costs until completion of the Improvements (provided, however, the construction contract may provide for the release of retention, prior to completion of the Improvements, to certain specified subcontractors that have completed all of their work on the Development as reasonably approved by the County, and,

provided, further, that such early retention amount shall be based on the subcontractor's initial contract sum, and shall exclude any increase in the contract sum due to change orders, or otherwise); (v) the construction contract requires the payment of prevailing wages in accordance with the Ground Lease Section 4.5 and Labor Code Sections 1720 et seq., to the extent applicable; (vi) the construction contract includes language indemnifying the County for any and all claims resulting from the construction in a form to be provided by the County; and (vii) the construction contract includes the applicable insurance requirements as set forth in the Agreement and the Ground Lease. The County's approval of the construction contract shall in no way be deemed to constitute approval of, or concurrence with, any other term or condition of the construction contract.

(b) Upon receipt by the County of the proposed construction contract, the County shall promptly review same and approve it within fifteen (15) days if it satisfies the limited criteria set forth above. Notwithstanding the foregoing, the County may require an additional fifteen (15) day period to complete its review and will notify Developer prior to the end of the initial fifteen (15) days if such additional fifteen (15) days are needed. If the construction contract is not approved by the County, the County shall set forth in writing and notify the Developer of the County's reasons for withholding such approval. The Developer shall thereafter submit a revised construction contract for County approval, which approval shall be granted or denied in fifteen (15) or thirty (30) days in accordance with the criteria and procedures set forth above. Failure of the County to respond within the fifteen (15) or thirty (30) day period(s) set forth above shall be deemed approval by the County. Any construction contract executed by the Developer for the Improvements shall be in a form approved or deemed approved by the County.

(c) The Developer shall not rely on the County's approval of the construction contract(s) as a representation regarding the enforceability or business advantage of the construction contract(s). County approval shall merely constitute satisfaction of the condition set forth in this Section.

Section 2.5 Construction Bonds. With respect to each Phase, no later than the date set forth in the Development Schedule, the Developer shall deliver to the County forms of one (1) labor and material bond and one (1) performance bond for the Improvements in such Phase issued by a reputable insurance company licensed to do business in California, and named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department, and reasonably acceptable to the County, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of the Improvements in such Phase as set forth in the approved construction contract for the County's review and approval. The bonds shall name the County as co-obligee. Upon receipt by the County of the proposed payment and performance bonds, the County shall promptly review such bonds and approve them within fifteen (15) days if they satisfy the criteria set forth above, and include any other modification reasonably requested by the County. If the payment and performance bonds are not approved by the County, the County shall set forth in writing and notify the Developer of the County's reasons for withholding such approval. The Developer shall thereafter submit revised payment and performance bonds for County approval, which approval shall be granted or denied in fifteen (15) days in accordance

with the criteria and procedures set forth above. Failure of the County to respond within the fifteen (15) day period(s) set forth above shall be deemed approval by the County

(a) Prior to the Close of Escrow for each Phase, the Developer shall deliver to the County copies of actually issued bonds for such Phase substantially identical to the forms previously delivered to, and approved by, the County. The Developer may elect to satisfy the obligation set forth in this Section 2.6 by delivering bonds which name the Developer's general contractor(s), and not the Developer, as the principal. Only upon County receipt of such bonds shall the pre-disposition conditions of this Section 2.6 be deemed met. If such bonds are not received within the time set forth above, this Agreement may be terminated pursuant to Article 7.

Section 2.6 Insurance.

With respect to each Phase, the Developer shall furnish to the County evidence of the insurance coverage meeting the requirements set forth in the Ground Lease for such Phase including any insurance required from the Contractor and any design professionals, no later than the date set forth in the Development Schedule.

Section 2.7 Assignment of Documents.

At the Close of Escrow for each Phase, the Developer shall assign to the County its rights and obligations with respect to the Construction Plans and certain agreements, plans, specifications, other documents, and approvals for such Phase, pursuant to an Assignment of Documents, substantially in the form set forth in the attached Exhibit F, which shall be executed by the Developer and all Contractors, as defined in the Assignment of Documents. Such assignment shall be subject and subordinate to the rights of such Phase's senior construction lender.

Section 2.8 Other Governmental Approvals.

With respect to each Phase, the Developer shall have obtained any other required governmental approvals and permits necessary for the construction of the Improvements on the Property.

Section 2.9 Reciprocal Easement Agreement.

Within the time set forth in the Development Schedule, the Developer shall have submitted to the County for its approval a reciprocal easement agreement or other similar agreement (“**REA**”) governing the rights and responsibilities of each owner of each Phase of the Property, including but not limited to cross easements for ingress and egress and maintenance responsibilities for any common areas. If at the first Phase Close of Escrow, the Developer requires easements over the second Phase portion of the Property in order to construct and operate the first Phase, County shall be a party to the REA and shall, in its reasonable discretion, grant such easements.

The County Board of Supervisors shall approve or disapprove the REA in writing within sixty (60) days after the County's receipt. If the REA is disapproved by the County, the Developer shall have thirty (30) days from the date of the Developer's receipt of the County's disapproval notice to resubmit the REA. In the event the County disapproves the second submission, the County and the Developer agree to negotiate in good faith to develop a submission that is reasonably acceptable to the County and the Developer within a reasonable period of time. If the County fails to approve or disapprove the REA within such sixty (60) day period, it shall be deemed approved. Notwithstanding the foregoing, if the County is a party to

the REA, such time periods shall not apply, and County and Developer shall negotiate the REA in good faith.

Section 2.10 Defaults.

Neither the Developer nor the County shall be in Default under this Agreement.

Section 2.11 No Litigation.

There shall be no pending litigation challenging the County Approvals for such Phase, the County's authority to enter into this Agreement or the Ground Lease for such Phase, or the Development.

ARTICLE 3.

DISPOSITION OF THE LEASEHOLD INTEREST IN THE PROPERTY

Section 3.1 Opening Escrow.

To accomplish the transfer of Phase of the leasehold interest in the Property from the County to the Developer, the Parties shall, within ninety (90) days after the Effective Date, establish an escrow with the Title Company. The Parties shall execute and deliver all written instructions to the Title Company to accomplish the terms hereof, so long as such instructions are consistent with this Agreement.

Section 3.2 Close of Escrow.

(a) The Close of Escrow shall occur withing forty-five (45) days after the Developer has met all of its pre-disposition conditions as set forth in Article 2 above, or such later date as mutually agreed to by County and Developer, but in no event shall the Close of Escrow for each Phase occur later than the time set forth in the Development Schedule.

(b) At the Close of Escrow, the County shall convey the applicable leasehold interest in the Property to Developer by the execution of the Ground Lease in substantially the form set forth in the attached Exhibit E, and the execution of the Memorandum of Ground Lease and the recordation of the Memorandum of Ground Lease against the Phase of the Property. Additionally, the Developer and the County shall enter into and record the Regulatory Agreement against the applicable Phase of the Property.

Section 3.3 Conditions to Conveyance.

The County's obligation to convey each Phase of the leasehold interest in the Property to the Developer shall be subject to satisfaction of the following pre-conditions with respect to such Phase:

(a) The conditions precedent set forth in Article 2 above shall have been satisfied in accordance with the Development Schedule applicable to such Phase.

(b) The representations, warranties, and covenants of the Developer set forth in Section 7.18 shall be true and correct, and fully observed, as of the Effective Date and as of the Close of Escrow.

(c) There exists no Developer Event of Default nor any act, failure, omission, or condition that would constitute a Developer Event of Default under this Agreement.

(d) The Developer has delivered to the County a copy of the Developer's organizational documents and corporate resolution(s) authorizing the Developer's execution of this Agreement and the transactions contemplated by this Agreement.

(e) The Developer has executed and delivered to the County the Ground Lease, the Memorandum of Ground Lease, and the Regulatory Agreement for such Phase.

Section 3.4 Condition of Title.

At the Close of Escrow for each Phase, the County shall deliver title to the leasehold interest in the applicable Phase of the Property free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except those set forth in the Title Report.

Section 3.5 Condition of the Property. To the County's Current Actual Knowledge, no release of Hazardous Materials has come to be located on or beneath the Property, except as previously disclosed by the County to the Developer. During the Negotiating Period, as defined in the ENA, the Developer completed all due diligence activities, including but not limited to a physical adequacy determination of the Property, and may not terminate this Agreement as a result of the purported physical unsuitability of the Property. As used in this Agreement, the phrase "to the County's Current Actual Knowledge" and words of similar import shall mean the actual knowledge of George Salcido, Real Property Specialist, on behalf of the County, as of the Effective Date, without any duty of separate inquiry and investigation. The County represents and warrants that George Salcido, Real Property Specialist, is that person affiliated with the County most knowledgeable regarding the ownership and operation of the Property. Developer hereby agrees that the foregoing person shall not have or incur any personal liability for the breach of any representation or warranty in this Agreement, and that Developer's sole remedy for any such breach shall be against the County.

(a) **"AS IS" CONVEYANCE. EXCEPT AS SET FORTH ABOVE, THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE COUNTY IS CONVEYING AND THE DEVELOPER IS ACCEPTING THE LEASEHOLD INTEREST IN EACH PHASE OF THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT THE DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT) OR IMPLIED, FROM THE COUNTY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER; (C) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE; (D) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE ADJOINING OR NEIGHBORING**

PROPERTY; AND (E) THE CONDITION OF TITLE TO THE PROPERTY. THE DEVELOPER AFFIRMS THAT THE DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE COUNTY OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE COUNTY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. THE DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). THE DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

(b) Survival. The terms and conditions of this Section 3.5 shall expressly survive the Close of Escrow, shall not merge with the provisions of the Ground Lease, or any other closing documents and shall be deemed to be incorporated by reference into the Ground Lease. The County is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, employee, servant, or other person. The Developer acknowledges that the lease payments reflect the "as is" nature of this transaction and any faults, liabilities, defects, or other adverse matters that may be associated with the Property. The Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with the Developer's counsel and understand the significance and effect thereof.

(c) Acknowledgment. The Developer acknowledges and agrees that (i) to the extent required to be operative, the disclaimers of warranties contained in Section 3.5 hereof are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements, and (ii) the disclaimers and other agreements set forth in such sections are an integral part of this Agreement, that the Ground Lease has been adjusted to reflect the same and that the County would not have agreed to convey the Property to the Developer pursuant to the Ground Lease without the disclaimers and other agreements set forth in this Section.

(d) Developer's Release of the County. Effective as of the Close of Escrow for each Phase, the Developer, on behalf of itself and anyone claiming by, through or under the Developer hereby waives its right to recover from and fully and irrevocably releases the County and its Board of Supervisors, officials, employees, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that the Developer may have or hereafter acquire

against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the applicable Phase of the Property, or its suitability for any purpose whatsoever, (ii) any presence of Hazardous Materials, and (iii) any information furnished by the Released Parties under or in connection with this Agreement.

(e) Scope of Release. The release set forth in Section 3.5(e) hereof includes claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the Released Parties. The Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the County from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads 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."

Developer's Initials: Initial
AD

Notwithstanding the foregoing, this release shall not apply to, nor shall the County be released from, the County's actual fraud or intentional misrepresentation.

Section 3.6 Costs of Escrow and Close of Escrow.

Ad valorem taxes, if any, shall be prorated as of the Close of Escrow for each Phase. The lien of any bond or assessment shall be assumed by the Developer and assessments payable thereon shall be prorated as of the date of conveyance. The County shall pay any delinquent ad valorem taxes and any amounts owing for delinquent bonds and assessments as of the date of conveyance. The Developer shall bear the costs of any owner's title insurance policy desired by the Developer. All other costs of escrow (including the Title Company's fee) shall be evenly borne by the Developer and the County. The costs borne by the Developer shall be in addition to the rent paid by the Developer to the County pursuant to the Ground Lease.

Notwithstanding anything to the contrary contained in this Agreement, once the conveyance of a particular Phase occurs in accordance with the term of this Agreement (each a "Transferred Phase"), the Transferred Phase and Developer of such Transferred Phase shall no

longer be subject to the terms of this Agreement and shall be governed instead by the applicable Ground Lease.

ARTICLE 4.
REQUIREMENTS AFTER CLOSE OF ESCROW

Section 4.1 Ground Lease Rent.

The annual long-term ground lease payment for each Ground Lease of the Property is one Dollar (\$1.00) per year.

Section 4.2 Construction Pursuant to Plans.

All works of construction and development on the Property shall be done in accordance with the approved Construction Plans, as may be amended pursuant to the Ground Lease and the other applicable requirements of the Ground Lease.

Section 4.3 Encumbrance of the Property.

The Developer shall not encumber the Property, including, but not limited to, a leasehold deed of trust or mortgage, other security financing interest, lien, or other encumbrance except in strict accordance with the conditions, requirements and limitations set forth in the Ground Lease for such encumbrances.

Section 4.4 Compliance With Ground Lease.

Following the Close of Escrow for each Phase, the Developer shall comply with all standards and requirements for construction, use, operation, maintenance, management and encumbrance of the Property and the Improvements which are set forth in the Ground Lease for such Phase. As between the County and the Developer, the Developer shall be solely responsible for all costs necessary for the construction and operation of such Phase of the Development, including, but not limited to, any construction cost overruns. The Developer shall commence the construction of the Improvements for each Phase and complete the construction of the Improvements for each Phase by the dates set forth in the Development Schedule and the Ground Lease for such Phase.

ARTICLE 5.
ASSIGNMENT AND TRANSFERS

Section 5.1 Definitions.

As used in this Article 5, the term "Transfer" means:

- (a) Any total or partial sale, assignment, or conveyance, of any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement or of the Developer's interest in any Phase of Property or the Improvements or any part thereof or any interest therein or any contract or agreement to do any of the same; or
- (b) Any total or partial sale, assignment, or conveyance, of any trust or power, or any transfer in any other mode or form, of or with respect to any ownership interest in Developer; or

(c) Any merger, consolidation, sale, or lease of all or substantially all of the assets of Developer; or

(d) The leasing of part or all of the Property or the Improvements thereon.

Section 5.2 Purpose of Restrictions on Transfer.

This Agreement is entered into solely for the purpose of the development and operation of the Development and its subsequent use in accordance with the terms hereof and the terms of the County Documents. The Developer recognizes that the qualifications and identity of Developer are of particular concern to the County, in view of:

(a) The importance of the redevelopment of the Property to the general welfare of the community; and

(b) The public assistance and other public aids that have been made available by law and by the government for the purpose of making such redevelopment possible; and

(c) The reliance by the County upon the unique qualifications and ability of the Developer to serve as the catalyst for development of the Property and upon the continuing interest which the Developer will have in the Property to assure the quality of the use, operation and maintenance deemed critical by the County in the development of the Property; and

(d) The fact that a change in ownership or control of the Developer as owner of the Property, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of the Developer or the degree thereof is for practical purposes a transfer or disposition of the Property; and

(e) The fact that the Property is not to be acquired or used for speculation, but only for development and operation by the Developer in accordance with the Agreement; and

(f) The importance to the County and the community of the standards of use, operation, and maintenance of the Property.

The Developer further recognizes that it is because of such qualifications and identity that the County is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 5.3 Prohibited Transfers.

The limitations on Transfers set forth in this Article shall apply throughout the Term. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law without the prior written approval of the County.

Any Transfer made in contravention of this Section 5.3 shall be void and shall be deemed to be a Default under this Agreement whether or not the Developer knew of or participated in such Transfer.

Section 5.4 Other Transfers with County Consent.

The County may, in its sole discretion, approve in writing other Transfers as requested by the Developer. In connection with such request, the Developer shall submit to the County for review all instruments and other legal documents proposed to affect any such Transfer and all other documents as reasonably requested by the County to determine the qualifications and identity of the proposed transferee. If a requested Transfer is approved by the County such approval shall be indicated to the Developer in writing. Such approval shall be granted or denied by the County within thirty (30) days of receipt by the County of all materials required by this Section 5.4.

No Transfer of this Agreement permitted pursuant to Section 5.4 shall be effective unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an instrument in writing approved as to form by the County Counsel and in form recordable among the Official Records, shall expressly assume the obligations of the Developer under the County Documents and agree to be subject to the conditions and restrictions to which the Developer is subject arising under the County Documents, to the fullest extent that such obligations are applicable to the particular portion of or interest in the Property and Improvements conveyed in such Transfer.

In the absence of specific written agreement by the County, no such Transfer, assignment or approval by the County shall be deemed to relieve the Developer or any other party from any obligations under this Agreement.

Section 5.5 Assignment for Each Phase.

Notwithstanding anything to the contrary contained herein, on or before the Close of Escrow for each Phase of the Development, Developer may partially assign its rights and obligations under this Agreement with respect to such Phase to a limited partnership in which Developer (or its affiliate) wholly controls the managing general partner (each a "Partnership"). At the time of such assignment, County and Developer shall amend this Agreement and any other applicable County Documents to the extent reasonably necessary to reflect the bifurcation of this Agreement and any applicable County Documents for each applicable Phase. Any such amendments shall be approved or denied by the County Board of Supervisors. At the conveyance of each Phase, the Partnership for such Phase shall be the party that enters into the Ground Lease, Regulatory Agreement, and any other County documents related to the conveyance.

ARTICLE 6.
DEFAULT AND REMEDIES

Section 6.1 General Applicability.

The provisions of this Article 6 shall govern the Parties' remedies for breach or Default under this Agreement.

Section 6.2 No Fault of Parties.

The following events constitute a basis for a Party to terminate this Agreement without the fault of the others:

(a) The County, despite good faith and diligent efforts, is unable to convey the leasehold interest in any Phase of the Property to the Developer and the Developer is otherwise entitled to such conveyance.

(b) Any of the conditions precedent to the conveyance of a Phase of the leasehold interest in the Property proves to be impossible to meet despite the Developer's good faith and diligent efforts and the County is otherwise ready and able to convey such Phase of the leasehold interest in the Property to the Developer.

Upon the happening of the above-described event and at the election of either Party, this Agreement may be terminated by written notice to the other Party. After such termination of this Agreement, no Party shall have any rights against or liability to the others under this Agreement, except that the indemnification provisions of this Agreement shall survive such termination and remain in full force and effect.

Notwithstanding the foregoing, upon execution of the Ground Lease for the first Phase of the Development, any termination of this Agreement under this Section 6.2 shall apply only to the second Phase of the Development and not to the Transferred Phase.

Section 6.3 Events of Default.

(a) Except as to the events constituting a basis for termination under Section 6.2, a Party's violation of any material term of this Agreement or failure by any Party to perform any material obligation of this Agreement shall constitute a default ("Default").

(b) The following shall additionally constitute a Developer Event of Default:

(1) The Developer constructs or attempts to construct the Development in violation of Article 4 or the Ground Lease, or otherwise fails to comply with any obligation or requirement set forth in Article 4; or

(2) The Developer fails to complete construction of the Development by the date set forth in the Development Schedule (as may be extended pursuant to the limited circumstances more particularly set forth in Section 6.3), or abandons or suspends construction of the Improvements prior to completion of all construction for a period of thirty (30) days after written notice by the County of such abandonment or suspension; or

(3) A Transfer occurs, either voluntarily or involuntarily, in violation of Article 5; or

(4) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate, or report submitted to the County in connection with this Agreement proves to have been incorrect in any material and adverse respect when made; or

(5) A court having jurisdiction shall have made or entered any decree or order (i) adjudging the Developer, to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of the Developer, or seeking any arrangement for the Developer, under the bankruptcy law or any other applicable debtor's relief law or statute of the

United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of the Developer, in bankruptcy or insolvency or for any of their properties, or (iv) directing the winding up or liquidation of the Developer, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection as well; or the Developer, shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive; or

(6) The Developer shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to sooner sale pursuant to such sequestration, attachment, or execution. In the event that the Developer, is diligently working to obtain a return or release of the Property and the County's interests under the County Documents are not immediately threatened, in the County's reasonable business judgment, the County may elect not to declare a Default under this subsection; or

(7) The Developer, shall have voluntarily suspended its business or, the Developer shall have been dissolved or terminated; or

(8) There shall occur any default declared by any lender under any loan document related to any loans secured by a deed of trust on the Developer's leasehold interest in the Property or the Improvements, after the expiration of applicable cure periods; or

(9) There shall occur any default declared by the County under the Ground Lease, or a default is declared by the County under any other County Document.

(c) Upon the happening of any of the above-described events, the non-defaulting Party shall first notify the other Party in writing of the purported breach, failure, or act above described, giving the defaulting Party sixty (60) days from receipt of such notice to cure or, if such cure cannot be accomplished within sixty (60) days, to commence to cure such breach, failure, or act. In the event the defaulting Party fails to cure within said sixty (60) days, or, if the breach or failure is of such a nature that it cannot be cured within sixty (60) days, the non-defaulting Party fails to commence to cure within such sixty (60) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the non-defaulting Party shall be afforded the remedies described in Section 6.4 below.

(d) Notwithstanding the notice and cure periods set forth above, if a lesser cure period or notice requirement is allowed before a default occurs under any other County Document (including, but not limited to the Ground Lease), such periods shall control in this Agreement as well.

(e) Notwithstanding the foregoing, upon execution of the Ground Lease for the first Phase of the Development, any Default with respect to the second Phase shall not itself constitute a Default for the Transferred Phase, and upon execution of the Ground Lease for the second Phase of the Development, any Default thereafter with respect to the first Phase shall not itself constitute a Default for the second Phase.

Section 6.4 Remedies for Default.

County and Developer agree that, in the event of a Default or breach under this Agreement, following the expiration of the notice and cure periods described in Section 6.3, the only remedies available to the non-breaching Party shall be those listed in this Section 6.4, as follows:

(a) Action for Specific Performance. Upon a Default, the non-defaulting Party may prosecute an action for specific performance.

(b) Action for Damages. Prosecute an action for damages, provided however, any action for damages shall be limited to actual damages and in no event shall any party be entitled to punitive or consequential damages.

(c) Termination of this Agreement. Upon a Default, the non-defaulting Party may terminate this Agreement by written notice to the defaulting Party, provided, however, that the remedies pursuant to this Article 6 or any other County Document and the indemnification provisions of this Agreement shall survive such termination.

(d) Termination of Ground Lease. Upon a Developer Event of Default, the County may terminate the Ground Lease as provided in the Ground Lease.

(e) Construction Plans and Assignment of Documents. If the Agreement is terminated pursuant to subsection (c) above, the Developer, at no cost to the County, shall deliver to the County copies of any and all Construction Plans and studies in the Developer's possession or to which Developer is entitled related to development of the Improvements on the Property, as provided in the Assignment of Documents.

Section 6.5 Waiver of Lis Pendens.

It is expressly understood and agreed by the Parties that no lis pendens shall be filed against any portion of the Property with respect to this Agreement or any dispute or act arising from it.

Section 6.6 Remedies Cumulative.

No right, power, or remedy given by the terms of this Agreement or the County Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise. Neither the failure nor any delay to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 6.7 Waiver of Terms and Conditions.

No waiver of any Default or breach by the Developer hereunder shall be implied from any omission by the County to take action on account of such Default if such Default persists or is repeated, and no express waiver shall affect any Default other than the Default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by the County to, or of, any act by the Developer requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any Default under this Agreement or the applicable County Documents, nor shall it invalidate any act done pursuant to notice of Default, or prejudice the County in the exercise of any right, power, or remedy hereunder or under the applicable County Documents, unless in the exercise of any such right, power, or remedy all obligations of the Developer to the County under the applicable County Documents are paid and discharged in full.

ARTICLE 7.
GENERAL PROVISIONS

Section 7.1 Notices, Demands and Communications.

Formal notices, demands, and communications between the County and the Developer shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by facsimile with a copy delivered the following day by reputable overnight delivery service, or delivered personally, to the principal office of the Parties as follows:

County: County of Monterey
Housing and Community Development Department
1441 Schilling Place, 2nd Floor
Salinas, CA 93901
Attention: Craig Spencer, Director

With copy to:

Developer: Eden Housing, Inc.
22645 Grand Street
Hayward, CA 94541
Attention: Andrea Osgood

With copy to:

Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section 7.1.

Section 7.2 Non-Liability of County Officials, Employees and Agents.

No Board of Supervisor, official, employee or agent of the County shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by the County for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

Section 7.3 Forced Delay.

In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in Default only if such delay or Default is due solely to: war; insurrection; riots; floods; earthquakes; fires; casualties; acts of terrorism or the public enemy; severe and unanticipated weather conditions; litigation (including suits filed by third parties concerning or arising out of this Agreement); or court order. An extension of time for cause will be deemed granted if notice by the Party claiming such extension is sent to the other Party within ten (10) days from the date the Party seeking the extension first discovered the cause and such extension of time is not rejected in writing by the other Party within ten (10) days after receipt of the notice. In no event shall the cumulative delays exceed one hundred twenty (120) days, unless otherwise agreed to by the Parties in writing.

Section 7.4 Inspection of Books and Records.

Upon request, the Developer shall permit the County to inspect at reasonable times and on a confidential basis those books, records, and all other documents of the Developer necessary to determine Developer's compliance with the terms of this Agreement.

Section 7.5 Provision Not Merged with Ground Lease.

None of the provisions of this Agreement are intended to or shall be merged by the Ground Lease transferring title to any interest in the real property which is the subject of this Agreement from County to Developer or any successor in interest, and any such Ground Lease shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 7.6 Title of Parts and Sections.

Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

Section 7.7 General Indemnification.

The Developer agrees to indemnify, protect, hold harmless and defend (with counsel reasonably selected by the County) the County, and its supervisors, employees, agents, and volunteers from any and all suits, actions, claims, losses, liabilities, damages, injuries, causes of action, costs, and expenses of any kind, whether actual or alleged, including without limitation, court costs, reasonable attorneys' fees, and other litigation expenses, demands, judgments and liens arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the Developer's performance or non-performance under any of the County Documents, or any other agreement executed pursuant to the County Documents, or arising out of acts or omissions of any of Developer's contractors, subcontractors, or persons claiming under any of the aforesaid, except as directly caused by the County's willful misconduct or gross negligence. The provisions of this section shall survive expiration of the Term or other termination of this Agreement and shall remain in full force and effect and are not limited by the amount of insurance as may be required.

Section 7.8 Applicable Law.

This Agreement shall be interpreted under and pursuant to the laws of the State of California without regard to choice of law principles.

Section 7.9 No Commissions.

The County shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement. The County represents that it has engaged no broker, agent, or finder in connection with this transaction, and the Developer shall defend and hold the County harmless from any claims by any broker, agent or finder retained by the Developer. The provisions of this section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 7.10 Severability.

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 7.11 Legal Actions.

Any legal action commenced to interpret or to enforce the terms of this Agreement shall be filed in the Superior Court of the County.

Section 7.12 Binding Upon Successors.

This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto except that there shall be no Transfer of any interest by any of the Parties hereto except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such Party who has acquired an interest in compliance with the terms of this Agreement, or under law.

The covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property. Each and every contract, deed, or other instrument hereafter executed covering or conveying any interest in the Property shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed, or other instrument, unless the County expressly releases the leasehold interest in the Property from the requirements of this Agreement.

Section 7.13 Parties Not Co-Venturers.

Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 7.14 No Third Party Beneficiaries.

This Agreement and the County Documents are made and entered into solely for the benefit of the County and the Developer and no other person shall have any right of action under or by reason of this Agreement or the County Documents.

Section 7.15 Time of the Essence.

In all matters under this Agreement, the Parties agree that time is of the essence.

Section 7.16 Action by the County.

Except as may be otherwise specifically provided in this Agreement or another applicable County Document, whenever any approval, notice, direction, finding, consent, request, or other action by the County is required or permitted under this Agreement or another applicable County Document that is in substantial compliance with the terms of this Agreement, including, but not limited to, any approval of a proposed Transfer pursuant to Article 5, such action may be given, made, or taken by the County Director of Housing and Community Development, or by any person who shall have been designated in writing to the Developer by the County Director of Housing and Community Development, without further approval by the Board of Supervisors. Any such action shall be in writing.

Section 7.17 Operating Memoranda; Implementation Agreements.

(a) The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance for those items covered in general terms under this Agreement. If and when, from time to time during the Term of this Agreement, the Parties find that refinements or adjustments are necessary, such refinements or adjustments shall be made through Operating Memoranda or Implementation Agreements approved by the Parties which, after execution, shall be attached to this Agreement as addenda and become a part hereof.

(b) Operating Memoranda or Implementation Agreements may be executed on the County's behalf by the County Directory of Housing and Community Development. In the event a particular subject requires notice or hearing, or any significant modification is proposed to the terms of this Agreement, the matter shall be processed as an amendment to this Agreement and must be approved by the Board of Supervisors.

Section 7.18 Representation and Warranties of Developer.

The Developer hereby represents and warrants to the County as follows:

(a) Organization. The Developer is a duly organized, validly existing nonprofit public benefit corporation, and is in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Developer. The Developer has full power and authority to execute and deliver this Agreement, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Developer, and all actions required under the Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments

executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Developer enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on the Developer, or any provision of the organizational documents of the Developer, or will conflict with or constitute a breach of or a default under any agreement to which the Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of the Developer, other than liens established pursuant hereto.

(f) Compliance With Laws; Consents and Approvals. The construction of the Improvements will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) Pending Proceedings. The Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Developer, threatened against or affecting the Developer, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Developer, materially affect the Developer's ability to develop the Improvements.

(h) Title to Property. Upon the recordation of the Ground Lease, the Developer will have good and marketable title to the leasehold interest in such Phase of the Property and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than those liens approved by the County, liens for current real property taxes and assessments not yet due and payable, and liens in favor of the County or approved in writing by the County.

(i) Financial Statements. The financial statements of the Developer, and other financial data and information furnished by, or on behalf of the Developer, to the County fairly present the information contained therein. As of the Effective Date, there has not been any adverse, material change in the financial condition of the Developer from that shown by such financial statements and other data and information.

(j) Sufficient Funds. Upon the acquisition of the leasehold interest in each Phase, the Developer will hold sufficient funds or binding commitments for sufficient funds to

obtain the leasehold interest in the Property for such Phase, and complete the construction of the Improvements in such Phase in accordance with this Agreement.

Section 7.19 Conflict Among County Documents.

Unless otherwise provided in a particular County Document, in the event of a conflict between the terms of this Agreement and any other County Document, the terms of this Agreement shall control to the extent of such conflict until such time as the Ground Lease is effective, after which the Ground Lease shall control.

Section 7.20 Entry by the County.

Subject to the provisions of the Ground Lease, the Developer shall permit the County, through its officers, agents, or employees, at all reasonable times to enter into the Property (a) to inspect the work of construction to determine that the same is in conformity with the requirements of this Agreement, and (b), following completion of construction, to inspect the ongoing operation and management of the Property and Improvements to determine that the same is in conformance with the requirements of this Agreement and the Ground Lease. The Developer acknowledges that the County is under no obligation to supervise, inspect, or inform the Developer of the progress of construction, or operations and the Developer shall not rely upon the County therefor. Any inspection by the County during the construction is entirely for its purposes in determining whether the Developer is in compliance with this Agreement and is not for the purpose of determining or informing the Developer of the quality or suitability of construction. The Developer shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers.

Section 7.21 Entire Understanding of the Parties.

This Agreement, in conjunction with the County Documents, constitutes the entire understanding and agreement of the Parties with respect to the conveyance of the leasehold interest in the Property, and the development of the Improvements. The Parties further intend that this Agreement constitute the final and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceedings involving this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. The Parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (including but not limited to Civil Code Section 1654 as may be amended from time to time) shall not apply to the interpretation of this Agreement.

Section 7.22 Counterparts; Multiple Originals.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument. Delivery of a counterpart to this Agreement by facsimile transmittal, in portable document format (PDF), or by any other commonly utilized electronic means shall be effective as delivery of a manually executed original counterpart of this Agreement.

Remainder of Page Left Intentionally Blank

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

DEVELOPER:

EDEN HOUSING, INC., a California nonprofit public benefit corporation

Signed by:
Andrea Osgood
By: _____
Its: Andrea Osgood Chief of Real Estate Development Investor

COUNTY:

COUNTY OF Monterey, a politic subdivision of the State of California

By: _____
Christopher M. Lopez, Chair
Monterey County Board of Supervisors

ATTEST:

By: _____
Clerk, Board of Supervisors

APPROVED AS TO FORM:

Susan K. Blich, Acting County Counsel

DocuSigned by:
Susan K. Blich
By: _____
Reed W. Gallogly, Deputy County Counsel

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

DEVELOPMENT SCHEDULE

This Development Schedule summarizes the schedule for various activities under the Lease Disposition and Development Agreement (the "Agreement" or the "LDDA") to which this exhibit is attached. Times for performance set forth in this Development Schedule are subject to Section 7.3 of the LDDA, and may be amended or otherwise revised in accordance with Section 7.17 of the LDDA. The description of items in this Development Schedule is meant to be descriptive only, and shall not be deemed to modify in any way the provisions of the LDDA to which such items relate. Section references herein to the LDDA are intended merely as an aid in relating this Development Schedule to other provisions of the LDDA and shall not be deemed to have any substantive effect.

Whenever this Development Schedule requires the submission of plans or other documents at a specific time, such plans or other documents, as submitted, shall be complete and adequate for review by the County, within the time set forth herein. Prior to the time set forth for each particular submission, the Developer shall consult with County staff, informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form within the time for submission set forth herein.

<u>Action</u>	<u>Date</u>
1. <u>Effective Date</u> . The LDDA is executed by the Parties.	Effective Date
2. <u>Developer Obtains County Approvals</u> . The Developer shall obtain all County Approvals. [LDDA § 2.2]	Concurrent with approval of LDDA
3. <u>Submittal of Financing Plan</u> . The Developer shall submit the Final Financing Plan. [LDDA § 2.3]	No later than 180 days before Closing
4. <u>Approval of Financing Plan</u> . The County shall approve or deny the Final Financing Plan. [LDDA § 2.3]	Within 30 days of submittal
5. <u>Construction Plans and Permits</u> . The Developer shall submit the proposed construction plans and apply for construction permits for the Improvements. [LDDA § 2.4]	No later than 180 days before Closing
6. <u>Submittal of Construction Contract</u> . The Developer shall submit the proposed construction contract to the	No later than 90 days before Closing

<u>Action</u>	<u>Date</u>
County. [LDDA § 2.5]	
7. <u>Approval of Construction Contract.</u> The County shall approve or deny construction contract. [LDDA § 2.5]	Within 15 days or 30 days of submittal, pursuant to section 2.5(b)
8. <u>Construction Bonds.</u> The Developer shall deliver the construction bonds to the County. [LDDA § 2.6]	No later than the Closing
9. <u>Construction Permit.</u> The Developer shall have received an Issue Ready Notice for the construction permits for the Improvements. [LDDA § 2.4]	No later than the Closing
10. <u>Closing of all Supplemental Financing.</u> The Developer shall close on all Supplemental Financing as set forth in the Financing Plan. [LDDA § 2.3]	No later than the Closing
11. <u>Developer Insurance.</u> The Developer shall provide the County all applicable insurance policies required by LDDA. [LDDA § 2.7]	No later than the Closing
12. <u>Closing.</u> The closing for the recordation of the Memorandum of Ground Lease shall occur upon the satisfaction of the predisposition requirements in accordance with the LDDA. [LDDA § 3.2]	Not more than ten (10) years from the Effective Date of the LDDA
13. <u>Commencement of Construction.</u> The Developer shall pull the construction permits and commence the construction of the Improvements. [LDDA § 4.4]	No later than thirty (30) days following the Closing
14. <u>Completion of Construction.</u> The Developer shall complete the construction of the Improvements. [LDDA § 4.4]	No later than thirty (30) months following Closing

EXHIBIT C

SCOPE OF DEVELOPMENT

EXHIBIT D
APPROVED PLANS

EXHIBIT E
FORM OF GROUND LEASE

EXHIBIT F

ASSIGNMENT OF DOCUMENTS

ASSIGNMENT OF AGREEMENTS, PLANS AND SPECIFICATIONS, AND APPROVALS

FOR VALUE RECEIVED, the undersigned,
_____ (the "Developer"), hereby assigns and transfers to
the County of Monterey, a political subdivision of the State of California (the "County"), all of
its right, title and interest in and to:

(1) All architectural, design, engineering, and construction contracts and development agreements, and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively, the "Agreements"), heretofore or hereafter entered into by any Contractor (as defined below);

(2) All written reports, studies, investigations, analyses, plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions, other documents, and addenda thereto (collectively, the "Plans and Specifications") heretofore or hereafter prepared by any Contractor (as defined below); and

(3) All land use approvals, building permits, and other governmental approvals of any nature obtained for the Development (collectively, the "Governmental Approvals").

This Assignment of Agreements, Plans and Specifications, and Approvals (the "Assignment") is made pursuant to the terms of that certain Lease Disposition and Development Agreement dated as of _____, 2025 (the "LDDA"), by and between the County and Developer. Capitalized terms used but not defined in this Assignment shall have the meanings set forth in the LDDA. The Property subject to the LDDA is described in Exhibit A attached to this Assignment.

For purposes of this Assignment, the term "Contractor" means any architect, construction contractor, engineer, consultant or other person or entity entering into Agreements with the Developer and/or preparing Plans and Specifications for the Developer with respect to the Development.

The Developer hereby irrevocably appoints the County as its attorney-in-fact (which agency is coupled with an interest) to, upon the occurrence of a Default under and as defined in the LDDA, demand, receive, and enforce any and all of the Developer's rights with respect to the Plans and Specifications, Agreements and Governmental Approvals, and perform any and all acts in the name of the Developer or in the name of the County with the same force and effect as if performed by the Developer in the absence of this Assignment.

The County shall not have any obligation under any of the Agreements unless and until the County expressly agrees in writing to be bound by such Agreement(s) following a Default. Upon the occurrence of a Default, the County may use any of the Agreements assumed by the County and any of the Plans and Specifications and Governmental Approvals for any purpose for which the Developer could have used them for development of the Development. Upon the occurrence of a Default, the Developer shall cooperate with the County to implement this Assignment and shall immediately deposit with the County all the Agreements, Plans and Specifications, and Governmental Approvals.

The Developer represents and warrants to the County that no previous assignment(s) of its rights or interest in or to the Plans and Specifications, Agreements, and/or Governmental Approvals has or have been made, and the Developer agrees not to assign, sell, pledge, transfer, mortgage, or hypothecate its rights or interest therein (without prior written approval of the County Administrator) so long as the LDDA is in effect. Notwithstanding anything to the contrary herein, upon Ground Lease closing, this Assignment and the County's rights hereunder shall be subject and subordinate to the rights of the Development's senior construction lender.

This Assignment is made to secure payment and performance by the Developer of all its obligations under the LDDA and the County Documents.

This Assignment shall terminate upon the issuance of the Certificate of Completion by the County in accordance with the Ground Lease.

This Assignment shall be governed by the laws of the State of California, and the Developer agrees that the Superior Court of the County of Monterey shall be the site and have jurisdiction for the filing and maintenance of any action arising hereunder and further agrees that the prevailing Party in any such action shall be entitled, in addition to any other recovery, to reasonable attorneys' fees and costs.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, and successors-in-interest of the Developer, and the County; provided, however, this shall not be construed and is not intended to waive the restrictions on assignment, sale, transfer, mortgage, pledge, hypothecation or encumbrance by the Developer contained in the LDDA or the Ground Lease.

Exhibit A, the Architect's Consent, the Landscape Architect's Consent, and the Engineer's Consent are attached hereto and incorporated herein by reference.

Executed by the Developer on _____, 202__.

DEVELOPER:

By: _____

Name: _____

Its: _____

ARCHITECT'S CONSENT

The undersigned architect ("Architect") hereby consents to the foregoing Assignment of Agreements, Plans and Specifications, and Approvals ("Assignment"), of which this Architect's Consent ("Consent") is a part, and acknowledges that there presently exists no unpaid claims presently due to the Architect except as disclosed to the County arising out of the preparation and delivery of the Plans and Specification to the Developer and/or the performance of the Architect's obligations under the Agreements, as the term "Agreements" is defined in the Assignment.

Architect agrees that if, at any time, the County elects to undertake or cause the completion of construction of the Development on any of the Site, in accordance with the Plans and Specifications, and gives Architect written notice of such election; then so long as the Architect has received, receives or continues to receive the compensations called for under the Agreements, the County may, at its option, use and rely on the Plans and Specifications for the purposes for which they were prepared, and Architect will continue to perform its obligations under the Agreements for the benefit and account of the County in the same manner as if performed for the benefit or account of the Developer in the absence of this Assignment. The County may assign its rights pursuant to this paragraph to another entity in its discretion.

Architect further agrees that, in the event of a breach by the Developer of the Agreements, or any agreement entered into with Architect in connection with the Plans and Specifications, so long as the Developer's interest in the Agreements and Plans and Specifications is assigned to the County, Architect will give written notice to the County at the address shown below of such breach. The County shall have thirty (30) days from the receipt of such written notice of Default to remedy or cure said Default; provided, however, nothing herein shall require the County to cure said Default or to undertake completion of construction of the Improvements.

Except as set forth in the Assignment, Architect warrants and represents that it/he/she has no knowledge of any prior assignment(s) of any interest in either the Plans and Specifications and/or the Agreements. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment or the LDDA, as applicable.

Executed by the Architect on _____, 202__.

Address of County:

Address of Architect:

Architect:

By: _____

Name: _____

Its: _____

ENGINEER'S CONSENT

The undersigned engineer ("Engineer") hereby consents to the foregoing Assignment of Agreements, Plans and Specifications, and Approvals ("Assignment"), of which this Engineer's Consent ("Consent") is a part, and acknowledges that there presently exists no unpaid claims presently due to the Engineer except as disclosed to the County arising out of the preparation and delivery of the Plans and Specification to the Developer and/or the performance of the Engineer's obligations under the Agreements, as the term "Agreements" is defined in the Assignment.

Engineer agrees that if, at any time, the County elects to undertake or cause the completion of construction of the Development on any of the Site, in accordance with the Plans and Specifications, and gives Engineer written notice of such election; then so long as the Engineer has received, receives or continues to receive the compensations called for under the Agreements, the County may, at its option, use and rely on the Plans and Specifications for the purposes for which they were prepared, and Engineer will continue to perform its obligations under the Agreements for the benefit and account of the County in the same manner as if performed for the benefit or account of the Developer in the absence of this Assignment. The County may assign its rights pursuant to this paragraph to another development entity in its discretion.

Engineer further agrees that, in the event of a breach by the Developer of the Agreements, or any agreement entered into with Engineer in connection with the Plans and Specifications, so long as the Developer's interest in the Agreements and Plans and Specifications is assigned to the County, Engineer will give written notice to the County at the address shown below of such breach. The County shall have thirty (30) days from the receipt of such written notice of Default to remedy or cure said Default; provided, however, nothing herein shall require the County to cure said Default or to undertake completion of construction of the Improvements.

Except as set forth in the Assignment, Engineer warrants and represents that it/he/she has no knowledge of any prior assignment(s) of any interest in either the Plans and Specifications and/or the Agreements. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment or the LDDA, as applicable.

Executed by the Engineer on _____, 201__.

Address of County:

Address of Engineer:

By: _____

Name: _____

Its: _____

EXHIBIT G
PRELIMINARY FINANCING PLAN

EXHIBIT H
REGULATORY AGREEMENT

EXHIBIT I
COUNTY APPROVALS

Attachment C1 Exhibit E Ground Lease Agreement

GROUND LEASE AGREEMENT

By and Between the

The County of Monterey

and

(855 East Laurel)

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GROUND LEASE AGREEMENT
(855 East Laurel)

THIS GROUND LEASE AGREEMENT (the "Lease") is entered into as of _____, 20__ (the "Effective Date"), by and between the County of Monterey, a body corporate and politic and a subdivision of the State (the "County", or the "Landlord"), and _____, (the "Tenant").

RECITALS

- A. Capitalized terms used, but not defined, in these Recitals shall have the meaning set forth in Section 1.1.
- B. The County and Eden Housing, Inc., an affiliate of Tenant entered into a Lease Disposition and Development Agreement (the "LDDA") on March 11, 2025.
- C. Pursuant to the LDDA, the County agreed to lease the Property more particularly described in Exhibit A to Tenant for the purposes of developing the Development on the Property.
- D. The County owns the Property, as more particularly described in the attached Exhibit A.
- E. The County desires to lease the Property to the Tenant in accordance with the provisions of this Lease in order to facilitate the use of the Property for a housing development.
- F. In accordance with the terms of this Lease, the Tenant intends to operate the Property and Improvements, in accordance with the terms of this Ground Lease.

Therefore, the County and the Tenant agree as follows:

AGREEMENT

The foregoing recitals are hereby incorporated by reference and made part of this Lease.

ARTICLE 1.
DEFINITIONS AND EXHIBITS.

Section 1.1 Definitions.

The following capitalized terms have the meanings set forth in this Section 1.1 wherever used in this Lease, unless otherwise provided:

- (a) "Approved Security Interest" means a mortgage, deed of trust, or other reasonable method of security encumbering the Tenant's leasehold estate in the Property that: (i)

meets the requirements of this Agreement, and (ii) secures any loan and/or refinancing approved by the County in connection with the approval of the Financing Plan.

(b) "Approved Security Interest Holder" means the holder or beneficiary of an Approved Security Interest.

(c) "Bankruptcy/Insolvency Event" means any of the following:

(1) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging the Tenant to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of the Tenant or seeking any arrangement for the entity in question under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of the Tenant in bankruptcy or insolvency or for any of its properties, or (iv) directing the winding up or liquidation of the Tenant, if any such decree or order described in clause (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period will apply under this subsection; or the Tenant shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive.

(2) Assignment; Attachment. The Tenant shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or prior to sooner sale pursuant to such sequestration, attachment or execution.

(3) Suspension; Termination. The Tenant shall have voluntarily suspended its business or fails to maintain its good standing.

(d) "Construction Permit" means all construction permits for the Improvements required to be obtained from the County or other Governmental Authorities.

(e) "CEQA" means the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and any state or local implementing guidelines in connection therewith.

(f) "Certificate of Completion" means the certificate issued by the County to the Tenant, or such other documentation provided by the County, after completion of the Improvements in accordance with the provisions set forth in this Lease, as more particularly described in Section 4.1(c).

(g) "City" means the City of Salinas, a charter city.

(h) "Construction Contracts" means, collectively, all the contracts between the Tenant and any general contractor(s) covering the construction of the Improvements or any Major Additional Improvements.

(i) "Control" means (i) direct or indirect management or control of the managing member or members in the case of a limited liability company; (ii) direct or indirect management or control of the managing general partner or general partners in the case of a partnership and (iii) (a) boards of directors that overlap by fifty percent (50%) or more of their directors, or (b) direct or indirect control of a majority of the directors in the case of a corporation.

(j) "County" means the County of Monterey, a body corporate and politic and a subdivision of the State.

(k) "County Documents" means, collectively, this Lease, the LDDA, the Regulatory Agreement, and all other documents required by the County, to be executed by the Tenant in connection with the transaction contemplated by this Lease or the LDDA. "County Document" means any of the County Documents.

(l) "Default Interest Rate" means the rate of ten percent (10%) per month during the relevant period over which the Default Interest Rate is to be applied under this Lease, but in no event greater than the maximum rate permitted by law.

(m) "Development" means Tenant's design, planning and construction of the Improvements as contemplated in the LDDA and this Lease.

(n) "Effective Date" means the date first written above.

(o) "Final Construction Plans" means those certain construction plans for the Improvements approved by the County pursuant to the LDDA (as may be amended pursuant to the LDDA), and attached hereto as Exhibit B.

(p) "Financing Plan" means the Tenant's financing plan for the development of the Improvements as approved by the County in accordance with the LDDA.

(q) "General Contractor" shall have the meaning set forth in Section 4.3(j).

(r) "Governmental Authority(ies)" means any federal, state, and/or local agency, department, commission, board, bureau, administrative or regulatory body, or other public instrumentality having jurisdiction over the Property or any portion thereof.

(s) "Hazardous Materials" means any substance, material, or waste which is: (1) defined as a "hazardous waste", "hazardous material", "hazardous substance", "extremely hazardous waste", "restricted hazardous waste", "pollutant" or any other terms comparable to the foregoing terms under any provision of California law or federal law; (2) petroleum; (3) asbestos and asbestos containing materials; (4) polychlorinated biphenyls; (5) radioactive materials; (6)

mold; (7) MTBE; or (8) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety, property or the environment.

The term "Hazardous Materials" shall not include: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of residential properties, buildings and grounds, or typically used in household activities, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Section 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Improvements, including but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet and saccharine, so long as such materials and substances are stored, used, and disposed of in compliance with all applicable Hazardous Materials Laws.

(t) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials.

(u) "Improvements" means the 132 housing units, 180 parking spaces and ancillary improvements to be constructed on the on the Property in accordance with the LDDA, this Ground Lease and the Scope of Development attached thereto.

(v) "Insurance Trustee" shall have the meaning set forth in Section 8.5(c).

(w) "Land Use Approvals" means any governmental or regulatory approvals, permits or authority, other than the Building Permit, necessary for the development and operation of the Improvements, including but not limited to, mitigation measures or other conditions imposed under CEQA.

(x) "LDDA". means that certain Lease Disposition and Development Agreement dated March 11, 2025, by and between the County, and Eden Housing, Inc., and as may be amended from time to time.

(y) "Lease" means this Ground Lease Agreement.

(z) "Major Additional Improvements" shall have the meaning set forth in Section 4.2(c).

(aa) "Memorandum of Lease" means the memorandum of this Lease to be recorded against the Property substantially in the form attached as Exhibit D.

(bb) "Parties" means the County and the Tenant.

(cc) "Preliminary Title Report" means that certain Preliminary Title Report for the Property, dated _____, issued by _____ Title Company.

(dd) "Property" means that certain real property located in the City and more particularly described in the attached Exhibit A.

(ee) "Regulatory Agreement" means that certain agreement between the County and Tenant recorded against the Property that restricts the use of the Property to housing affordable to [low- and very-low] income households and other uses as specified.

(ff) "Rent" means the applicable amount set forth in Article 3, plus all other amounts owed by the Tenant to the County, under this Lease.

(gg) "Scope of Development" means the general description of the Improvements attached hereto as Exhibit B.

(hh) "Tenant" means _____, and its permitted successors or assigns as more particularly set forth herein.

(ii) "Tenant Event of Default" means an event described in Section 12.1

(jj) "Term" means the term of this Lease, commencing on the Effective Date and ending on the earlier to occur of (1) the ninety nine year (99) anniversary of the Effective Date, as may be extended pursuant to Article 2; or (2) the date of any termination of this Lease in accordance with the provisions hereof.

(kk) "Transfer" has the meaning set forth in Section 7.1.

ARTICLE 2. LEASE OF THE PROPERTY

Section 2.1 Property.

Subject to the terms, covenants, and conditions hereof and in consideration of rents to be paid pursuant to this Lease, the County hereby leases the Property to the Tenant, and the Tenant hereby leases and takes from the County, the Property.

Section 2.2 Term.

Unless sooner terminated pursuant to the provisions of this Lease, this Lease shall continue in full force and effect for the Term, commencing on the Effective Date and shall expire on midnight the day immediately preceding the ninety-nine (99) year anniversary of the Effective Date. This Lease will terminate on the last day of the Term, unless sooner terminated pursuant to the terms of this Lease.

Section 2.3 Use.

Subject to the provisions of this Lease, the Tenant shall use the Property for the construction, development and operation of the Improvements on the Property in accordance with the restrictions and requirements set forth in Article 4 and the LDDA.

Section 2.4 Possession.

The County agrees to, and shall, provide possession of the Property to the Tenant immediately following the Effective Date. To the best of the County's knowledge, the Property is subject only to the encumbrances listed in the Preliminary Title Report and such encumbrances approved by the County and recorded concurrently with the Memorandum of Lease. The County shall convey the Property to the Tenant in the physical condition set forth in the LDDA.

Section 2.5 Memorandum of Lease.

The Parties shall execute and acknowledge the Memorandum of Lease, in the form attached hereto as Exhibit C, which the Tenant shall cause to be recorded against the Property at the Tenant's expense.

ARTICLE 3.
RENT

Section 3.1 Annual Rent.

(a) Rent Amount During Term. Each year the Tenant shall pay to the County one dollar (\$1.00), or if Tenant requests, Tenant may prepay the entire \$99 Rent for the Term on the Effective Date.

Section 3.2 Exhibits.

The following exhibits are attached to and incorporated into this Lease:

- Exhibit A: Legal Description of the Property
- Exhibit B: Scope of Development and Final Construction Plans
- Exhibit C: Memorandum of Lease
- Exhibit D: Insurance Requirements

(a) Payment Location. The Tenant shall pay the Rent to the County, without deduction or offset whatsoever, in lawful money of the United States of America, at the address for the County set forth in Section 13.1, or to such other person or at such other place as the County may from time to time designate by notice in writing to Tenant, during the Term in accordance with the terms of this Lease.

Section 3.3 Advances for Lease Obligations.

In addition to and not by way of limitation of County's rights under specific provisions of this Lease, the County shall at all times have the right (at its sole election and without any obligation so to do) to advance on behalf of the Tenant any amount payable under this Lease by the Tenant, or to otherwise satisfy any of the Tenant's obligations under this Lease, provided that (except in case of emergency calling for immediate payment) the County shall first have given the Tenant no less than fifteen (15) days advance written notice of the County's intention to

advance such amounts on behalf of the Tenant. No advance by the County shall operate as a waiver of any of the County's rights under this Lease and the Tenant shall remain fully responsible for the performance of its obligations under this Lease. All amounts advanced by the County shall be separate from and additional to the Rent, and shall be immediately due and payable by the Tenant to the County and shall bear interest from the date of advance at the Default Interest Rate. All amounts advanced by the County pursuant to this Section 3.2 or similar provisions of this Lease are hereinafter referred to as "Advances".

Section 3.4 Net-Net-Net Lease.

This Lease is a net-net-net lease, and Rent and other payments payable to or on behalf of the County shall: (a) be paid without notice or demand and without offset, counterclaim, abatement, suspension, deferment, deduction or defense; and (b) be an absolute net return to the County, free and clear of any expenses, charges or offsets whatsoever. Under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall County be expected or required to make any payment of any kind whatsoever, including without limitation, any regular or special assessments levied against the Property, or be under any obligation or liability hereunder, except as herein expressly set forth. County shall have no responsibility for any costs of repair, maintenance or replacement whatsoever.

Section 3.5 No Termination.

Except as otherwise expressly provided in this Lease, this Lease shall not terminate nor shall the Tenant be entitled to the abatement of any Rent or other payment due or any reduction or allocation thereof, nor shall the obligations of the Tenant under this Lease be otherwise affected by reasons of any damage to or destruction of all or any part of the Improvements from whatever cause, or a taking of the Property or Improvements or any portion thereof by condemnation, requisition or otherwise for any reason whatsoever, or the prohibition, limitation or restriction of the Tenant's use of all or any part of the Property or Improvements, or the interference with such use by any person, or by reason of the termination or foreclosure of any mortgage, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the Parties that the obligations of the Tenant shall be separate and independent covenants and agreements, that the Rent and all other payments payable by the Tenant under this Lease shall continue to be payable in all events, and that the obligations of the Tenant under this Lease shall continue unaffected, unless the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this Lease; provided, however, that during the continuance of any such damage, destruction, taking, prohibition, limitation, interference, eviction or foreclosure, the Tenant shall not be obligated to perform any obligations which are no longer capable of being performed as a result of such event.

ARTICLE 4.
CONSTRUCTION OF IMPROVEMENTS

Section 4.1 Construction of Improvements.

(a) Specific Standards. Within the time and in the manner set forth in this Lease, the Tenant shall construct, or cause to be constructed on the Property, the Improvements, as required by the LDDA, and this Lease. The Improvements shall be constructed in full conformity with the LDDA, Land Use Approvals, the Scope of Development, the Final Construction Plans, attached as Exhibit B as may be amended pursuant to this Lease, the Building Permits and any other agreements related to the construction of the improvements.

If the Tenant desires to make any material change (as defined below) in the Final Construction Plans then in effect, the Tenant shall first submit, or cause to be submitted, to the County such plans or other information which document the desired change. If the Final Construction Plans, as modified by the desired change, conform to the requirements of this Lease, the LDDA, and the Land Use Approvals, the County shall approve or disapprove the change by notifying the Tenant in writing within twenty (20) days of the submission of the request for the material change. If the proposed change is disapproved by the County, the disapproval shall state with reasonable specificity the basis for disapproval. Until and unless such change is approved by the County, the previously approved Final Construction Plans shall remain in effect.

For purposes of this paragraph, a "material change" is one involving a change in exterior design, building materials or colors, a change in the number of housing units to be constructed or any change that requires an amendment to any Land Use Approval so long as such change is determined by the County as being in substantial conformity with the Land Use Approvals.

(b) Commencement and Completion. The Tenant shall commence the construction of the Improvements no later than thirty (30) days following Close of Escrow, and shall thereafter complete the Improvements no later than thirty (30) months from such date, subject to the limited circumstances for delay set forth in Section 13.4. Once the Tenant commences construction of the Improvements, the Tenant shall not halt, or permit the cessation of construction for such work for a period of more than thirty (30) days, subject to excused delays.

(c) Certificate of Completion. Promptly after completion of the Improvements, in accordance with those provisions of this Lease and the LDDA relating solely to the obligations of the Tenant to construct, or cause the construction of, the Improvements (including the dates for beginning and completing construction of the Improvements), the County shall provide an instrument so certifying, which may include the County's execution of a final building inspection report, or equivalent document (collectively, the "Certificate of Completion"). The Certificate of Completion shall constitute a conclusive determination that the covenants in this Lease solely with respect to the obligations of the Tenant to construct the Improvements (including the dates for the beginning and completing construction of the Improvements) have been met. The Certificate of Completion shall not constitute evidence of compliance with, or satisfaction of, any obligation of the Tenant to any holder of a deed of trust securing money loaned to finance the Improvements or any part thereof, shall not be deemed a

notice of completion under the California Civil Code, and shall not constitute evidence of compliance with, or otherwise waive, modify, or limit any of the requirements regarding the payment of prevailing wages as set forth in this Lease.

Section 4.2 Additional Construction on Property.

(a) General Standards. Any Major Additional Improvements undertaken on or within the Improvements or on any portion of the Property (other than the initial construction of the Improvements pursuant to Section 4.1) shall at all times be of high-quality construction and architectural design. All such Major Additional Improvements work shall be diligently prosecuted, and completed (1) only after the Tenant has obtained the County's prior written approval for such additional construction, (2) without cost to the County, (3) in good and workmanlike manner, (4) after Tenant has obtained any permits and approvals from any applicable Governmental Authorities necessary for such work; and (5) in accordance with any plans and specifications approved by the County pursuant to subsection (b) below, if applicable. The Tenant shall secure all Land Use Approvals for such additional construction, prior to submitting any construction plans to the County under this Section 4.2.

(b) Approval of Plans. Prior to commencing construction of any Major Additional Improvements (as defined below), the Tenant shall submit to the County for the County's approval plans and specifications for such work which, to the extent relevant, shall contain the same information as set forth in the Final Construction Plans. The County shall approve or disapprove (in the County's reasonable discretion) such plans and specifications in writing within sixty (60) days of submission. Any disapproval shall state with specificity the reasons for such disapproval.

If rejected by the County in whole or in part, the Tenant shall submit new or corrected construction plans within thirty (30) days of notification of the County's disapproval. The County shall then have thirty (30) days to review and approve the Tenant's new or corrected construction plans. The County's failure to either approve or disapprove the construction plans within such thirty (30) day period shall be deemed approval. The provisions of this Section 4.2 relating to time periods for approval, rejection, or resubmission of new or corrected construction plans shall continue to apply until construction plans have been approved by the County (or deemed approved) at which time they shall be attached to and become a part of this Lease as if fully set forth herein. Only upon approval of the construction plans shall this condition be met.

The County's approval or disapproval of the plans and specifications pursuant to this Lease shall be solely in its capacity as the lessor of Property and not in its regulatory capacity. Tenant shall be responsible for obtaining any and all regulatory approvals for such improvements in addition to the approvals set forth herein.

In the event that prior to or during the course of construction, the Tenant desires to make any material change in the Major Additional Improvements from that contemplated in the approved plans and specifications, the Tenant shall, prior to making such change, submit to the County such plans or other information which document the desired change. The County shall approve or disapprove such change within thirty (30) days of its submission to the County.

Any disapproval shall state with reasonable specificity the basis for such disapproval. Unless such change is approved, the previously approved plans and specifications shall remain in effect.

(c) "Major Additional Improvements" means any of the following: (1) any new buildings, structures or outdoor facilities to be located on the Property, (2) any substantial alterations, remodeling or rehabilitation of existing buildings, structures, or remodeling or rehabilitation of existing buildings, structures, or outdoor facilities, (3) construction of additional spaces or facilities, (4) any other alteration, construction, remodeling or reconstruction with a cost in excess of five hundred thousand dollars (\$500,000), or (5) a change that will change the number of housing units within the Improvements. Alteration, construction, remodeling, or reconstruction not constituting a Major Additional Improvement shall not require the County's consent or approval of plans and specifications, but must be designed and performed in accordance with the General Standards set forth in subsection (a) above.

Section 4.3 Construction Standards.

(a) General Standards. All construction of the Improvements, and any Major Additional Improvements permitted by this Lease shall be accomplished expeditiously and diligently by reputable licensed contractor(s), approved by the County in accordance with the provisions of Section 4.3(j), below (to the extent applicable), and shall be made under the supervision of a competent architect or licensed structural engineer and made in conformity with applicable governmental approvals.

The Tenant shall take all reasonably necessary measures to minimize any damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected thereby. The Tenant shall repair, at the Tenant's own cost and expense any and all damage caused by such work and shall restore the area upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the beginning of such work. In addition, the Tenant shall pay all costs of and expenses associated herewith, and shall indemnify, defend, and hold harmless the County and the County's supervisors, agents, employees and volunteers from any and all suits, actions, claims, losses, liabilities, damages, injuries, causes of action, costs and expenses of any kind, whether actual or alleged, including without limitation, court costs, reasonable attorneys' fees and other litigation expenses, demands, judgments and liens arising out of, pertaining to or relating to, directly or indirectly, in whole or in part, the performance of such work, except directly caused by the County's willful misconduct or gross negligence.

(b) Compliance with Construction Documents and Laws; Issuance of Permits. All Improvements and any Major Additional Improvements shall be constructed in compliance with the requirements of the construction documents approved by the County, in accordance with this Lease, the LDDA, and also in strict compliance with all applicable local, state and federal laws and regulations. The Tenant shall have the sole responsibility for obtaining all necessary permits and shall make any application for such permit directly to the Governmental Authority having jurisdiction.

(c) Construction Safeguards. The Tenant shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by the Tenant, all reasonable safeguards for the protection of workers and the public.

(d) Rights of Access. Representatives of the County shall have the reasonable right of access to the Property and the Improvements thereon without charges or fees, at normal construction hours during the period of construction, for the purposes of ascertaining compliance with the terms of this Lease, including, but not limited to, the inspection of the construction work being performed, provided that such representatives shall be those who are so identified in writing by the Director of the Community Development Agency, shall be accompanied by the Tenant's representatives if the Tenant so desires, shall comply with the Tenant's contractor's reasonable rules for the construction site, and shall provide the Tenant with forty-eight (48) hours' notice prior to any such inspection.

(e) Notice of Completion. Upon completion of the Improvements and any Major Improvements, the Tenant shall file or cause to be filed in the Official Records of the County of Monterey a notice of completion with respect to the applicable construction, and the Tenant shall deliver to the County, at no cost to the County, two (2) sets of the final as-built plans and specifications of the Improvements, or Major Additional Improvements.

(f) Discharge of Liens. The Tenant shall not create or permit or suffer to be created or to remain, and will discharge upon twenty (20) days after it is filed, any lien (including, but not limited to, the liens of mechanics, laborers, material men, suppliers or vendors for work or materials alleged to be done or furnished in connection with the Property and the Improvements thereon), encumbrances or other charge upon the Property and the Improvements thereon, or any part thereof, or upon the Tenant's leasehold interest therein. In addition to and without limiting any other indemnification obligations under this Lease, Tenant shall indemnify, defend and hold County harmless from any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for Tenant or persons claiming under Tenant. This obligation to indemnify, defend, and hold harmless will survive the expiration or termination of this Lease.

The Tenant shall have the right to contest in good faith and by appropriate legal proceedings the validity or amount of any mechanics', laborers', materialmen's, suppliers' or vendors' lien or claimed lien. If Tenant contests any lien filed against the Property, Improvements, or Tenant's leasehold interest in the Property, it shall furnish a bond, surety, undertaking, or other security in connection therewith as required by law, or as requested by and satisfactory to County, to stay such proceeding, which bond, surety, undertaking or other security shall be sufficient to cause the lien to be insured against by the title company or removed as a lien against the Property. If a final judgment establishing the validity of existence of a lien for any amount is entered Tenant shall immediately pay and satisfy the judgment.

(g) Right to Cure. If Tenant is in default in paying any charge for which a lien claim and suit to foreclose the lien have been filed, and has not provided security in accordance with Section 4.3(f), above, County may, but shall not be required to, pay the claim.

Any related costs and the claim amount paid, together with reasonable attorneys' fees incurred in connection with paying the claim ("Lien Costs") shall be immediately due and payable from Tenant to County as additional rent, and Tenant shall pay the Lien Costs to County with interest at the Default Interest Rate calculated from the date(s) of County's payment of the Lien Costs to Tenant's payment of the Lien Costs to County.

(h) Protection of the County. Nothing in this Lease shall be construed as constituting the consent of the County, expressed or implied, to the performance of any labor or the furnishing of any materials or any specific improvements, alterations of or repairs to the Property or the Improvements thereon, or any part thereof, by any contractor, subcontractor, laborer or materialman, nor as giving the Tenant or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services or the furnishing of any materials in such manner as would give rise to the filing of mechanics' liens or other claims against the fee interest of the Property or the improvements thereon, if any. The County shall have the right at all reasonable times to post and keep posted on the Property any notices which the County may deem necessary for the protection of the County and of the Property and the Improvements thereon from mechanics' liens or other claims. In addition, but subject to the second paragraph of subsection (f) above, the Tenant shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any work or furnishing any materials or supplies to the Tenant, or any of its respective contractors or subcontractors in connection with the Property and the Improvements thereon.

(i) The Tenant to Furnish and Equip the Improvements. The Tenant covenants and agrees to furnish and equip the Improvements, or any Major Additional Improvements, with all fixtures, furnishings, equipment and other personal property (collectively, the "Personal Property") of a quantity as necessary to operate the Improvements in accordance with the standards set forth in this Lease.

(j) Performance and Payment Bonds. Prior to commencing construction of the Improvements, or any Major Additional Improvements, the Tenant shall obtain and provide to the County evidence of one (1) labor and material, and, one (1) performance, bond issued by a reputable insurance company licensed to do business in California, and named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department, and reasonably acceptable to the County, each in a penal sum of not less than [one hundred percent (100%)] of the scheduled cost of construction on the Property. The County shall be named as an obligee under those bonds.

Within ten (10) days after receipt, the County shall review and approve or disapprove the bonds or other security, providing said bonds meet the requirements of the County as to form, content, and issuer, and shall notify the Tenant of any deficiency. If the bonds are not approved, the Tenant shall resubmit updated bonds within five (5) days after receipt of notice. The review and submittal periods shall continue to apply until the bonds or other security are approved by the County. Only upon final approval this condition shall be met. No work shall be initiated until approval of the bonds has been received. The County hereby acknowledges that as of the Effective Date, the bonds for the construction of the Improvements have been approved.

(k) Contractor(s). The Improvements and any Major Additional Improvements shall be performed by a general contractor (a "General Contractor") reasonably satisfactory to the County, having the reputation, experience, financial capability, and qualification for serving as general contractor for similar developments in the California. The Tenant shall submit for the County's approval the identity of any proposed General Contractor and such additional information about the background, experience, and financial condition of any proposed General Contractor as is reasonably necessary for the County to determine whether the proposed General Contractor meets the standard for a qualified General Contractor set forth above. If the proposed General Contractor meets such standard, the County shall approve or disapprove the proposed General Contractor by notifying the Tenant in writing within twenty (20) days of the submission. Any disapproval shall state with reasonable specificity the basis for disapproval. The County hereby acknowledges that as of the Effective Date, the General Contractor for the construction of the Improvements have been approved.

(l) Construction Contracts. The Tenant shall enter into contracts for the construction of the Improvements with reputable contractors as set forth above. Those contracts shall provide for the work to be performed for fixed and specified maximum amounts or allowances pursuant to the approved Final Construction Plans and the Final Financing Plan for such construction (approved by the County pursuant to the LDDA).

Within ten (10) days following the issuance of a Construction Permit for construction of the Improvements, or any Major Additional Improvements, the Tenant shall submit a copy of all construction contracts for such construction to the County, for the sole and limited purposes of determining: (i) that the amount of the cost of work has been clearly fixed and determined and is consistent with the amount set forth in the approved applicable Financing Plan; (ii) that no changes to the provisions of the contract which, pursuant to this Lease require the approval of County shall be made without the prior consent of the County; (iii) that Prevailing Wages set forth in this Lease have been met; (iv) that the County is named as a specified third-party beneficiary with a direct right of enforcement under such contract; (v) the construction contract is with a contractor duly licensed by the State of California, registered with the Department of Industrial Relations, and reasonably acceptable to the County; (vi) the construction contract contains provisions consistent with this Lease; (vii) the construction contract requires a retention of ten percent (10%) of hard costs until completion of the Improvements or Major Additional Improvements (provided, however, the construction contract may provide for the release of retention, prior to completion of the Improvements or Major Additional Improvements, to certain specified subcontractors that have completed all of their work on the Improvements or Major Additional Improvements as reasonably approved by the County, and, provided, further, that such early retention amount shall be based on the subcontractor's initial contract sum, and shall exclude any increase in the contract sum due to change orders, or otherwise); (viii) the construction contract includes indemnifications from the contractor indemnifying the County for any and all claims resulting from the construction; and (ix) the construction contract includes the applicable insurance requirements as set forth in this Lease. Unless the County notifies the Tenant in writing within ten (10) days following the submittal of the contract(s) that the contract has been disapproved, it shall be deemed approved. The County's approval shall merely constitute satisfaction of the conditions set forth in this

Section 4.3. The County's approval of the construction contract shall in no way be deemed to constitute approval of, or concurrence with, any other term or condition of the construction contract. The Tenant shall not rely on the County's approval of the construction contract(s) as a representation regarding the enforceability or business advantage of the construction contract(s). The County hereby acknowledges that as of the Effective Date, the construction contract for the construction of the Improvements have been approved.

(m) Conditions to Commencement of Construction. In no event shall the Tenant commence any construction of the Improvements or any Major Additional Improvements on the Property until the following conditions have been satisfied or waived by the County, in addition to other conditions and requirements imposed by this Lease:

- (1) The County has approved the final plans and specifications for the improvements to be constructed;
- (2) The Tenant has obtained financing and equity capital necessary for the full payment of construction of the Improvements (or the Major Additional Improvements) and delivered evidence of such financing to the County;
- (3) The Tenant has obtained building permits and all other governmental approvals necessary for the construction of the Improvements (or Major Additional Improvements) to the extent required by applicable law;
- (4) The Tenant has entered into complete and binding contracts with its contractor or contractors for the construction of the Improvements (or Major Additional Improvements), which contracts shall meet the requirements of subsection (l) above;
- (5) The Tenant has obtained the performance bond and the payment bond meeting the requirements of subsection (j) above; and
- (6) There exists no Tenant Event of Default nor any act, failure, omission, or condition that would constitute a Tenant Event of Default under this Lease, the LDDA, or any other County Documents.

(n) County Property. Tenant must take all reasonably necessary measures to protect the adjacent property of County from Tenant's construction activities.

Section 4.4 Equal Opportunity.

During the construction of the Improvements or any Major Additional Improvements there shall be no discrimination on the basis of race, color, creed, religion, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in the construction work. The Tenant and its construction contractors, employees and agents shall comply with all applicable state laws, including all equal opportunity and fair employment laws and regulations applicable to the Property.

Section 4.5 Prevailing Wages.

(a) To the extent required by state, federal, or local law, Tenant shall and shall cause its contractors and subcontractors to pay prevailing wages in the construction of the Improvements or any Major Additional Improvements as those wages are determined pursuant to Labor Code Sections 1720 et seq. and the implementing regulations of the Department of Industrial Relations (the "DIR"), to employ apprentices as required by Labor Code Sections 1777.5 et seq., and the implementing regulations of the DIR and comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., 1810-1815 and implementing regulations of the DIR.

(b) All calls for bids, bidding materials and the construction contract documents for the Improvements or any Major Additional Improvements must specify that:

(1) No contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the Improvements or any Major Additional Improvements unless registered with the DIR pursuant to Labor Code Section 1725.5.

(2) The Improvements or any Major Additional Improvements are subject to compliance monitoring and enforcement by the DIR.

(c) Tenant, as the "awarding body", shall register the Improvements or the Major Additional Improvements as required by Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within two (2) days after entering into the construction contract and provide evidence of such registration to the County within two (2) days of such registration and any additional registration reporting to the DIR.

(d) In accordance with Labor Code Sections 1725.5 and 1771.1, Tenant shall require that its contractors and subcontractors be registered with the DIR, and maintain such registration as required by the DIR.

(e) Pursuant to Labor Code Section 1771.4, the Improvements and any Major Additional Improvements are subject to compliance monitoring and enforcement by the DIR. Tenant shall and shall require its contractors and subcontractors to submit payroll and other records electronically to the DIR pursuant to Labor Code Sections 1771.4 and 1776 et seq, or in such other format as required by the DIR.

(f) Tenant shall and shall cause its contractors and subcontractors to keep and retain such records as are necessary to determine if prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq., and that apprentices have been employed as required by Labor Code Section 1777.5 et seq., and shall, from time to time upon the request of Landlord provide to Landlord such records and other documentation reasonably requested by Landlord.

(g) Tenant shall and shall cause its respective contractors and subcontractors to comply with all other applicable provisions of Labor Code, including without limitation, Labor Code Sections 1720 et seq., 1725.5, 1771, 1771.1, 1771.4, 1776, 1777.5 et seq., 1810-1815 and implementing regulations of the DIR in connection with construction of the

Improvements or any Major Additional Improvements or any other work undertaken or in connection with the Leased Premises.

(h) Copies of the currently applicable current per diem prevailing wages are available from the DIR website, www.dir.ca.gov. Tenant shall cause its respective contractors to post the applicable prevailing rates of per diem wages at the Property site and to post job site notices, in compliance with Title 8 California Code of Regulations 16451(d) or as otherwise as required by the DIR.

(i) Tenant shall indemnify, hold harmless and defend (with counsel reasonably selected by the County), to the extent permitted by applicable law, the County, its supervisors, commissioners, officials, employees and agents, against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Tenant, or its contractors or subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to hire apprentices in accordance with Labor Code Sections 1777.5 et seq., or to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1725.5, 1771, 1771.1, 1771.4, 1776, 1777.5 et seq., 1810-1815 and the implementing regulations of the DIR in connection with the work performed pursuant to this Agreement. The provisions of this Section shall survive termination of this Agreement.

Section 4.6 No Liens.

The Tenant shall not have any right, authority or power to bind the County, or the County's fee interest in the Property, for any claim for labor or material or for any other charge or expense, lien or security interest incurred in connection with the development, construction or operation of the Improvements or any change, alteration or addition thereto including, but not limited to any Major Additional Improvements. Except as otherwise set forth herein or in the LDDA, the Tenant shall not have any right to encumber the Tenant's estate in the Property without the written consent of the County, which approval shall not be unreasonably withheld or delayed. Except as otherwise set forth in Section 4.7 below, any easements necessary and incidental to the development, construction and operation of the Improvements over the Property are subject to the approval of the County, which approval shall not be unreasonably withheld or delayed.

Section 4.7 Permits, Licenses and Utility Easements.

At no cost to the County, the County shall cooperate with the Tenant in the submittal of applications for all required permits, licenses, applications for utility services and easements, provided that the Tenant shall be responsible for obtaining any and all permits, licenses, easements and other authorizations required by any Governmental Authorities with respect to any construction or other work to be performed on the Property and for granting or causing to be granted all permits, licenses, easements and other governmental authorizations that are necessary or helpful for electric, telephone, gas, water, sewer, drainage, access and such other public or private utilities or facilities as may be reasonably necessary or desirable in connection with the

construction or operation of the Improvements. Any such licenses or easements shall not be subject to County approval. Notwithstanding the foregoing, where the County serves as the Governmental Authority with jurisdiction to issue any required regulatory and/or ministerial permit, license, easement or other authorization, Tenant understands and acknowledges that County must issue any such approval in an independent capacity in accordance with applicable laws, regulations and standards, and is not obligated to issue the same solely by virtue of the existence of this Lease.

ARTICLE 5.
USE, CHARACTER, OPERATION AND
MAINTENANCE OF IMPROVEMENTS

Section 5.1 Required and Permitted Uses

(a) Acceptance of Premises. Prior to the Effective Date, Tenant unconditionally accepted the condition of the Property based on its own due diligence in accordance with the LDDA. Tenant acknowledges that, except as set forth in the LDDA, County has made no oral or written representations or warranties to Tenant regarding the condition of the Property, and that Tenant has relied solely on its inspection of the Property with respect to the condition of the Property. Except to the extent set forth in the LDDA, the Property is being leased in an “as is” condition, with no warranty, express or implied by County as to the condition of the soil, water, geology, or the presence of known or unknown faults, other site conditions or the suitability of the Property for the Project or the Improvements to be constructed by Tenant. If the soil, water, geology, or presence of known or unknown faults, or other site conditions is not in all respects entirely suitable for the Improvements it is the sole responsibility and obligation of Tenant to take the necessary action to place the Property in a condition entirely suitable for the development of the Project and construction of the Improvements.

(b) Permitted Uses. Tenant covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property, that Tenant, such successors and such assignees shall use the Property only for development, operation, maintenance, and repair of affordable housing and ancillary uses consistent with the LDDA, Land Use Approvals, Regulatory Agreement, and this Lease. No change in the use of the Property is permitted without the prior written approval of County.

(c) Regulatory Agreement. At all times Tenant shall operate the Improvements in a manner consistent with the Regulatory Agreement.

(d) Annual Report. The Tenant shall provide the County with an annual report regarding its compliance with this section in accordance with the requirements of the Regulatory Agreement.

Section 5.2 Limitations on Use.

In addition to the covenants regarding the use of the Property set forth above, the Tenant further agrees:

- (a) Not to use or permit the Property for any disorderly or unlawful purpose;
- (b) Not to cause or permit any party from committing or maintaining any nuisance or unlawful conduct on or about the Property;
- (c) Not to cause or permit any action by any party that would cause the Tenant to violate any of the covenants and conditions of this Lease with respect to the Improvements;
- (d) Upon notice from the County, to take reasonable action, if necessary, to abate any action by any party that would cause a violation of this Lease;
- (e) To permit the County and its agents upon not less than forty-eight (48) hours written notice to inspect the Property or any part thereof at any reasonable time during the Term, subject to the rights of any subtenants of the Property;
- (f) Not to commit or suffered to be committed any waste in, on or about the Property;
- (g) Not to cause or permit obnoxious odors to emanate or be dispelled from the Improvements;
- (h) Not to permit undue accumulations of garbage, trash, rubbish, or any other refuse; and
- (i) Not to use or permit to be used the Property for any purpose inconsistent with this Lease, the LDDA, and the Regulatory Agreement.

The Tenant shall maintain all portions of the Property in good repair and in a neat, clean, and orderly condition.

In the event that there arises at any time prior to the expiration of this Lease a condition in contravention of these maintenance and use standards, then the County shall give written notice to the Tenant of the deficiency. If the Tenant fails to cure the deficiency within thirty (30) days of the County's notice (or, if the deficiency is not susceptible of cure within such thirty (30) day period, the Tenant fails to commence the cure and thereafter to diligently pursue the cure to completion, in no event to exceed one hundred twenty (120) days from the date of the County's written notice), then the County shall have the right to enter the Property and perform all acts necessary to cure the deficiency or to take other recourse at law or in equity the County may then have and to receive from Tenant the County's cost in taking such action. If County makes or causes any repairs to be made or performed, as provided for in this Lease, Tenant shall pay the cost of the repairs or maintenance to County, including administrative costs, promptly upon receipt of an invoice for the work. The foregoing provisions shall be covenants running with the land until expiration of the Lease, enforceable by the County.

Section 5.3 Maintenance of Improvements.

Tenant, at its sole expense, shall at all times during the Term of this Lease repair, maintain in good and tenable condition and replace, as necessary, the Property, the Improvements, and all fixtures and equipment installed on the Property, including all items of repair, maintenance, alteration, improvement or reconstruction that may be required at any time or from time to time by a governmental agency having jurisdiction over the Property. These obligations shall apply regardless of whether the repairs, restorations and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or noncapital, or the fault or not the fault of Tenant, its agents, employees, invitees, visitors, sublessees, or contractors. All replacements made by Tenant shall be made in accordance with this Lease and shall be of like size, kind and quality to the items replaced. Tenant shall provide for trash removal, at its sole expense, and shall maintain all trash receptacles and trash areas in a clean, orderly, and first class condition..

Section 5.4 The County Not Obligated to Repair.

The County shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Improvements, and the Tenant hereby expressly waives all right to make repairs at the County's expense under Section 1941 and 1942 of the California Civil Code, as either or both may from time to time be amended, replaced or restated.

Section 5.5 Non-discrimination.

There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, age, handicap, marital status, source of income, veterans status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Improvements, or any part thereof, and the Tenant or any person claiming under or through the Tenant, shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, Tenants, subtenants, sublessees, or vendees of the Improvements, or any part thereof.

The Tenant shall refrain from restricting the use of the Improvements, or any portion thereof, on the basis of race, color, creed, religion, sex, sexual orientation, age, handicap, marital status, ancestry, or national origin of any person.

Section 5.6 Compliance with Laws.

The Tenant shall, at Tenant's sole cost and expense, comply with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances affecting the Improvements the use thereof, or construction thereon, including those which require the making or any structural, unforeseen or extraordinary changes, whether or not any such statutes, laws, rules, orders, regulations or ordinances which may be hereafter enacted were within the contemplation of the Parties at the time of execution of this Lease, or involve a change of policy on the part of the Governmental Authority enacting the same. Further, Tenant

shall, at Tenant's sole cost and expense, procure, maintain and hold available for County's inspection any governmental license or permit required for the property and lawful conduct of Tenant's business.

The Tenant shall comply with each and every requirement of all policies of public liability, fire, and other insurance which at any time may be in force with respect to the Improvements.

Section 5.7 County Not Responsible for Taxes and Assessments.

The Tenant acknowledges and agrees that this Lease may create a possessory interest subject to property taxation. Subject to the Tenant's rights of contest as provided in Section 5.14, the Tenant agrees to pay and discharge, or cause the payment and discharge, during the Term of the Lease, before delinquency, all taxes (including, without limitation, possessory interest taxes associated with the Property, the Lease, and any so-called value added tax), assessments (including without limitation, all assessments for public improvements or benefits, whether or not to be completed prior to the date hereof and whether or not to be completed within the Term of the Lease), fees, levies, water and sewer rents, rates and charges, license and permit fees and other governmental charges of any kind or nature whatsoever, general and special, ordinary and extraordinary, foreseen, currently or hereafter levied or assessed in lieu of or in substitution of any of the foregoing (all of the foregoing collectively called "Taxes") which are or may be at any time or from time to time during the Term of the Lease levied, charged, assessed or imposed upon or against the Property or the Improvements which are located thereon, or against any of the Tenant's Personal Property located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby or which may be imposed upon any taxable interest of the Tenant acquired pursuant to the Lease. The Tenant shall pay or reimburse the County, as the case may be, for any fines, penalties, interest or costs which may be added by the collecting authority for the late payment or nonpayment of any Taxes required to be paid by the Tenant hereunder. Nothing herein shall prevent the Tenant from applying for a property tax exemption for all or a portion of the Property pursuant to Revenue and Taxation Code Section 214(g). It shall be Tenant's sole obligation at its sole cost to make any application to obtain any such exemption and to take such additional actions to obtain or maintain such exemption. Tenant's failure to make such applications or to take such actions to obtain and maintain any exemption from taxation shall not excuse Tenant's obligation to pay any resulting tax bill. The County shall not be obligated to waive or exempt Tenant from taxation related to this Lease by virtue of its legal duty to impose or collect taxes or to administer any exemption from taxation.

Section 5.9 Apportionment of Taxes.

All Taxes for the fiscal or tax years in which the Term begins and ends shall be apportioned so that the Tenant shall pay only those portions thereof that will correspond with the portion of said years as are with the Term.

Section 5.10 Tax Receipts.

The Tenant, upon the request of the County, shall furnish to the County within thirty (30) days after the date when any such Taxes would become delinquent, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to the County or such mortgagee evidencing the payment of such Taxes.

Section 5.11 Evidence of Nonpayment.

The receipt by the County of a certificate, advice, receipt or bill of the appropriate official designated by law to make or issue the same or to receive payment of any such Taxes, stating the nonpayment of such Taxes shall be prima facie evidence that such Taxes are due and unpaid or have not been paid at the time of the making or issuance of such certificate, advice, receipt or bill.

Section 5.12 The County's Right Cure.

If the Tenant, in violation of the provisions of this Lease, shall fail to pay and to discharge any Taxes, or any other tax or fee, the County may (but shall not be obligated to) pay or discharge such Taxes, and the amount paid by the County and the amount of all costs, expenses, interest and penalties connected therewith, including attorneys' fees, together with interest at the Default Interest Rate shall be deemed to be and shall, upon demand of the County, be payable by the Tenant as repayment of an Advance.

Section 5.13 Permitted Contests.

The Tenant shall not be required to pay, discharge or remove any Taxes (including penalties and interest) upon or against the Improvements, or any part thereof, so long as the Tenant shall in good faith contest the same or the validity thereof by appropriate legal proceedings and shall give to the County prompt notice in writing of such contest at least ten (10) days before any delinquency occurs and such legal proceedings shall operate to prevent the collection of the taxes so contested, or the sale of the Improvements, or any part thereof, to satisfy the same; and the Tenant shall, prior to the date such taxes are due and payable, (a) meet all requirements for contest imposed by the taxing entity whose Tax is being contested (including, without limitation, depositing any sums required by such taxing entity), and (b) if the taxing entity does not otherwise require such a deposit, deposit with the County, in a form reasonably acceptable to the County, that portion of the Tax which the Tenant in good faith does not propose to contest. In the event the final determination of any such contest is adverse to the Tenant, the Tenant shall, before any fine, interest, penalty or cost may be added thereto for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by the Tenant, and after such payment and discharge by the Tenant, the County shall promptly return to the Tenant any deposit that the Tenant shall have placed with the County. Any proceedings to contest the validity or amount of taxes or to recover back any taxes paid by the Tenant shall be brought by the Tenant, at the Tenant's sole expense, in the name of the Tenant. If any such proceedings are brought by the Tenant, the Tenant shall indemnify and hold harmless the County against any and all loss, cost or expense of any kind

(including, but not limited to, reasonable attorneys' fees and expenses) which may be imposed upon or incurred by the County in connection with those proceedings.

The County shall cooperate with the Tenant in providing the Tenant information in connection with contests permitted under this Section.

Section 5.14 Service and Utilities.

The Tenant shall pay promptly as the same become due and payable all charges, costs, bills and expenses of and for water, gas, electricity, sewer, air-conditioning, telephone and all other public or private services and utilities of whatever kind furnished or supplied to or used by the Tenant or any other party in connection with the use, occupancy, maintenance or operation of the Improvements or any part thereof, and shall comply with all contracts relating to such services and shall do all other things necessary and required for the maintenance and continuance of such services (other than services and utilities charged directly to the subtenants).

Section 5.15 Hazardous Materials.

(a) Covenants.

(1) No Hazardous Materials Activities. The Tenant hereby represents and warrants to the County that, at all times from and after the Effective Date, the Tenant shall not cause or permit the Property or the Improvements thereon to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.

(2) Hazardous Materials Laws. The Tenant hereby represents and warrants to the County that, at all times from and after the Effective Date, the Tenant shall comply and cause the Property and the Improvements thereon to comply with all Hazardous Materials Laws, including without limitation, those relating to soil and groundwater conditions.

(3) Notices. The Tenant hereby represents and warrants to the County that, at all times from and after the Effective Date, the Tenant shall immediately notify the County in writing of: (i) the discovery of any Hazardous Materials on or under the Property; (ii) any knowledge by Tenant that the Property does not comply with any Hazardous Materials Laws; (iii) any claims or actions pending or threatened against the Tenant, the Property or the Improvements thereon by any Governmental Authorities or any other person or entity relating to Hazardous Materials or pursuant to any Hazardous Materials Laws (collectively "Hazardous Materials Claims"); and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property.

(4) Remedial Action. In response to the presence of any Hazardous Materials on, under or about the Property, the Tenant shall immediately take, at Tenant's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials Claims.

(b) Inspection by County. Upon reasonable prior written notice to the Tenant, the County, its employees and agents, may from time to time enter and inspect the Property for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Property.

(c) Environmental Indemnity. Without limiting the generality of the indemnity set forth elsewhere in this Lease, the Tenant shall defend, indemnify, and hold the County and its supervisors, employees, agents, successors, and assigns free and harmless against any claims, loss, damage, costs, expense or liability they may incur directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, or disposal by the Tenant or its contractors, subcontractors, tenants, agents, and employees, of Hazardous Materials on, under, or about the Property or the Improvements occurring from and after the Effective Date, including without limitation: (1) all foreseeable consequential damages; (2) the costs of any required or necessary repair, cleanup or detoxification of the Property or the Improvements, and the preparation and implementation of any closure, remedial or other required plans; and (3) all reasonable costs and expenses incurred by the County in connection with clauses (1) and (2), including but not limited to reasonable attorney's fees. This obligation to indemnify and defend shall survive termination of this Lease.

ARTICLE 6.

Title to Improvements; quiet enjoyment; inspections.

Section 6.1 During the Term.

The County hereby grants to the Tenant, without warranty express or implied, any right, title, or interest that the County has or may have in the improvements now or hereafter located on the Property, which improvements are and shall at all times during the Term be deemed real property. Notwithstanding any provision in this Lease to the contrary, the Improvements and all alterations, additions, equipment and fixtures built, made or installed by the Tenant in, on, under or to the Property or the Improvements shall be the sole property of the Tenant until the expiration of the Term or other termination of this Lease; provided, however, that the Tenant shall have no right to destroy, demolish or remove the Improvements, or any portion thereof, except as specifically provided for in this Lease or as approved in writing by the County. It is the intent of the Parties hereto that this Lease shall create a constructive notice of severance of the Improvements from the Property without the necessity of a deed from the County after the Improvements have been constructed.

Section 6.2 After the Term.

Upon the expiration of the Term or other termination of the Lease, the Improvements and all alterations, additions, equipment, and fixtures shall be deemed to be and shall automatically become the property of the County, without cost or charge to the County. The Tenant agrees to execute, at the request of the County at the end of the Term, a quitclaim deed of the Improvements to the County to be recorded at the County's option and expense and any other

documents that may be reasonably required by the County or the County's title company to provide the County title to the Property and the Improvements free and clear of all monetary liens and monetary encumbrances not caused or agreed to by the County.

Section 6.3 Benefits of Improvements During Term.

The County acknowledges and agrees that any and all depreciation, amortization, tax credits and other tax benefits for federal or state tax purposes relating to the Improvements located on the Property and any and all additions thereto, substitutions therefor, fixtures therein and other property relating thereto shall be deducted or credited exclusively to the Tenant during the Term and for the tax years during which the Term begins and ends.

Section 6.4 Quiet Enjoyment.

Provided Tenant is not in default under this Lease, the County covenants and warrants that the Tenant shall peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full, exclusive and unrestricted use and enjoyment of, all of the Property during the Term, subject only to the provisions of this Lease and all applicable legal requirements of the Governmental Authorities.

Section 6.5 The County's Right of Inspection.

Notwithstanding Section 6.4 above, the County, in person or through its agents, upon at least forty-eight (48) hours prior written notice to the Tenant, shall have the right to enter upon the Property for purposes of reasonable inspections performed during reasonable business hours in order to assure compliance by the Tenant with its obligations under this Lease, subject to the rights of any subtenants.

ARTICLE 7.
ASSIGNMENT AND SUBLETTING

Section 7.1 Definitions.

Transfer means:

(a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Lease or of the leasehold in the Property or fee estate in the Improvements or any part thereof or any interest therein, of the Improvements constructed thereon;

(b) Any total or partial sale, assignment or conveyance, any trust or power, or any transfer in any other mode or form, of or with respect to the majority ownership of the Tenant or any contract to any of the same, including without limitation, any transfer or sale of any interest in the Tenant for financing purposes other than an Approved Security Interest unless approved by the County as part of the approved Financing Plan or as otherwise permitted under this Lease or the LDDA;

(c) Any merger, consolidation, sale, lease, assignment, or conveyance of all or substantially all of the assets of Tenant; or

(d) The subletting of part or all of the Property (except in accordance with this Lease).

Section 7.2 Purpose of Restrictions on Transfer; Applicability.

This Lease is granted to the Tenant solely for the purpose of development and operation of the Improvements, and its subsequent use in accordance with the terms of this Lease, and not for speculation in landholding. The Tenant recognizes that, in view of the following factors, the qualifications and identity of the Tenant are of particular concern to the community and County:

(a) The importance of the development of the Improvements to the general welfare of the community;

(b) The fact that a Transfer as defined in Section 7.1 above is for practical purposes a transfer or disposition of the leasehold interest in the Property then owned by Tenant; and

(c) The fact that the Improvements are not to be acquired, developed, or used for speculation, but only for development and operation by Tenant in accordance with this Lease and the LDDA.

Tenant further recognizes that it is because of such qualifications and identity that County is entering into this Lease with Tenant and that Transfers are permitted only as provided in this Lease.

Section 7.3 Prohibited Transfers.

Except as expressly permitted in this Lease, Tenant represents and agrees that Tenant has not made or created, and shall not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law.

Any Transfer made in contravention of this Section 7.3 shall be void and shall be deemed to be a default under this Lease whether or not Tenant knew of or participated in such Transfer.

Section 7.4 Permitted Transfers.

Notwithstanding the provisions of Section 7.3, the following Transfers shall be permitted and approved by County:

(a) any Transfer solely and directly resulting from the death or incapacity of an individual; and

(b) the lease of individual residential units;

(c) transfer of the Property and Improvements to an Approved Security Interest Holder by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof), or to a third-party purchaser pursuant to a foreclosure sale (or the leasehold equivalent thereof);

(d) the admission of an investor limited partner and transfers of any limited partner interest in Tenant;

(e) removal and replacement of the general partner by the Tenant's investor limited partner; and

(f) grants and easements for the establishment, operation, and maintenance of utility services, provided however any easements affecting the County's fee interest in the Property shall require the County's consent which consent shall not be unreasonably withheld or delayed.

Section 7.5 Procedure for County Approval of Certain Transfers.

In the event the Tenant desires to effect a Transfer other than a permitted Transfer under Section 7.4, the Tenant shall first submit to County information regarding such proposed Transfer including the proposed documents to effectuate the Transfer, a description of the type and amount of consideration for the Transfer, and information regarding the proposed transferee's financial strength and the proposed transferee's capacities and expertise with respect to operation and management of similar mixed-use developments. The County shall approve the Transfer by written notice to the Tenant if, based upon the information submitted by the Tenant and any other information available to the County, it appears that following the Transfer, the new Tenant will be of sound reputation and will have sufficient financial strength and management and operation expertise in the ownership and operation of multi-family residential developments, to fully perform and comply with all terms of this Lease. Tenant shall reimburse County for all legal fees and staff time incurred resulting from the request.

The proposed Transfer shall be approved or disapproved by County within [sixty (60)] days. If disapproved, the disapproval shall state with reasonable specificity the basis for disapproval.

Section 7.6 Effectuation of Certain Permitted Transfers.

No Transfer of this Lease (as opposed to a Transfer in whole or in part of an interest in the Tenant) permitted pursuant to Section 7.4 (other than the lease of the residential units to tenants) shall be effective unless, at the time of the Transfer, the person or entity to whom such Transfer is made, by an instrument in writing reasonably satisfactory to County and in form recordable among the land records, shall expressly assume all of the obligations of the Tenant under this Lease and the applicable County Documents and agree to be subject to all conditions and restrictions to which the Tenant is subject arising during such person's or entity's ownership of this Lease.

Section 7.7 Transfer by County.

In the event of a sale, assignment, transfer or conveyance by the County of the fee interest in the Property or of the County's rights under this Lease, the County shall be released from any future liability upon any of the covenants or conditions of this Lease, expressed or implied, in favor of the Tenant, and, in such event, the Tenant agrees to look solely to the successor in interest of the County in and to the Property or this Lease. This Lease shall not be affected by any such sale, and the Tenant agrees to attorn to any such purchaser or assignee.

Section 7.8 Successors and Assigns.

The terms, covenants and conditions contained in this Article 7 shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators and assigns of the Parties hereto; provided, however, that there shall be no transfer of any interest by the Tenant except pursuant to the terms of this Lease.

ARTICLE 8.

INSURANCE; DAMAGE AND DESTRUCTION OF IMPROVEMENTS

Section 8.1 Insurance Requirements.

The Tenant shall submit to County evidence of the insurance coverage meeting the general requirements set forth in Exhibit D, on, or before, the Effective Date, provided any evidence of insurance required for construction purposes shall be submitted ten (10) days prior to commencement of any construction work on the Property. The County shall review and reasonably approve or disapprove of the evidence of insurance not less than ten (10) days after submission of complete information in the form required by the County. If the County disapproves the evidence of insurance, it shall specify in writing the reasons for such disapproval. The Tenant shall resubmit the information required within fifteen (15) days of the Tenant's receipt of the County's written notification. The review and submission periods shall continue to apply until the County approves the evidence of insurance coverage. Notwithstanding any provision to the contrary, this Lease shall not commence prior to County's approval of Tenant's insurance and no construction work shall be initiated on the Property prior to receipt of the County's approval of Tenant's insurance relating to construction. The County shall not unreasonably withhold, delay, or condition approval of any insurance.

General contractor shall have furnished the County with evidence of the insurance coverage meeting the general insurance requirements set forth in Exhibit D, prior to initiating any work on the Property.

Section 8.2 No Termination of Lease; Obligation to Restore.

Except as otherwise provided in Section 8.4, no loss or damage by fire or any other cause resulting in either partial or total destruction of any buildings or the Improvements now or hereafter located in, upon or on the Property, or any fixtures, equipment or machinery used or

intended to be used in connection with the Improvements shall operate to terminate this Lease, or to relieve or discharge the Tenant from the payment of any Rent or other amounts payable under this Lease, as Rent or otherwise, as and when they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by the Tenant. The Tenant hereby waives the provisions of Section 1932, subsection 2, and of Section 1933, subsection 4, of the California Civil Code, as either or both may from time to time be amended, replaced, or restated. Except as provided in Section 8.3 and 8.4, the Tenant shall, if and to the extent there are sufficient insurance proceeds made available to Tenant, promptly repair, or cause the prompt repair of, any damage or destruction caused to the Improvements and restore the Improvements to at least as good a condition as existed prior to the damage or destruction, as more specifically provided in Section 8.5. The Tenant's failure to make such full repair and restoration under any conditions in which it has elected or is required so to do shall constitute a Tenant Event of Default under this Lease.

Section 8.3 Damage or Destruction Occurring Prior to Final Years of Term.

Subject to the provisions of Section 8.2, if at any time after the Effective Date and during the Term, all or any part of the Property or Improvements are damaged or destroyed by any cause ("Casualty"), Tenant shall, if and to the extent there are sufficient insurance proceeds made available to Tenant, at Tenant's sole cost and expense, repair, restore, and reconstruct the Property and Improvements to substantially the same condition that existed immediately prior to the Casualty in substantial conformance with the previously approved final plans and specifications for the Improvements (as may be modified pursuant to this Lease), subject to any changes necessary to comply with then applicable federal, state, and local laws and regulations and with any upgrades or improvements proposed by Tenant and reasonably approved by County. All such work shall be promptly constructed in a good and workmanlike manner according to and in conformance with all laws and the requirements of this Lease.

In the event of a Casualty, subject to the rights of any Approved Security Interest Holder, all insurance proceeds shall be applied first to fully repair, restore, and reconstruct the Property and Improvements, and any insurance proceeds remaining after completion of all such repair, restoration, and reconstruction in accordance with this Lease shall be paid to Tenant. If the insurance proceeds are insufficient to pay all costs to fully repair, restore, and reconstruct the Property and Improvements as required under this Lease, then, subject to the rights of any Approved Security Interest Holder and Tenant's investor limited partner, Tenant and County may terminate the Lease

Section 8.4 Damage or Destruction During Final Years of Term.

In the event of major damage or destruction to the Improvements on the Property during the last five (5) years of the Term, the Tenant shall have the right, at the Tenant's election, to either make full repair of such damage and fully restore the Improvements on the Property in accordance with the provisions of Section 8.2 or to terminate this Lease, and provided that if the Tenant elects to terminate this Lease, the Tenant shall comply with all of the following conditions:

(a) The Tenant shall give the County written notice of the damage or destruction within ten (10) days after the event causing such damage or destruction;

(b) There shall not then exist an Event of Default (or an event which, after notice and the passage of time as required by this Lease without cure of such event, would constitute an Event of Default);

(c) As promptly as is feasible, the Tenant shall repair or restore the damaged Improvements to the extent necessary to preserve them and make them safe from immediate danger to the public; and

(d) The Tenant shall deliver possession of the Property and the Improvements thereon to the County and shall quitclaim to the County all right, title and interest in the Property and the Improvements thereon.

Major damage or destruction to the Improvements on the Property (as used in this Section) means damage or destruction where the cost to make full repair of such damage and restore the Improvements in accordance with the provisions of Section 8.2 would be fifty percent (50%) or more of the replacement cost of all of the Improvements on the Property in their entirety. The calculation of such percentage shall be based upon the replacement cost of the Improvements on the Property as of the date of the damage or destruction. The determination of whether any particular damage or destruction constitutes major damage or destruction within the meaning of this paragraph shall be determined and certified by a professional cost estimator experienced in such matters and mutually designated by the County and the Tenant within ten (10) days of the occurrence of such damage or destruction. If the Parties are unable to designate a mutually acceptable cost estimator within such period, either party may apply to the presiding judge of the Superior Court of Monterey County who shall appoint such cost estimator.

Section 8.5 Procedures for Repair and Restoration.

The provisions of this Section shall apply whenever the Improvements on the Property are to be repaired or restored under the provisions of this Article.

(a) In the event of any damage or destruction to the Property or the Improvements, the Tenant shall promptly give the County written notice of such damage or destruction, setting forth the cause (if known), the date on which such damage or destruction occurred, and the estimated cost of repair and restoration as certified by a professional cost estimator experienced in such matters. Whenever any part of the Property or the Improvements shall have been damaged or destroyed, the Tenant shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which the Tenant may have against insurers or others based upon any such damage or destruction. Except as otherwise provided below, sums of money received as payments for any losses pursuant to said insurance policies shall be used and expended for the purpose of fully repairing or reconstructing the portions of the Property or the Improvements which have been destroyed or damaged in accordance with the procedures of subsections (b) and (c) below, unless the Tenant has established alternate procedures that, in the County's reasonable judgment, will accomplish the

use and expenditure of the insurance proceeds to effectuate full repair or reconstruction of the portions of the Property or the Improvements which have been destroyed or damaged in a more effective manner than the procedures set forth in subsections (b) and (c).

The provisions of subsection (d) below shall apply regardless of the procedure employed for the use and expenditure of insurance proceeds.

(b) Within one hundred eighty (180) days after the event of damage or destruction, the Tenant shall make available to the Insurance Trustee, described in subsection (c) below, the difference, if any, between the certified estimated cost of repair and restoration and the amount of insurance proceeds anticipated to be received for such repair and restoration (such amount is hereinafter referred to as the "Tenant Contribution").

(c) All proceeds of insurance together with the Tenant Contribution, if any, shall be paid by the Tenant to the insurance trustee, which insurance trustee shall be a commercial bank or trust company experienced in such matters and designated by the County and approved by Tenant and the Approved Security Interest Holders (the "Insurance Trustee"). The Insurance Trustee shall hold such proceeds in trust and shall disburse same to the Tenant as follows: from time to time as the work of restoration progresses, the Tenant shall submit to the Insurance Trustee a certificate of the Tenant, signed by an authorized officer or representative thereof, and approved by an architect selected by the Tenant and approved by the County (the "Architect"), which certificate shall:

(1) accurately describe the work for which the Tenant is requesting payment and the cost incurred by the Tenant in connection therewith,

(2) certify that the Tenant has not theretofore received payment for such work, and

(3) conditional lien releases based upon payment executed by all persons or entities supplying labor or materials in connection with such work; and

(4) contain or be accompanied by a statement by the Tenant that the work for which the Tenant is requesting payment has been performed substantially in accordance with plans and specifications therefor approved by the County.

Within five (5) days after receipt of any such certificate, the Insurance Trustee shall pay to the Tenant, from the funds on hand, an amount equal to ninety percent (90%) of the amount of the cost of the work for which the Tenant is requesting payment, as shown on such certificate. Upon completion of such work, the remainder of such cost (to the extent of the balance of the funds held by the Insurance Trustee) and all other insurance proceeds held by the Insurance Trustee shall be paid to the Tenant within five (5) days after the delivery to the Insurance Trustee of a certificate of the Tenant, signed by an authorized officer or representative thereof and approved by the Architect for the work, stating that the work has been completed and setting forth the total cost thereof, which certificate shall: (1) contain or be accompanied by a statement by the Tenant that the work has been completed substantially in accordance with plans

and specifications therefor approved by the County; and (2) be accompanied by either (A) an unconditional waiver or release of mechanics' and materialmen's liens executed by all persons or entities supplying labor or materials in connection with such work or (B) other evidence reasonably satisfactory to the County that the period for filing any such lien has expired and no such lien has been filed, or, if filed, has been bonded by the Tenant to the reasonable satisfaction of the County and the Insurance Trustee. The Insurance Trustee shall not be required to invest or pay interest on any funds held by such trustee, except in accordance with any agreement between the Tenant and the Insurance Trustee.

The Tenant shall promptly commence and complete, in a good and workmanlike manner and in accordance with Article 4, the reconstruction or repair of any part of the Property or the Improvements thereon damaged or destroyed after (1) the County has approved the Tenant's plans, drawings, specifications and construction schedule for such reconstruction or repair as such approval may be required under Article 4, and (2) the proceeds of insurance, if any, applicable to such reconstruction or repair have been made available for such purpose.

Section 8.6 Procedures Upon Permitted Termination.

Upon termination of this Lease pursuant to Section 8.3 or 8.4, insurance proceeds for the Improvements not used in repair or restoration shall be distributed as follows:

(a) First, to the Approved Security Interest Holder(s), the amount required by such Approved Security Interest Holder(s).

(b) Second, at the option of the County, to the County in the amount necessary to raze the remaining Improvements, clear the Property, make it safe, and return the Property to the condition of a developable pad.

(c) Third, any balance shall be divided between the County and the Tenant on the following basis: Proceeds for Improvements having a remaining useful life less than the remaining Term as of the termination date shall be paid to the Tenant. A proportionate share of proceeds for the Improvements having a remaining useful life greater than the remaining Term as of the termination date, calculated by the ratio that the remaining Term bears to the remaining useful life, shall be paid to the Tenant, and the balance of such proceeds for such Improvements shall be paid to the County.

All other insurance proceeds shall be paid to and become the sole property of the Tenant.

Section 8.7 Prosecution of Claims.

In connection with and as a condition of any termination pursuant to Section 8.4, the Tenant shall make proof of loss and proceed to collect or commence collection of all valid claims which the Tenant may have against insurers or others based upon such damage or destruction, and shall assign and transfer to the County all rights under insurance policies and against others and proceeds of insurance and other claims resulting from the casualty.

Upon termination of this Lease, the Tenant shall deliver possession of the Property and the Improvements thereon to the County and quitclaim to the County all right, title and interest in the Property and the Improvements thereon.

ARTICLE 9.
APPROVED SECURITY INTERESTS

Section 9.1 Right to Encumber the Leasehold Estate.

The Tenant shall have the right during the Term to encumber, through an Approved Security Interest pursuant to the County approved Financing Plan, all of the Tenant's right, title and interest in the Property subject to the provisions of this Lease; provided, however, any Approved Security Interest shall remain subordinate and inferior to County's right, title, and interest in the Property and, upon acquisition of the leasehold interest in the Property, any foreclosing Approved Security Interest Holder's rights to the Property shall be subject to the terms and provisions of this Lease and provided further, any Approved Security Interest shall be limited to funding costs associated with the Improvements on the Property. In no event shall Tenant place any encumbrance on the Tenant's right, title or interest in the Property or the Improvements that provides financing for any purpose other than the Property and the Improvements.

Section 9.2 Notice to Approved Security Interest Holders. During any period in which an Approved Security Interest is in place, the Landlord shall give any such Approved Security Interest Holder of which the Landlord has received notice from the Tenant, a duplicate copy of all notices of default or other notices that Landlord may give to or serve in writing upon Tenant pursuant to the terms of this Lease. The address of the Approved Security Interest Holder originally designated in the Approved Security Interest may be changed upon written notice delivered to Landlord in the manner specified in Section 13.1 below. The Landlord's failure to give any such notice to any such Approved Security Interest Holder shall not render such notice ineffective, nor shall any such failure constitute an Event of Default hereunder; provided, however, all rights of the Landlord to terminate this Lease as the result of the occurrence of any Event of Default shall be subject to, and conditioned upon: (i) the Landlord having first given Approved Security Interest Holders, notice of such Event of Default, and; (ii) the Approved Security Interest Holder, having failed to remedy such default or acquire the Tenant's leasehold estate created pursuant to this Lease, or commence foreclosure or other appropriate proceedings in the nature thereof within the time and manner set forth in Section 9.3, below, as applicable.

Section 9.3 Right to Perform and Right to Cure. Each Approved Security Interest Holder, shall have the right, but not the obligation, at any time prior to termination of this Lease and without payment of any penalty other than the interest on unpaid Rent, to pay all of the Rents due hereunder, to effect any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any other act or thing required of the Tenant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions set forth in this Lease to prevent a termination of this Lease as the same would have been if made, done and performed by the

Tenant instead of by an Approved Security Interest Holder. Should any event of default under this Lease occur, and not be cured by the Tenant within the applicable notice and cure period provided in this Lease, the Landlord shall not terminate this Lease nor exercise any other remedy hereunder unless it first gives written notice of such event of default to the Approved Security Interest Holders, and, thereafter, the Approved Security Interest Holder, shall have failed, within thirty (30) days of receipt of said written notice, either (i) to remedy such default; or (ii) to obtain title to Tenant's interest in the Property in lieu of foreclosure; or (iii) to commence foreclosure or other appropriate proceedings in the nature thereof and thereafter diligently prosecute such proceedings to completion. If the Approved Security Interest Holder takes any of the actions in (i) thru (iii) above, then such event of default shall be deemed remedied.

Section 9.4 Notice and Right to Cure Defaults Under Approved Security Interests.

Upon the recording of the Memorandum of Lease, the County may record in the office of the Recorder of the County of Monterey a request for notice of any default under the Approved Security Interests. In the event of default by the Tenant under any of the Approved Security Interests, the County shall have the right, but not the obligation, to cure the default. Any payments made by the County to cure a default shall be treated as additional Rent due from the Tenant as provided in Article 3.

Section 9.5 Estoppel Certificates. The County and the Tenant agree that at any time and from time to time upon not less than twenty (20) days prior written notice by the other party, or upon request from any Approved Security Interest Holder or a permitted assignee or other interested party, the County or the Tenant shall execute, acknowledge and deliver to the other party or to such other parties a statement in writing certifying (a) that this Lease is unmodified and in full force and effect; (b) the date through which the Rent has been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default, set-off, defense or other claim against the County or the Tenant, as applicable, other than those, if any, so specified under the provisions of this Lease. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of the County, the Tenant or any Approved Security Interest Holder, as the case may be, in this Lease or by any assignee of any Approved Security Interest Holder.

Section 9.6 Mortgage of County's Estate. The County agrees not to encumber or convey any interest in the County's fee interest in the Property with any deed to secure debt, mortgage, deed of trust or other instrument in the nature thereof as security for any debt which is not expressly subordinate to the Tenant's interest in the Property under this Lease and to any Approved Security Interest without the written consent of the Tenant. The County agrees not to permit any liens arising from work contracted for by the County to be filed against the Property without causing the same to be removed or bonded over within thirty (30) days of such filing.

Section 9.7 Registration of Approved Security Interests. The Tenant shall provide written notice to the County of the name and address of each Approved Security Interest under this Lease.

ARTICLE 10.
SURRENDER; HOLDING OVER

Section 10.1 Ownership of Improvements; Surrender of the Premises; County Possession of Premises.

3.3.1 Definitions.

3.3.1.1. Fixtures. “Fixtures” means all fixtures permanently attached to the Premises, and excludes trade fixtures, such as retail business trade equipment.

3.3.1.2. Original Useful Life. “Original Useful Life” means the expected number of years, starting from brand new condition, that each Fixture and System, as applicable, can be used at full capacity for its intended purpose, assuming no repairs or rehabilitation other than repairs or rehabilitation that would customarily be performed to address ordinary wear and tear.

3.3.1.3. Remaining Useful Life. The term “Remaining Useful Life” means: (i) with respect to the Improvements, the number of years that the Improvements can continue to be used at full capacity for their intended purpose, assuming no repairs or rehabilitation other than repairs or rehabilitation that would customarily be performed to address ordinary wear and tear, taking into consideration all aspects of the physical condition of the Improvements, all applicable Laws, and all other relevant factors, and (ii) with respect to the Fixtures and Mechanical Equipment, the percentage of the Original Useful Life remaining as determined by the Improvements Assessment.

3.3.1.4. Mechanical Equipment. “Mechanical Equipment” means all mechanical equipment serving the Improvements, including but not limited to, HVAC units, fans, vents, generators, elevator motors, and other equipment integral to the regular operations of the Improvements.

(b) Ownership of Improvements During Term. Title to all Improvements (defined in Article 10) constructed or placed on the Premises by Tenant are and shall be vested in Tenant until the expiration or earlier termination of this Lease. County and Tenant agree for themselves and all persons claiming under County and Tenant that the Improvements are real property. During the Term, Tenant shall have the exclusive right to all tax benefits arising from any and all Improvements.

(c) 3.3.3 Ownership of Improvements Upon the Expiration or Earlier Termination of Lease. Unless Restoration (defined in Section 3.3.2.1) is required pursuant to Section 3.3.2.1, all Improvements on the Premises, including Fixtures and Mechanical Equipment, upon the expiration or earlier termination of this Lease shall, without payment to Tenant, become County’s property free and clear of all claims to or against them by Tenant and free and clear of all Leasehold Mortgages and any other taxes, liens, and claims arising from Tenant’s use and occupancy of the Premises as of the date of expiration or earlier termination of this Lease. Subject to the Restoration provisions of Section 3.4.3, and to the Casualty provisions of ARTICLE 19, Tenant shall, upon the expiration or earlier termination of this Lease, deliver the Premises and Improvements, including Fixtures and Mechanical Equipment, to County in good order, condition and state of repair, ordinary wear and tear excepted, and in accordance with the requirements of Section 3.3.4.2.

(d) 3.3.4 Improvements Assessment; Restoration of Premises. Not less than nine (9) years before the expiration of the Term, Tenant shall, at the Tenant’s sole expense, provide County with a report prepared by a qualified independent engineering

consultant, which consultant shall be subject to County's reasonable approval, assessing the condition of the Improvements ("Improvements Assessment"). The Improvements Assessment shall include the following: (a) an evaluation of the building structure, all building components, all Mechanical Equipment, and all Fixtures, (b) all repairs or replacements to the Improvements necessary to deliver the Improvements, including the Mechanical Equipment and Fixtures, to County in good order, condition, and state of repair, ordinary wear and tear excepted, and the costs of such repairs or replacements ("Good Condition Repairs"), (c) an evaluation of the estimated Remaining Useful Life of the Improvements, including the Mechanical Equipment and Fixtures, and (d) the following:

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

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

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

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

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

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

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

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

(4) Upon receipt of the County Restoration Notice, Tenant shall establish an account in favor of County with an Eligible Independent Trustee (defined in Section 15.1.11), containing by the time of Lease expiration sufficient funds to cover the Restoration of the Improvements ("Restoration Fund"). Within thirty (30) days after delivery of the County Restoration Notice, the Tenant shall secure bids from three (3) licensed contractors for the Restoration. The Tenant shall, on the first day of the second month after delivery of the County Restoration Notice commence making annual payments equal to one eighth (1/8th) of the average of the three bids for the Restoration into the Restoration Fund. The Restoration Fund shall be maintained until completion of the Restoration and expended solely for the Restoration.

The Restoration Fund shall also be explicitly available to County until completion of the Restoration for any Restoration work not completed by Tenant, provided that Tenant may draw on the Restoration Fund to complete the Restoration, and the availability of the Restoration Fund to the County shall not impact Tenant's obligation to complete the Restoration. Interest earned on the Restoration Fund shall be added to the Restoration Fund. The amount by which the Restoration Fund exceeds the actual cost of the Restoration shall be delivered to Tenant in accordance with applicable law after completion of the Restoration. If the actual cost of the Restoration exceeds the Restoration Fund, the Tenant shall be responsible for payment of any amounts in excess of the Restoration Fund.

(5) If the Improvements Assessment specifies that Improvements meet the Minimum Remaining Useful Life Requirements as provided in Section 3.4.3.2, then upon receipt of the County-approved Improvements Assessment, Tenant shall establish an account in favor of County with an Eligible Independent Trustee (defined in Section 15.1.11), containing by the time of Lease expiration sufficient funds to cover the Good Condition Repairs, Useful Life Rehabilitation, and Fixtures and Mechanical Equipment Useful Life Rehabilitation (collectively, the "Rehabilitation") for the Improvements ("Rehabilitation Fund"). Within thirty (30) days after receipt of the Improvements Assessment, the Tenant shall secure bids from three (3) licensed contractors for the Rehabilitation. Tenant shall, on the first day of the second month after receipt of the Improvements Assessment commence making annual payments equal to one eighth (1/8th) of the average of the three bids for the Rehabilitation into the Rehabilitation Fund. The Rehabilitation Fund shall be maintained until completion of the Rehabilitation and expended solely for the Rehabilitation. The Rehabilitation Fund shall also be explicitly available to County until completion of the Rehabilitation for any Rehabilitation work not completed by Tenant provided that Tenant may draw on the Rehabilitation Fund to complete the Rehabilitation, and the availability of the Restoration Fund to the County shall not impact Tenant's obligation to complete the Restoration. Interest earned on the Rehabilitation Fund shall be added to the Rehabilitation Fund. The amount by which the Rehabilitation Fund exceeds the actual cost of the Rehabilitation shall be delivered to Tenant in accordance with applicable law after completion of the Rehabilitation. If the actual cost of the Rehabilitation exceeds the Rehabilitation Fund, the Tenant shall be responsible for payment of any amounts in excess of the Rehabilitation Fund.

(6) The Tenant intends to seek to avoid having to make any payments into the Restoration Fund or Rehabilitation Fund by maintaining the Improvements in a condition that will not require Restoration or Rehabilitation under the terms of this Section. Subject to the provisions of ARTICLE 14, County will not unreasonably withhold or delay consent to Tenant in connection with any refinancing or syndication of the Improvements, the proceeds of which would be used to repair, rehabilitation, maintain, and improve the Improvements.

(e) 3.3.3 Surrender of the Premises. Subject to the requirements of Section 3.4.3, Tenant shall surrender possession of the Premises and Improvements (including Fixtures) (if any), to County upon expiration or earlier termination of this Lease. Upon the expiration or earlier termination of this Lease for any reason, including but not limited to termination because of default by Tenant, but after the expiration of any new lease rights of a

Leasehold Mortgagee under Article 15, Tenant shall execute, acknowledge and deliver to County, within ninety (90) days following receipt of written demand, a good and sufficient deed where Tenant quitclaims all right, title and interest in the Premises and Improvements to County. If Tenant fails or refuses to deliver the quitclaim deed to County, County may prepare and record a notice reciting the failure of Tenant to record a quitclaim deed, and the notice shall be deemed conclusive evidence of the termination of this Lease and of all right of Tenant or those claiming under Tenant to the Premises and Improvements. The foregoing sentence shall not apply in the event of a disputed termination of the Lease.

(f) 3.3.4 Subleases. At least 180 days prior to expiration of the Term, or immediately upon termination of the Lease, Tenant shall provide to County a current rent roll containing the contact information for all subtenants and other occupants and all subleases for such subtenants. Upon request by County prior to expiration of the Term, Tenant will provide all notices to subtenants required by applicable law with respect to expiration of the sublease term.

(g) 3.3.5 County Possession of Premises. If the manner or method employed by County to re-enter or take possession of the Premises pursuant to the provisions of this Lease gives Tenant a cause of action for damages or in forcible entry and detainer, the total amount of damages to which Tenant shall be entitled in any action shall be one dollar (\$1.00). This provision may be filed in any action brought by Tenant against County, and when filed shall constitute a stipulation by Tenant fixing the total damages to which Tenant is entitled in an action. Nothing in this Section shall preclude Tenant from seeking any equitable remedy including but not limited to (a) bringing an action to enjoin any County action or (b) requiring specific performance from the County.

(h) 3.3.6 Personal Property. Tenant's trade fixtures, furniture, furnishings, signs and other personal property (collectively, "Personal Property") not permanently affixed to the Premises or Improvements shall remain the property of the Tenant. Tenant shall, at its sole expense, immediately repair any damage caused to the Improvements or by reason of the Tenant's removal of any Personal Property.

(i) 3.3.7 Fixtures and Mechanical Equipment. Subject to Sections 3.3 and 3.4, all Mechanical Equipment and Fixtures shall become the property of County upon expiration or earlier termination of this Lease.

Section 10.2 Holding Over.

If the Tenant shall retain possession of the Property or the Improvements thereon or any part thereof without the County's prior written consent following the expiration or sooner termination of this Lease for any reason, then the Tenant shall pay to the County an amount equal to two hundred percent (200%) of the fair market rent for the Property (as reasonably determined by the County) and other payments that would have been due had the Lease not expired or been terminated and had the Rent and other payment terms in effect at the time of the expiration or sooner termination of the Lease remained in effect. These payments shall be applicable to a holding over of any kind by the Tenant. The Tenant shall also indemnify and hold the County harmless from any loss or liability resulting from delay by the Tenant in

surrendering the Property, including, without limitation, any claims made by any succeeding tenant founded on such delay. Acceptance of Rent by the County following expiration or termination shall not constitute a renewal of this Lease and nothing contained in this Section 10.2 shall waive the County's right of reentry or any other right. The Tenant shall be only a tenant at sufferance, whether or not the County accepts any Rent from the Tenant while the Tenant is holding over without the County's written consent.

Section 10.3 No Merger.

Except upon expiration of the Term or upon termination of this Lease pursuant to an express right of termination set forth herein, there shall be no merger of either this Lease or the Tenant's estate created hereunder with the fee estate of the Property or any part thereof by reason of the fact that the same person may acquire, own or hold, directly or indirectly, (a) this Lease, the Tenant's estate created hereunder or any interest in this Lease or the Tenant's estate (including the Improvements), and (b) the fee estate in the Property or any part thereof or any interest in such fee estate (including the Improvements), unless and until all persons, including any assignee of the County, having an interest in (i) this Lease or the Tenant's estate created hereunder, and (ii) the fee estate in the Property or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same.

ARTICLE 11.
EMINENT DOMAIN

Section 11.1 Total Taking.

If either the entire Property (or any improvements thereon) or a substantial and essential portion of the Property (or any improvements thereon), the taking of which portion materially impairs the use of the Improvements then being made by Tenant and renders the remainder of the Improvements unsuitable or economically not feasible for such use, as reasonably determined by Tenant in good faith, is taken under the power of eminent domain during the Term of this Lease, then this Lease shall terminate as of the date of such taking. The County and the Tenant shall together make one claim for an award for their combined interests in the Property and all buildings, structures, Improvements, and fixtures thereon which are so taken. Such award shall be paid to and divided between the County and the Tenant in priority as follows:

(a) All compensation and damages payable for or on account of the underlying fee title to the Property, assuming that the Property were unimproved but encumbered by this Lease, shall be payable to and be the sole property of the County.

(b) All compensation and damages payable for or on account of the buildings and Improvements located on the Property shall be divided between the County and the Tenant in the manner specified in Section 8.6 of this Lease.

Section 11.2 Partial Taking.

If less than the whole of the Property is taken under the power of eminent domain during the Term of this Lease and this Lease is not terminated as provided in Section 11.1 hereof, then this Lease shall terminate only with respect to the portion of the Property taken and this Lease shall continue in full force and effect with respect to the portion of the Property not taken. The Tenant shall, but only to the extent of the amount of the award received, promptly reconstruct and restore the portion of the Property not taken and the buildings and Improvements located on the portion of the Property not taken as an integral unit of the same general quality and character as existed prior to such taking. Such reconstruction and restoration shall be performed in a good and workmanlike manner and undertaken in accordance with plans and specifications submitted to and approved by the County in accordance with Article 4, and otherwise in accordance with the applicable provisions of this Lease.

All awards or other payments received on account of a partial taking as described in this Section 11.2 shall be paid to the Insurance Trustee referred to in Section 8.5 above to be held and disbursed in the same manner as insurance proceeds, except that any portion of such award remaining after completion of any restoration shall be divided between the County and the Tenant and disbursed by the Insurance Trustee in the manner provided in Section 8.6.

Section 11.3 Temporary Taking.

If the use of all or any part of the Property is taken under the power of eminent domain during the Term on a temporary basis for a period less than the time remaining after the date of such taking to the end of the Term, then this Lease shall continue in full force and effect and the Tenant shall continue to be obligated to perform and observe all of the agreements, covenants and conditions on the part of the Tenant to be performed and observed as and when performance and observance is due to the full extent that such agreements, covenants and conditions are physically capable of performance and observance by the Tenant after such taking. The award payable for or on account of such taking shall be paid to the Tenant.

Section 11.4 Notice of Taking; Single Proceeding.

In case of a taking of all or any part of the Property or the Improvements thereon or the commencement of any proceeding or negotiations which might result in such taking, the party having notice of such taking or of the commencement of any such proceeding or negotiations shall promptly give written notice thereof to the other party. The County and the Tenant shall jointly prosecute their claims for an award in a single proceeding. In any eminent domain proceeding affecting the Property, both the County and the Tenant shall have the right to appear in the proceeding and to defend against the eminent domain action as they deem proper in accordance with their own interests. To the extent possible, the County and the Tenant shall cooperate with each other to maximize the amount of the award payable by reason of the eminent domain. Issues between the County and the Tenant that arise under this Article 10 shall be joined in any such eminent domain proceeding to the extent permissible under then applicable rules governing such joinder.

As used in this Lease: (1) a "taking" means the acquisition of all or any part of the Property for a public use by exercise of the power of eminent domain; (2) the taking shall be considered to occur as of the earlier of the date on which possession of the Property by the entity exercising the power of eminent domain is authorized as stated in an order for possession, or the date on which title to the Property vests in the person exercising the power of eminent domain; and (3) "award" means the compensation paid for the taking.

ARTICLE 12.
EVENTS OF DEFAULT

Section 12.1 Events of Default.

Each of the following, subject to the applicable notice and cure period below, shall be a "Tenant Event of Default" by the Tenant hereunder:

- (a) Failure by the Tenant to pay any Rent when due or to pay or cause to be paid any other costs or fees required under this Lease, insurance premiums or other liquidated sums of money herein stipulated to be paid by the Tenant, if such failure shall continue for a period of ten (10) days after notice thereof has been given by the County to the Tenant;
- (b) The Tenant breaches, and thereafter fails to cure within the time frame set forth in subsection (h) below, any provision of Article 4;
- (c) The Tenant breaches, and thereafter fails to cure within the time frame set forth in subsection (h) below, any provision of Article 5;
- (d) A Bankruptcy/Insolvency Event occurs with respect to the Tenant;
- (e) The Tenant attempts or completes a Transfer (other than a Permitted Transfer) without obtaining the County's prior written consent as required pursuant to this Lease;
- (f) The failure of the Tenant to fully repair and restore the Improvements in accordance with the requirements of Article 8, if applicable;
- (g) Failure by the Tenant to perform or observe any other provisions of this Lease, the LDDA, or the applicable County Documents to be observed and performed by the Tenant, if such failure shall continue for a period of sixty (60) days after notice thereof has been given by the County to the Tenant; provided, however, that if any such failure cannot reasonably be cured within such sixty (60) day period, then the County shall not have the right to terminate this Lease or the Tenant's right to possession hereunder so long as the Tenant promptly commences the curing of any such failure and thereafter proceeds in good faith and with due diligence to remedy and correct such failure within a reasonable period of time; provided, however, that such period shall not extend for more than one hundred twenty (120) days after the date of the County's notice to the Tenant.

Section 12.2 Rights and Remedies.

(a) At any time after the occurrence of an Event of Default hereunder, the County, subject in all respects to the provisions of this Lease with respect to the County's rights to cure defaults by the Tenant, may terminate this Lease by giving the Tenant written notice thereof, setting forth in such notice an effective date for termination which is not less than thirty (30) days after the date of such notice, in which event this Lease and the Tenant's estate created hereby and all interest of the Tenant and all parties claiming by, through or under the Tenant shall automatically terminate upon the effective date for termination as set forth in such notice, with the same force and effect and to the same extent as if the effective date of such notice had been the date originally fixed in Article 2 hereof for the expiration of the Term. In such event, the County, its agents or representatives, shall have the right, without further demand or notice, to re-enter and take possession of the Property (including all buildings, the Improvements, and other improvements comprising any part thereof) at any time from and after the effective termination date without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches of covenants or any other remedy available at law or equity to the County.

(b) In addition to the remedy set forth in subsection (a) above, upon any Tenant Event of Default the County may exercise any other remedy set forth in any applicable County Documents or any other remedy available at law or at equity.

(c) Upon the exercise of the County's remedies pursuant to this Section 12.2, the Tenant shall execute such releases, deeds and other instruments in recordable form as the County shall reasonably request in order to accurately set forth of record then current status of the Tenant's estate in the Property and the Tenant's rights hereunder. The obligations set forth in this subsection shall survive the termination of the Lease.

Section 12.3 Default by the County.

(a) Events of Default. The County shall be in default of this Lease if it fails to perform any material provision of this Lease that it is obligated to perform, and if the failure to perform is not cured within sixty (60) days after written notice of the default has been given to the County. If the default cannot reasonably be cured within sixty (60), the County shall not be in default of this Lease if the County commences to cure the default within such sixty (60) day period and diligently and in good faith continues to cure the default until completion.

(b) Right to Cure; the Tenant's Remedies. If the County shall have failed to cure a default by the County after expiration of the applicable time for cure of a particular default, the Tenant, at its election, but without obligation therefor (i) may seek specific performance of any obligation of the County, after which the Tenant shall retain, and may exercise and enforce, any and all rights that the Tenant may have against the County as a result of such default, (ii) from time to time without releasing the County in whole or in part from the obligations to be performed by the County hereunder, may cure the default at the County's cost, and/or (iii) may terminate this Lease.

(c) Notices. Notices given by the County or Tenant under Section 13.1 shall specify the alleged default and the applicable Lease provisions, and shall demand that the Tenant

or the County, as applicable, perform the appropriate provisions of this Lease within the applicable period of time for cure. No such notice shall be deemed a forfeiture or termination of this Lease unless expressly set forth in such notice.

ARTICLE 13.
MISCELLANEOUS PROVISIONS

Section 13.1 Notice, Demands and Communication.

Formal notices, demands, and communications between the County and the Tenant shall be in writing and shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by facsimile with a copy delivered the following day by reputable overnight delivery service, or delivered personally, to the principal office of the Parties as follows:

County: County of Monterey

With copy to:

Tenant:

With copy to:

Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section 13.1. No party shall evade or refuse delivery of any notice. Telephone numbers are only provided for the Parties' convenience, and formal notices may not be transmitted by telephone. In addition, any notice or demand from the County to the Tenant may be delivered by e-mail to the Tenant's e-mail set forth above; provided, however, in no event shall the Tenant deliver any formal notice or demand to the County by e-mail.

Section 13.2 Conflict of Interests.

No member, official or employee of the County shall make any decision relating to the Lease which affects his or her personal interests or the interest of any corporation, partnership, or association in which he is directly or indirectly interested.

Section 13.3 Non-Liability of Officials, Employees and Agents.

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

Section 13.4 Enforced Delay.

In addition to specific provisions of this Lease, performance by either party shall not be deemed to be in default where delays or defaults are due to war; acts of terrorism; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; government restrictions, regulations, or controls; freight embargoes; or any other similar causes (other than lack of funds of the Tenant or the Tenant's inability to finance the Development) beyond the control or without the fault of the party claiming an extension of time to perform ("Force Majeure"). Force Majeure shall not include any bankruptcy, insolvency, or financial inability or financial considerations of Tenant. An extension of time for any cause shall be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other party within ten (10) days of receipt of the notice. In no event shall the cumulative delays exceed one hundred twenty (120) days unless otherwise agreed to in writing by the Parties. Times of performance under this Lease may also be extended by written agreement of the County and the Tenant.

Section 13.5 Inspection of Books and Records.

The County and its agents have the right at all reasonable times to inspect on a confidential basis the books, records and all other documentation of the Tenant pertaining to its obligations under this Lease. The Tenant shall retain such books, records, and documentation for a period of five (5) years after their creation.

Section 13.6 Title of Parts and Sections.

Any titles of the sections or subsections of this Lease are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

Section 13.7 Indemnity.

The Tenant shall indemnify, defend, hold harmless the County, and its supervisors, employees, agents, volunteers, successors, and assigns against any and all suits, actions, claims, causes of actions, whether actual or alleged, administrative proceedings, arbitrations or enforcement actions which arise out of or in connection with directly or indirectly, in whole or in part, the Tenant's ownership, occupancy, development, or operation of the Improvements or construction, maintenance, rehabilitation or repair on the Property by the Tenant or the Tenant's contractors, subcontractors, agents, employees or tenants and all damages (direct or consequential), costs, losses, injuries, fines, penalties, liens, encumbrances, charges, liabilities, demands, judgments, remedial action requirements, obligations, and all costs and expenses incurred in connection therewith (including, but not limited to, attorney fees and costs); provided, however, that this indemnity shall not extend to any claim arising solely from the County's failure to perform its obligations under this

Lease or solely from the gross negligence or willful misconduct of the County, or its supervisors, employees, agents, volunteers, successors, and assigns. The provisions of this section shall survive expiration of the Term or other termination of this Lease and shall remain in full force and effect and are not limited by the amount of insurance as may be required.

Section 13.8 Applicable Law.

This Lease shall be interpreted under and pursuant to the laws of the State of California.

Section 13.9 Severability.

If any term, provision, covenant or condition of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 13.10 Legal Actions.

(a) Any legal action commenced to interpret or to enforce the terms of this Lease shall be filed in the Superior Court of Monterey County.

(b) In the event legal action is commenced by a third party or parties, the effect of which is to directly or indirectly challenge or compromise the enforceability, validity, or legality of the Lease and/or the power of the County to enter into this Lease or perform its obligations hereunder, either the County or the Tenant may (but shall have no obligation to) defend such action. Upon commencement of any such action, the County and the Tenant shall meet in good faith and seek to establish a mutually acceptable method of defending such action.

Section 13.11 Binding Upon Successors; Covenants to Run With Land.

This Lease shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties; provided, however, that there shall be no transfer of any interest by the Tenant except pursuant to the terms of this Lease. Any reference in this Lease to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Lease, or under law.

The terms of this Lease shall run with the land and shall bind all successors in title to the Property during the Term of this Lease, except that the provisions of this Lease that are specified to survive termination of this Lease shall run with the land in perpetuity and remain in full force and effect following such termination. Every contract, deed, or other instrument hereafter executed covering or conveying the Property or the Improvements or any portion thereof shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the County expressly releases the Property, the Improvements, or the applicable portion of the Property, from the requirements of this Lease.

Section 13.12 Discretion Retained by County.

The County's execution of this Lease, in its capacity as the landlord and the fee owner of the Property, does not constitute approval by the County, in its capacity as a Governmental Authority, and in no way limits the discretion of the County in the permit and approval process in connection with development of the Improvements, any Major Additional Improvements, or any other proposed use or development on the Property by the Tenant. The Tenant acknowledges that nothing in this Lease (including any approval by the County Administrator in accordance with this Lease) shall limit, waive, or otherwise impair the authority and discretion of: (i) the County's Planning Department, in connection with the review and approval of the proposed construction plans for the Improvements (or any change to such plans), any Major Additional Improvements, or any use, or proposed use, of the Property, or (ii) any other office or department of the County acting in its capacity as a Governmental Authority with jurisdiction over the development, use, or operation of the Development.

Section 13.13 Parties Not Co-Venturers.

Nothing in this Lease is intended to or does establish the parties as partners, co-venturers, or principal and agent with one another.

Section 13.14 Warranties.

As more particularly set forth in the LDDA, the County expresses no warranty or representation to the Tenant as to fitness or condition of the Property or any portion thereof for the building or construction to be conducted thereon.

Section 13.15 Action by the County or Tenant; Time.

(a) Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent, request, or other action by the County is required or permitted under this Lease, such action may be given, made, or taken by the Director of Housing and Community Development, or by any person who shall have been so designated in writing to the Tenant by the Director of Housing and Community Development, without further action or approval by the Board of Supervisors, and any such action shall be in writing. The Director of Housing and Community Development may, in his or her discretion, agree in writing to modification of the dates by which action are to be complete or to waive any terms and conditions of this Lease or to make reasonable modifications to the Lease requested by the Tenant's lenders; provided, however, in no event shall the Director of Housing and Community Development have any authority to subordinate the County's fee interest in the Property.

(b) The Tenant shall take all actions necessary to implement the provisions of this Lease and to complete those performances required of the Tenant.

(c) Time is of the essence for all matters set forth in this Lease.

Section 13.16 No Third-Party Beneficiary.

No person or entity other than the County, the Tenant, and their permitted successors and assigns shall have any right of action under this Lease.

Section 13.17 Amendments.

The parties can amend this Lease only by means of a writing signed by both parties; provided, however, the parties may enter into Operating Memoranda or Implementation Agreements in furtherance of the intent of this Lease without formal amendment of this Lease for purposes, in the manner, and with the effect set forth in Section 13.18.

Section 13.18 Operating Memoranda; Implementation Agreements.

(a) The Parties acknowledge that the provisions of this Lease require a close degree of cooperation and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Lease. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance for those items covered in general terms under this Lease. If and when, from time to time during the Term of this Lease, the Parties find that refinements or adjustments are necessary or appropriate, then such refinements or adjustments shall be made through Operating Memoranda or Implementation Agreements approved by the Parties which, after execution shall be attached to this Lease as addenda and become a part hereof.

(b) Operating Memoranda or Implementation Agreements may be executed on the County's behalf by the Director of Housing and Community Development. In the event a particular subject requires notice or hearing, such notice or hearing shall be appropriately given. Any significant modification to the terms of performance under this Lease shall be processed as an amendment of this Lease in accordance with Section 13.17 and must be approved by the Board Supervisor.

Section 13.19 Representation and Warranties of Tenant.

The Tenant hereby represents and warrants to the County as follows:

(a) Organization. The Tenant is a duly organized, validly existing California limited partnership, and is in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Tenant. The Tenant has full power and authority to execute and deliver this Agreement, or to be executed and delivered, pursuant to this Lease, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Lease and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Lease have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Tenant, and all actions required under the Tenant's organizational documents and applicable governing law for the authorization, execution, delivery

and performance of this Lease and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Lease, have been duly taken.

(d) Valid Binding Agreements. This Lease and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Lease constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Tenant enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Lease or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Lease, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on the Tenant, or any provision of the organizational documents of the Tenant, or will conflict with or constitute a breach of or a default under any agreement to which the Tenant is a party, or will result in the creation or imposition of any lien upon any assets or property of the Tenant, other than liens established pursuant hereto.

(f) Compliance With Laws; Consents and Approvals. The construction of the Improvements, and any other construction work, will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) Pending Proceedings. The Tenant is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Tenant, threatened against or affecting the Tenant, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Tenant, materially affect the Tenant's ability to develop the Improvements.

(h) Title to Property. Upon the recordation of the Memorandum of Lease, the Tenant will have good and marketable leasehold title to the Property and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than the Approved Security Interests, those liens approved by the County, liens for current real property taxes and assessments not yet due and payable, and liens in favor of the County or approved in writing by the County.

(i) Financial Statements. The financial statements of the Tenant, and other financial data and information furnished by the Tenant to the County, fairly present the information contained therein. As of the date of this Lease, there has not been any adverse, material change in the financial condition of the Tenant from that shown by such financial statements and other data and information.

(j) Sufficient Funds. The Tenant holds sufficient funds or binding commitments for sufficient funds to complete the construction of the Improvements in accordance with this Agreement.

Section 13.20 Multiple Originals; Counterparts.

This Lease may be executed in counterparts and multiple originals, each of which shall be deemed to be an original.

Remainder of Page Left Intentionally Blank

WHEREFORE, the Parties have executed this Lease as of the Effective Date.

COUNTY:

THE COUNTY OF Monterey, a body corporate and politic and a subdivision of the State

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

_____, County Counsel

TENANT:

By: _____

Name: _____

Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B

SCOPE OF DEVELOPMENT AND FINAL CONSTRUCTION PLANS

EXHIBIT C

MEMORANDUM OF LEASE

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

County of Monterey

Attn: _____

No fee for recording pursuant to
Government Code Section 27383

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

MEMORANDUM OF GROUND LEASE AGREEMENT

THIS MEMORANDUM OF GROUND LEASE AGREEMENT (this "Memorandum") is made as of _____, 20__ (the "Effective Date") by and between the County of Monterey, a body corporate and politic and a subdivision of the State ("Landlord"), and _____ ("Tenant"), with respect to that certain Ground Lease Agreement dated _____, 20__ (the "Lease"), between Landlord and Tenant.

Pursuant to the Lease, Landlord hereby leases to Tenant, and Tenant leases from Landlord, that certain real property, more particularly described in Exhibit A, attached hereto and incorporated herein (the "Property"), for the term of the Lease. The Lease commenced on the Effective Date, and shall end on the earlier to occur of: (1) the ninety nine (99) year anniversary of the Effective Date, unless extended pursuant to Article 2 of the Lease; or (2) the date of any termination of the Lease in accordance with the provisions thereof.

This Memorandum shall incorporate herein all of the terms and provisions of the Lease as though fully set forth herein.

This Memorandum may be executed in multiple originals, each or which is deemed to be an original, and may be signed in counterparts.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend, or supplement the Lease of which this is a memorandum.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed as of the date first above written.

LANDLORD:

COUNTY OF MONTEREY, a body corporation and politic and a subdivision of State

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

_____, County Counsel

By: _____

TENANT:

By: _____

Name: _____

Its: _____

EXHIBIT D

INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS - CONSTRUCTION PERIOD

Insurance Requirements

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

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

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

any available insurance proceeds in excess of the specified minimum limits and coverage stated below, shall also be available to the County. The indemnity provisions shall apply to the full amount of damages and are not limited by the minimum limits stated below.

Tenant shall maintain limits no less than:

A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability, Independent Contractors Liability, Broad Form Property Damage, and Explosion, Collapse and Underground Damage (XCU): \$5,000,000 per occurrence for bodily injury and property damage. Products and Completed Operations with limits of not less than \$5,000,000 per occurrence to be maintained for three years following Acceptance of work by the County. The General Aggregate limit shall be \$5,000,000 and shall be a Project Specific Aggregate.

B. Comprehensive Automobile Liability covering all owned, non-owned and hired vehicles for bodily injury and property damage of not less than one million dollars (\$1,000,000) each accident.

C. Statutory Workers' Compensation, as required by State of California and Employer's Liability at one million dollars (\$1,000,000) each accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of the County.

D. Professional Errors and Omissions Liability: \$2,000,000 per claim with an aggregate limit of not less than \$2,000,000. Any self-retained limit shall not be greater than \$1,000,000 per occurrence/event without County Risk Management approval. This coverage shall be maintained for a minimum of three (3) years following termination or completion of Tenant's work pursuant to the Lease.

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

3. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by County Risk Management if excess of One Hundred and Fifty Thousand Dollars (\$150,000) per claim/occurrence. At the option of the County, either: the insurer shall reduce or eliminate the deductibles or self-insured

retentions as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers; or the Tenant shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4. Other Insurance Provisions The insurance policies are to contain, or be endorsed to contain, the following provisions:

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

B. Primary Insurance Endorsement: For any claims related to this project, the Tenant's insurance coverage, including any excess liability policies, shall be primary insurance at least as broad as ISO CG 2001 04 13 as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively. Any insurance or self-insurance maintained by the County, its officers, employees, or volunteers shall be excess of the Tenant's insurance and shall not contribute with it.

C. Notice of Cancellation: Notice of Cancellation shall be provided in accordance with policy provisions.

D. Severability of Interest Clause: Coverage applies separately to each insured, except with respect to the limits of liability, and that an act or omission by one of the named insureds shall not reduce or avoid coverage to the other named insureds.

E. Loss Payee Clause: Builder's Risk policy shall name County as loss payee as its interests may appear. Loss, if any, shall be adjustable with and payable to the County as trustee for all entities having an insurable interest, except in cases that may require payment of all or a proportion of the insurance to be made to a mortgagee as its interest may appear.

5. General Provisions.

A. Qualifying Insurers.

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

B. Evidence of Insurance.

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

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

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

D. No Limitation of Obligations.

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

E. No Recourse.

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

F. Review of Coverage.

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

G. Self-Insurance.

Tenant may, with the prior written consent of County Risk Management, fulfill some or all of the insurance requirements contained in the Lease under a plan of self-insurance.

Contractor shall only be permitted to utilize self-insurance if in the opinion of County Risk Management, Tenant's (i) net worth, and (ii) reserves for payment of claims of liability against Tenant, are sufficient to adequately compensate for the lack of other insurance coverage required by this Lease. Tenant's utilization of self-insurance shall not in any way limit liabilities assumed by Tenant under the Agreement.

H. Claims Made Coverage.

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

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

ii. Tenant shall make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Lease.

iii. If insurance is terminated for any reason, Tenant shall purchase an extended reporting provision of at least three years to report claims arising in connection with the Lease.

iv. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

I. Subcontractors' Insurance.

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

J. Waiver of Subrogation.

Tenant hereby agrees to waive rights of subrogation which any insurer (excluding pollution and professional policies) of Tenant may acquire from County by virtue of the payment of any loss. Tenant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of

subrogation in favor of the County for all work performed by the Contractor, its employees, agents and subcontractors.

INSURANCE REQUIREMENTS - OPERATIONS PERIOD

Insurance Requirements

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

1. MINIMUM SCOPE OF INSURANCE Coverage shall be at least as broad as:

- A. Commercial General Liability, Occurrence form, Insurance Services Office Form CG0001. Workers Compensation, as required by State of California and Employer's Liability Insurance.

- B. Property Insurance against all risk or special form perils (excluding earthquake or flood), including Replacement Cost coverage, without deduction for depreciation, for Tenant's merchandise, fixtures owned by Tenant, any items identified in this Lease as Improvements to the Premises constructed and owned by Tenant, and the personal property of Tenant, its agents and employees.

- C. Rental Income Replacement

2. MINIMUM LIMITS OF INSURANCE Tenant shall maintain limits no less than:

- A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability and Independent Contractors: One million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be two million dollars (\$2,000,000) and shall be a Per Location Aggregate. Fire Damage Limit (Any One Fire) three hundred thousand dollars (\$300,000) and Medical Expense Limit (Any One Person) five thousand dollars (\$5,000).

- B. Employers Liability: One million dollars (\$1,000,000) each accident for bodily injury or disease. Coverage shall include a waiver of subrogation endorsement in favor of County of Monterey.

- C. Property: Full replacement cost with no coinsurance penalty provision.

- D. Rental Income Replacement assuring County of receiving the minimum monthly rent from the time the Premises and Improvements are damaged or destroyed with a minimum period of coverage of one (1) year.

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

3. DEDUCTIBLES AND SELF-INSURED RETENTION'S

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

4. OTHER INSURANCE PROVISIONS

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

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

B. Primary Insurance Endorsement. For any claims related to this Lease, the Tenant's insurance coverage shall be primary insurance at least as broad as ISO CG 2001 04 13 as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively. Any insurance or self-insurance maintained by the County, the members of the Board of Supervisors of the County, its officers, officials, employees, or volunteers shall be excess of the Tenant's insurance and shall not contribute with it.

C. Notice of Cancellation. Notice of cancellation shall be in accordance with policy provisions.

5. QUALIFYING INSURERS

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

6. EVIDENCE OF INSURANCE

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

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

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

8. NO LIMITATIONS OF OBLIGATIONS

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

9. REVIEW OF COVERAGE

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

10. SELF-INSURANCE

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

11. SUBTENANT'S INSURANCE REQUIREMENTS IF COMMERCIAL SUBTENANT OR SUBTENANT

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

12. IF RESIDENTIAL SUBLESSEE OR SUB-SUBLESSEE

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

A. **Liability Insurance.** Tenant shall procure Personal Liability insurance including incidental Workers' Compensation coverage applying to the use and occupancy of the Premises and Improvements, or any part of the Premises and Improvements, or any areas adjacent to the Premises and Improvements, and in an amount not less than one hundred thousand dollars (\$100,000).

B. **All Risk Insurance.** A standard fire policy including all-risk or special form perils, providing Replacement Cost Coverage, without deduction for depreciation for (i) Tenant's personal property, (ii) fixtures owned by Tenant, and (iii) any items identified in this Lease as improvements to the Premises constructed and owned by Tenant. The deductible for the required fire insurance policy shall not exceed ten thousand dollars (\$10,000) per occurrence and shall be borne by Tenant.

13. WAIVER OF SUBROGATION

Tenant and County waive all rights to recover against each other or against any other tenant or occupant of the building, or against the officers, directors, shareholders, partners, employees, agents or invitees of each other or of any other occupant or tenant of the building, from any claims against either of them and from any damages to the fixtures, personal property, Tenant's improvements, and alterations of either County or Tenant in or on the Premises and Improvements, to the extent that the proceeds received from any insurance carried by either County or Tenant, other than proceeds from any program of self-insurance, covers any Claim or damage. Included in any policy or policies of insurance provided by Tenant (excluding professional and pollution if applicable) shall be a standard waiver of rights of subrogation against County by the insurance company issuing the policy or policies.



East Laurel Phase I - 4% LIHTC

Financing Summary		
Total Number of Units	78	
Density Ratio (Units per Acre)	16	5.00 acres
Total Residential Sq. Ft.	69,950 s.f.	
Total Building Sq. Ft.	79,115 s.f.	
Commercial Space	0 s.f.	
Childcare Space	0 s.f.	
Total Building Sq. Ft.	79,115 s.f.	
Total Parking	72	
Parking Ratio	0.92	
AFFORDABILITY MIX		
	Units	Net Rent
Extremely Low Income Units @ 30% AMI- 1 bed	4	\$672
Extremely Low Income Units @ 30% AMI- 2 bed	6	\$795
Extremely Low Income Units @ 30% AMI- 3 bed	6	\$907
Very Low Income Units @ 50% AMI- 1 bed	6	\$1,169
Very Low Income Units @ 50% AMI- 2 bed	17	\$1,391
Very Low Income Units @ 50% AMI- 3 bed	8	\$1,596
Low Income Units @ 60% AMI- 1 bed	9	\$1,417
Low Income Units @ 60% AMI- 2 bed	14	\$1,689
Low Income Units @ 60% AMI- 3 bed	7	\$1,940
Manager's Unit (2 BR)	1	
Total	78	
Project-based Vouchers	8	
1 @ 30% AMI	2	
2 @ 30% AMI	3	
3 @ 30% AMI	3	
Target Populations / Special Needs Set Asides	39	
Set Aside 1: Joe Serna	39	
UNIT MIX		
1BR/1BA	19	24%
2BR/1BA	37	47%
3BR/2BA	21	27%
Manager's Unit	1	1%
Total	78	100%
Total Residential SF	69,950	
Total Commercial SF	0	
DEVELOPMENT BUDGET		
	Total	Per Unit
Total Land & Improvements	\$ 70,000	\$ 897
Total Design & Consulting	\$ 1,643,546	\$ 21,071
Total Construction	\$ 51,052,470	\$ 654,519
Total Indirect Costs	\$ 9,000,872	\$ 115,396
Total Finance & Carry Costs	\$ 6,705,063	\$ 85,962
Total TCAC/Syndication	\$ 246,069	\$ 3,155
TOTAL DEVELOPMENT COSTS	\$68,718,019	\$881,000
PERMANENT SOURCES OF FINANCING		
	Total	Per Unit
City of Salinas - ARPA PreDev Loan	\$ 300,000	\$3,846
Local Funding - City of Salinas	\$ 4,000,000	\$51,282
CA HCD MHP/AHSC	\$ 11,772,368	\$150,928
CA HCD Joe Serna	\$ 13,113,736	\$168,125
LIHTC - LP Capital Contribution	\$ 30,547,266	\$391,632
GP Capital/Non-Priority Deferred Fee	\$ 3,000,000	\$38,462
Permanent Financing	\$ 1,705,290	\$21,863
Permanent Financing - leveraging PBVs	\$ 3,486,338	\$44,697
Deferred Developer Fee	\$ 793,020	\$10,167
Funding Gap (Surplus)	\$ 0	\$0
TOTAL SOURCES OF FUNDS	\$68,718,019	\$881,000
Tax Credit Equity Yield	\$0.91	
9% Tie Breaker Score	n/a	



East Laurel Phase 2 - 4% LIHTC

Financing Summary

Total Number of Units	54	
Density Ratio (Units per Acre)	11	5.00 acres
Total Residential Sq. Ft.	46,150 s.f.	
Total Building Sq. Ft.	54,125 s.f.	
Commercial Space	0 s.f.	
Childcare Space	0 s.f.	
Total Building Sq. Ft.	54,125 s.f.	
Total Parking	72	
Parking Ratio	1.33	

AFFORDABILITY MIX	Units	Net Rent
Extremely Low Income Units @ 30% AMI- 1 bed	6	\$672
Extremely Low Income Units @ 30% AMI- 2 bed	5	\$795
Extremely Low Income Units @ 30% AMI- 3 bed	2	\$907
Very Low Income Units @ 50% AMI- 1 bed	6	\$1,169
Very Low Income Units @ 50% AMI- 2 bed	8	\$1,391
Very Low Income Units @ 50% AMI- 3 bed	4	\$1,596
Low Income Units @ 60% AMI- 1 bed	8	\$1,417
Low Income Units @ 60% AMI- 2 bed	8	\$1,689
Low Income Units @ 60% AMI- 3 bed	6	\$1,940
Manager's Unit (2 BR)	1	
Total	54	
Project-based Vouchers	16	
1 @ 30% AMI	3	
1 @ 50% AMI	3	
2 @ 30% AMI	3	
2 @ 50% AMI	4	
3 @ 30% AMI	1	
3 @ 50% AMI	2	
Target Populations / Special Needs Set Asides	26	
Set Aside 1: Joe Serna	26	

UNIT MIX	Units	%
0BR/1BA	0	0%
1BR/1BA	20	37%
2BR/1BA	21	39%
3BR/2BA	12	22%
Manager's Unit	1	2%
Total	54	100%

Total Residential SF	46,150
Total Commercial SF	0

DEVELOPMENT BUDGET	Total	Per Unit
Total Land & Improvements	\$ 70,000	\$ 1,296
Total Design & Consulting	\$ 1,095,697	\$ 20,291
Total Construction	\$ 28,650,795	\$ 530,570
Total Indirect Costs	\$ 7,407,111	\$ 137,169
Total Finance & Carry Costs	\$ 4,636,877	\$ 85,868
Total TCAC/Syndication	\$ 215,925	\$ 3,999
TOTAL DEVELOPMENT COSTS	\$42,076,406	\$779,193

PERMANENT SOURCES OF FINANCING	Total	Per Unit
City of Salinas - ARPA PreDev Loan	\$ 200,000	\$3,704
Local Funding - City of Salinas	\$ 2,000,000	\$37,037
CA HCD Joe Serna	\$ 8,256,715	\$152,902
LIHTC - LP Capital Contribution	\$ 22,809,438	\$422,397
GP Capital/Non-Priority Deferred Fee	\$ 2,000,000	\$37,037
Permanent Financing	\$ 470,453	\$8,712
Permanent Financing - leveraging PBVs	\$ 5,339,799	\$98,885
Deferred Developer Fee	\$ 1,000,000	\$18,519

Funding Gap (Surplus) \$	(0)	(\$0)
TOTAL SOURCES OF FUNDS	\$42,076,406	\$779,193

Tax Credit Equity Yield	\$0.93
9% Tie Breaker Score	n/a

NO FEE DOCUMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Monterey County
County of Monterey
Housing and Community Development Department
1441 Schilling Place, 2nd Floor
Salinas, CA 93901
Attention: Craig Spencer, Director

No fee for recording pursuant to
Government Code Sections 27383 and 27388.1

REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
(855 East Laurel Drive Salinas, California, 93905)

This Regulatory Agreement and Declaration of Restrictive Covenants (the "**Agreement**") is dated _____, and is between the County of Monterey, a political subdivision of the State of California (the "**County**"), and _____, a _____ ("**Owner**").

RECITALS

A. Capitalized terms used but not defined in these recitals are as defined in Article 1 of this Agreement.

B. The County and Eden Housing, Inc. (the "Developer") have entered into a Lease Disposition and Development Agreement ("LDDA") dated as of March 11, 2025. Pursuant to the LDDA the County has ground leased pursuant to that certain Ground Lease by and between the County and the Owner of even date herewith as evidenced by a Memorandum of Ground Lease recorded of even date herewith ("**Ground Lease**") to the Owner that certain property located in the City of Salinas and more particularly described in Exhibit A attached hereto and incorporated herein (the "**Property**").

C. Owner intends to construct on the Property a _____ (_____) unit housing development, consisting of _____ (_____) units that will be affordable to extremely low-, very low-, low-income households, and including one (1) unrestricted manager's unit and associated site improvements (the "**Improvements**"). The Property and the Improvements are collectively referred to as the "**Development**."

D. The County has agreed to convey the leasehold interest in the Property to the Owner on the condition that the Development be maintained and operated in accordance with

restrictions concerning affordability, operation, and maintenance of the Development, as specified in this Agreement.

E. In consideration of conveyance of the leasehold interest in the Property for a below market rate rent, Owner has further agreed to observe all the terms and conditions set forth below.

F. In order to ensure that the entire Development will be used and operated in accordance with these conditions and restrictions, County and Owner wish to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, incorporated herein by this reference, and the covenants and promises contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the County and Owner hereby agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1 Definitions.

When used in this Agreement, the following terms have the following meanings:

(a) "Accessibility Requirements" has the meaning set forth in Section 2.1(e).

(b) "Actual Household Size" means the actual number of persons in the applicable household.

(c) "Adjusted Income" means with respect to the Tenant of each Affordable Unit, the income from all persons in the household including nonrelated individuals.

(d) "Affordable Units" means each of the _____ (____) Units, to be constructed on the Property, restricted by the County as a condition of conveyance of the leasehold interest in the Property.

(e) "Agreement" has the meaning set forth in the first paragraph.

(f) "Annual Operating Budget" has the meaning set forth in Section 4.6(a).

(g) "City" means the City of Salines, California.

(h) "Completion Date" means the date that a final Certificate of Occupancy, or equivalent document, is issued by the City to certify completion of the Development.

(i) "Construction Closing" means the date upon which all financing necessary for the construction of any new Improvements on the Property closes, and any deeds of trust related to such financing, are recorded against the Property.

(j) "Development" has the meaning set forth in Recital C.

(k) "Development Regulatory Documents" has the meaning set forth in Section 4.2(a).

(l) "Extremely Low-Income Household" means a household with an annual income with an annual income which does not exceed HUD's annual determination for low-income households with incomes of approximately thirty percent (30%) of the Median Income, adjusted for household size

(m) Extremely Low-Income Unit means a unit reserved for occupancy by Extremely Low-Income Households at an affordable rent.

(n) "HUD" means the United States Department of Housing and Urban Development.

(o) "Improvements" has the meaning set forth in Recital C.

(p) "Low-Income Household" means a household, including Extremely Low- and Very Low-Income Households, with an annual income which does not exceed HUD's annual determination for low-income households with incomes of approximately eighty percent (80%) of the Median Income, adjusted for household size.

(q) "Low-Income Unit" means a unit reserved for occupancy by Low-Income Households at an affordable rent.

(r) "Marketing Plan" has the meaning set forth in Section 4.3(a).

(s) "Median Income" means the median household income as determined periodically by HUD for the Salinas Metropolitan Statistical Area and updated on an annual basis. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the County shall provide Owner with other income determinations that are reasonably similar with respect to methods of calculation to those previously published by HUD.

(t) "Owner" has the meaning set forth in the first paragraph of this Agreement.

(u) "Permanent Closing" means the closing for the permanent loans for the Development.

(v) "Property" has the meaning set forth in Recital B.

(w) "Rent" means the total of monthly payments made by the Tenant of an Affordable Unit for the following (excluding any Rental Subsidy received): (1) use and occupancy of the Affordable Unit and land and associated facilities, including parking, bicycle parking, storage lockers, and use of all common areas; (2) any separately charged fees or service charges assessed by Owner that are customarily charged in rental housing and required of all Tenants, other than security deposits; (3) an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service, internet, or cable TV; and (4) any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Owner, and paid by the Tenant.

(x) "Rental Subsidy" means Project-Based Section 8 or any comparable federal, state, or local government rental assistance program rental subsidies.

(y) "Tenant" means a household legally occupying a Unit pursuant to a valid lease with Owner.

(z) "Tenant Selection Plan" has the meaning set forth in Section 4.4(a).

(aa) "Term" means the term of this Agreement which commences as of the date of this Agreement, and unless sooner terminated pursuant to the terms of this Agreement, ends ninety-nine (99) years after the Completion Date, provided, however, if a record of the Completion Date cannot be located or established, then ninety-nine (99) years after the date of this Agreement.

(bb) "Unit" means one or all of the _____ () units in the Development, including the one (1) unrestricted manager's unit.

(cc) "Very Low-Income Household" means a household with an annual income which does not exceed HUD's annual determination for very low-income households earning fifty percent (50%) of median income, adjusted for household size.

(dd) "Very Low-Income Unit" means a unit reserve for occupancy by very low-income households at an affordable rent.

ARTICLE 2 AFFORDABILITY AND OCCUPANCY COVENANTS

Section 2.1 Occupancy Requirements.

(a) Low-Income Units. During the Term, Owner shall cause _____ () of the Affordable Units to be rented to and occupied by, or, if vacant, available for occupancy by, Low-Income Households.

(b) Very Low-Income Units. During the Term, Owner shall cause _____ () of the Affordable Units to be rented to and occupied by, or, if vacant, available for occupancy by, Very Low-Income Households.

(c) Extremely Low-Income Units. During the Term, Owner shall cause _____ () of the Affordable Units to be rented to and occupied by, or, if vacant, available for occupancy by, Extremely Low-Income Households.

(d) Managers' Units. [One (1)] Unit is to be available for designation as the managers' units and is not income or rent restricted by the County.

(e) Intermingling of Units. Tenants in all Units shall have equal access to and enjoyment of all common facilities in the Development. The Affordable Units must be of the bedroom size set forth in the following chart:

	Extremely Low-Income Units	Very Low-Income Units	Low-Income Units	Total Affordable Units
1-Bd.				
2-Bd				
3-Bd.				

(f) Disabled Persons Occupancy.

(1) Owner shall cause the Development to be operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) the United States Fair Housing Act, as amended, (iv) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "**Accessibility Requirements**").

(2) Owner shall indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the County) the County, and its board members, officers, and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Owner's failure to comply with the Accessibility Requirements. This obligation to indemnify survives termination of this Agreement.

Section 2.2 Allowable Rent.

(a) Allowable Rent for Affordable Units.

(1) Extremely Low-Income Units. Subject to the provisions of Section 2.2 and Section 2.3 below, Rent paid by Tenants of the Extremely Low-Income Units may not

exceed one-twelfth (1/12th) of thirty percent (30%) of thirty percent (30%) of Median Income adjusted by household size based on the number of bedrooms in the unit.

(2) Very Low-Income Units. Subject to the provisions of Section 2.2 and Section 2.3 below, Rent paid by Tenants of the Very Low-Income Units may not exceed one-twelfth (1/12th) of thirty percent (30%) of fifty percent (50%) of Median Income adjusted by household size based on the number of bedrooms in the unit.

(3) Low-Income Units. Subject to the provisions of Section 2.2 and Section 2.3 below, Rent paid by Tenants of the Low-Income Units may not exceed one-twelfth (1/12th) of thirty percent (30%) of ____ percent (____%) of Median Income adjusted for household size based on the number of bedrooms in the unit.

(b) No Additional Fees. Owner shall not charge any fee, other than Rent, to any resident of the Affordable Units for any housing or other services provided by Owner.

Section 2.3 Rent Increases; Increased Income of Tenants.

(a) Rent Increases. Initial Rents and subsequent Rents for all Affordable Units are subject to written County approval. All Rent increases for all Affordable Units are also subject to written County approval. Notwithstanding the foregoing, County's review and approval of Rents and Rent increases shall be limited to determining that such Rents and Rent increases comply with the requirements of this Agreement and County policy. No later than sixty (60) days prior to the proposed implementation of any Rent increase affecting an Affordable Unit, Owner shall submit to the County a schedule of any proposed increase in the Rent charged for the Affordable Units. Rents may not be increased more often than once every twelve (12) months. Owner shall provide each Tenant with at least sixty (60) days written notice of any increase in Rent applicable to such Tenant, following completion of the County approval process set forth above.

(b) Increased Income.

(1) Increased Income of an Extremely Low-Income Household
Subject to Subsection (a), in the event that, upon recertification of the income of a Tenant of an Extremely Low-Income Unit, Owner determines that the income of the Tenant has increased to above the qualifying limit of an Extremely Low-Income Household, but does not exceed the qualifying limit for a Very Low-Income Household or Low-Income Household, upon expiration of Tenant's lease and upon sixty (60) days written notice, the Tenant may continue to reside in the Unit and the Rent may be increased to Rent affordable to a Very Low-Income Household or Low-Income Household. Owner shall then rent the next available Unit to an Extremely Low-Income Household, at a Rent not exceeding the maximum Rent specified in Section 2.2(a) or designate another Unit in the Development with an Extremely Low-Income Household as an Extremely Low-Income Unit to comply with the requirements of Section 2.1(a) above. Upon renting the next available Unit in accordance with Section 2.1 or redesignating another Unit in the Development with an Extremely Low-Income Household as an Extremely Low-Income Unit,

the Unit with the over-income Tenant will no longer be considered an Extremely Low-Income Unit.

(2) Increased Income of a Very Low-Income Household Subject to Subsection (a), in the event that, upon recertification of the income of a Tenant of a Very Low-Income Unit, Owner determines that the income of the Tenant has increased to above the qualifying limit of a Very Low-Income Household, but does not exceed the qualifying limit for a Low-Income Household, upon expiration of Tenant's lease and upon sixty (60) days written notice, the Tenant may continue to reside in the Unit and the Rent may be increased to Rent affordable to a Low-Income Household. Owner shall then rent the next available Unit to a Very Low-Income Household, at a Rent not exceeding the maximum Rent specified in Section 2.2(a) or designate another Unit in the Development with a Very Low-Income Household as a Very Low-Income Unit to comply with the requirements of Section 2.1(a) above. Upon renting the next available Unit in accordance with Section 2.1 or redesignating another Unit in the Development with a Very Low-Income Household as a Very Low-Income Unit, the Unit with the over-income Tenant will no longer be considered a Very Low-Income Unit.

(3) Increased Income of a Low-Income Household. Subject to Subsection (a), in the event that, upon recertification of the income of a Tenant of a Low-Income Unit, Owner determines that the income of the Tenant has increased to above the qualifying limit of a Low-Income Household, upon expiration of Tenant's lease and upon sixty (60) days written notice, the Tenant may continue to reside in the Unit and the Rent may be increased to the lesser of (1) one twelfth (1/12th) of thirty percent (30%) of Tenant's actual Adjusted Income, or (b) market rate rent. Owner shall then rent the next available Unit to a Low-Income Household, at a Rent not exceeding the maximum Rent specified in Section 2.2(a) or designate another Unit in the Development with a Low-Income Household as a Low-Income Unit to comply with the requirements of Section 2.1(a) above. Upon renting the next available Unit in accordance with Section 2.1 or redesignating another Unit in the Development with a Low-Income Household as a Low-Income Unit, the Unit with the over-income Tenant will no longer be considered a Low-Income Unit.

(c) Termination of Occupancy. Upon termination of occupancy of an Affordable Unit by a Tenant, such Unit shall be deemed to be continuously occupied by a household of the same income level as the initial income level of the vacating Tenant, until such Unit is reoccupied, at which time the income character of such Unit will be redetermined to meet the occupancy requirements of Section 2.1 above. Owner shall, to the extent possible, maintain the number of units at each income level required by this Agreement.

Section 2.4 County Monitoring Fee.

To the extent permitted by applicable federal, state and local law, in connection with the restrictions imposed by this Agreement, the County shall charge Owner and Owner shall pay a monitoring fee in the amount of [_____] Dollars (\$[___]) per Affordable Unit per year, commencing on May 1 of the year after the first full year of operation of the Development, and on May 1 of each calendar year thereafter through the end of the Term.

Section 2.5 Rent Increases on Foreclosure or Loss of Subsidy.

Notwithstanding Section 2.3, in the event that (i) an Approved Security Holder (as defined in the Ground Lease) forecloses on the Development (or receives a deed in lieu of foreclosure), or (ii) there is a loss or reduction of any Rental Subsidy, the Rents on one or more of the Affordable Units may be increased to 60% of Median Income to maintain the financial feasibility of the Development, subject to the following requirements:

(a) Any such Rent increase must be pursuant to a transition plan approved by the County in writing showing: (i) how the Rent increase will be phased-in; (ii) which Affordable Units will be subject to the increase; and (iii) the operating income and expenses for the Development comparing the current rent structure to the proposed rent structure;

(b) The number of Affordable Units subject to the Rent increase and the level of rent increase may not be greater than the amount required to ensure that the Development generates sufficient income to cover its operating costs and debt service, and as is necessary to maintain the financial stability of the Development; and

The Rent increase may occur only at the time of renewal of the term of the lease of an existing Tenant or the time of leasing an Affordable Unit to a new Tenant. Any subsequent Rent increases remain subject to Section 2.3 above.

Section 2.6 Rent Increase after 55th Year of Operation. Notwithstanding anything to the contrary contained herein, on the fifty-fifth (55th) year anniversary of Development operations, to the extent reasonably necessary to repay all then-outstanding debt on the Property, the Rent and income restrictions under this Agreement may be increased, but only to the extent reasonably necessary for the Owner to refinance and repay the full outstanding loan balances, and in any event, all Affordable Units must at all times remain Rent and income restricted to no higher than 80% Median Income.

ARTICLE 3
INCOME CERTIFICATION; REPORTING; RECORDS

Section 3.1 Income Certification.

(a) Owner shall obtain, complete, and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Tenant renting any of the Affordable Units. Owner shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking two (2) or more of the following steps as a part of the verification process: (i) obtain a pay stub for the most recent two (2) months of pay period; (ii) obtain an income tax return for the most recent tax year; (iii) conduct a credit agency or similar search; (iv) obtain an income verification form from the applicant's current employer verifying employment for the last two (2) months; (v) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such

agencies; or (vi) if the applicant is unemployed and has no such tax return, obtain another form of independent verification.

(b) Owner shall also complete and/or have the Tenants of the Affordable Units complete and sign the "**Income Computation and Certification**" and the "**Owner's Certification of Household Income**" both of which are attached hereto as Exhibit B, or any other form approved by the County, and/or any other forms related to Tenants' income provided to Owner by the County or that provide income information that is sufficient to determine an applicant's income as required by this Section. Copies of Tenant income certifications shall be made available to the County upon request.

Section 3.2 Reporting Requirements.

Owner shall submit to the County annual reports in a form approved by the County, no later than one hundred twenty (120) days after the end of Owner's fiscal year. The reports shall contain such information as the County may require, including, but not limited to, the following:

(a) A statement of the fiscal condition of the Development, including a financial statement indicating surpluses or deficits in operating accounts for the period covered, a detailed itemized listing of income and expenses, and the amounts of any Development reserves. The report due after the end of each fiscal year shall contain an audited version of this statement. Such audit shall be prepared in accordance with the requirements of the County and certified at the Development's expense by an independent Certified Public Accountant licensed by the State of California. Owner shall also follow audit requirements of the Single Audit Act and 2 C.F.R. Part 200.

(b) The substantial physical defects in the Development, if any, including a description of any major repair or maintenance work undertaken in the reporting period.

(c) The occupancy of the Development indicating:

(1) A listing of current Tenants' names, income levels, Rent charged and paid, move-in dates, and the race and ethnic groups of Tenants;

(2) The number of applicants denied/accepted for tenancy with a household member with criminal convictions, along with the basis of denials; and

(3) General management performance, including Tenant relations and other relevant information.

Upon request of the County, Owner shall furnish, within fifteen (15) days, copies of all Tenant agreements for the Affordable Units. Within fifteen (15) days after receipt of a written request from the County, Owner shall also submit any other information or completed forms requested by the County (provided, however, that Owner shall in no event be obligated to provide any information that it cannot legally obtain as a housing provider).

(d) Other Reporting Requirements should the Development be subject to annual monitoring and reporting requirements delegated to the County by other funding sources, e.g. the HOME Investment Partnership Act, and those annual monitoring and reporting requirements will supersede the requirements listed above.

Section 3.3 Additional Information.

Owner shall provide any additional information reasonably requested by the County. The County shall have the right to examine and make copies of all books, records or other documents of Owner which pertain to the Development.

Section 3.4 Tenant Records.

Owner shall maintain complete, accurate and current records pertaining to the income and household size of Tenants. All Tenant lists, applications and waiting lists relating to the Development shall at all times be kept separate and identifiable from any other business of Owner and shall be maintained as required by the County, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the County. Owner shall retain copies of all materials obtained or produced with respect to occupancy of the Affordable Units for a period of at least five (5) years. The County may examine and make copies of all books, records or other documents of Owner that pertain to the Tenants.

Section 3.5 Development Records.

(a) Owner shall keep and maintain at the principal place of business of Owner set forth in Section 6.11 below, or elsewhere with the County's written consent, full, complete and appropriate books, records and accounts relating to the Development. Owner shall cause all books, records and accounts relating to its compliance with the terms, provisions, covenants and conditions of the Ground Lease and this Agreement to be kept and maintained in accordance with generally accepted accounting principles consistently applied, and to be consistent with requirements of this Agreement. Owner shall cause all books, records, and accounts to be open to and available for inspection and copying by the County, its auditors or other authorized representatives at reasonable intervals during normal business hours. Owner shall cause copies of all tax returns and other reports that Owner may be required to furnish to any government agency to be open for inspection by the County at all reasonable times at the place that the books, records and accounts of Owner are kept. Owner shall preserve such records for a period of not less than five (5) years after their creation in compliance with all County records and accounting requirements. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the Property is pending at the end of the record retention period stated herein, then Owner shall retain the records until such action and all related issues are resolved. Such records are to include but are not limited to:

(1) Records demonstrating compliance with the affordability and income requirements for Tenants; and

(2) Records documenting compliance with the fair housing, equal opportunity, and affirmative fair marketing requirements.

The County shall notify Owner of any records it deems insufficient. Owner shall have fifteen (15) days after the receipt of such a notice to correct any deficiency in the records specified by the County in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Owner shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

Section 3.6 On-site Inspection.

The County shall have the right to perform an on-site inspection of the Development when deemed necessary by the County, in any event at least one (1) time per year upon reasonable notice to Owner. Owner agrees to cooperate in such inspection.

ARTICLE 4
OPERATION OF THE DEVELOPMENT

Section 4.1 Residential Use.

The Development shall be operated only for residential use. No part of the Development shall be operated as transient housing. Owner shall provide to Tenants and post in a public location at the Development a "Tenants Rights and Responsibilities" document in the form approved by the County.

Section 4.2 Compliance with Regulatory Requirements.

(a) Owner's actions with respect to the Property shall at all times be in full conformity with any other regulatory requirements imposed on the Development including but not limited to regulatory agreements associated with the Low-Income Housing Tax Credits provided by the California Tax Credit Allocation Committee, regulatory agreement associated with other financing, and any Rental Subsidy provided to the Development (the "**Development Regulatory Documents**").

(b) Owner shall promptly notify the County in writing of the existence of any default under any Development Regulatory Documents and provide the County copies of any such notice of default.

Section 4.3 Marketing Plan.

(a) No later than six (6) months prior to the projected date of the completion of the Development, Owner shall submit to the County for approval its plan for marketing the Development (the "**Marketing Plan**"), to ensure that target populations, countywide and local residents and workforce populations will be aware of the housing opportunities in the Development. Specifically, the Marketing Plan must

include information on Owner's plan to: (i) affirmatively market the Development to income-eligible households, and (ii) comply with fair housing laws.

(b) Upon receipt of the Marketing Plan, the County shall promptly review the Marketing Plan and shall approve or disapprove it within fifteen (15) days after submission, provided that such approval shall not be unreasonably withheld. If the Marketing Plan is not approved, the County shall set forth in writing and notify Owner of the County's reasons for withholding such approval. Owner shall submit a revised Marketing Plan within fifteen (15) days thereafter, and the County shall approve or disapprove it within fifteen (15) days after submission, provided that such approval shall not be unreasonably denied. If the County does not approve the revised Marketing Plan, Owner shall be in default hereunder.

(c) Owner shall comply with the approved Marketing Plan during the Term and may not make material modifications to the Marketing Plan without the prior written approval of the County, which approval shall not be unreasonably withheld.

Section 4.4 Tenant Selection Plan.

(a) No later than six (6) months prior to the projected date of the completion of the Development, Owner shall submit to the County for approval its policies and criteria for selecting tenants for the Development to ensure that the leasing of the Development will be conducted in a manner that provides fair and equal access under the law (the "**Tenant Selection Plan**"). The Tenant Selection Plan may be part of the Marketing Plan. The Tenant Selection Plan must include information on Owner's plan to: (i) limit occupancy to income-eligible households, (ii) give notice to applicants of rejection and grounds for rejection, (iii) manage applicants on a wait list for occupancy in the Development, and (iv) comply with fair housing laws.

(b) Owner shall comply with any local, County and State fair chance laws, regulations, ordinances or requirements relating to prospective and existing Tenants.

(c) To the extent permitted by applicable state and federal laws and the other Development funding sources, and provided that the applicants meet standard applicant screening standards for the Development, Owner shall give a priority in the rental of Affordable Units to eligible households in which at least one member lives or works in the County.

(d) Upon receipt of the Tenant Selection Plan, the County shall promptly review the Tenant Selection Plan and shall approve or disapprove it within fifteen (15) days after submission, provided that such approval shall not be unreasonably withheld. If the Tenant Selection Plan is not approved, the County shall set forth in writing and notify Owner of the County's reasons for withholding such approval. Owner shall submit a revised Tenant Selection Plan within fifteen (15) days thereafter, and the County shall approve or disapprove it within fifteen (15) days after submission, provided that such approval shall not be unreasonably denied. If the County does not approve the revised Tenant Selection Plan, Owner shall be in default hereunder.

(e) Owner shall comply with the approved Tenant Selection Plan during the Term and may not make material modifications to the Tenant Selection Plan without the prior written approval of the County, which approval shall not be unreasonably withheld.

Section 4.5 Lease Provisions.

(a) No later than four (4) months prior to the date construction of the Development is projected to be complete, Owner shall submit to the County Owner's proposed form of lease agreement for the County's review and approval. When leasing Units within the Development, Owner shall use the form of lease approved by the County. The form of lease must comply with all requirements of this Agreement and must, among other matters:

(1) Provide for termination of the lease and consent by the Tenant to immediate eviction for failure: (i) to provide any information required under this Agreement or reasonably requested by Owner to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Development in accordance with the standards set forth in this Agreement, or (ii) to qualify as an Extremely Low-, Very Low- or Low-Income Household, as applicable, as a result of any material misrepresentation made by such Tenant with respect to the income computation.

(2) Be for an initial term of not less than one (1) year, unless by mutual agreement between the Tenant and Owner, and provide for no increase of Rent during such year. After the initial year of tenancy, the lease may be month-to-month by mutual agreement of Owner and the Tenant. Notwithstanding the above, any Rent increases shall be subject to the requirements of Section 2.3.

(3) Include a provision which shall require a Tenant who is residing in a Unit made accessible pursuant to Section 2.1(e)(2) above and who is not in need of an accessible Unit to move to a non-accessible Unit when a non-accessible Unit becomes available, and another Tenant or prospective Tenant is in need of an accessible Unit.

(b) Any termination of a lease or refusal to renew a lease for an Affordable Unit within the Development must be preceded by not less than sixty (60) days written notice to the Tenant by Owner specifying the grounds for the action.

Section 4.6 Annual Operating Budget; Operating Deficiencies.

(a) Owner, at least sixty (60) days prior to the end of each of Owner's fiscal years, shall furnish the County a budget for the operation of the Development (the "**Annual Operating Budget**"). The County may request additional information to assist the County in evaluating the financial viability of the Development. Upon receipt by the County of the proposed Annual Operating Budget, the County shall promptly review the same and approve or disapprove it within fifteen (15) days, provided that such approval shall not be unreasonably withheld. In the event the County does not respond within such time period, the Annual Operating Budget shall be deemed approved. If the Annual Operating Budget is not approved by the County, the County shall set forth in

writing and notify Owner of the County's reasons for withholding such approval. Owner shall thereafter submit a revised Annual Operating Budget for County approval within thirty (30) days, which approval shall be granted or denied within fifteen (15) days in accordance with the procedures set forth above.

(b) Owner shall promptly notify the County upon Owner's discovery that Owner's rental income and other Development subsidies are insufficient to pay for any or all operating expenses incurred by Owner in connection with the operations of the Development.

ARTICLE 5 PROPERTY MANAGEMENT AND MAINTENANCE

Section 5.1 Management Responsibilities.

Owner is responsible for all management functions with respect to the Development, including, without limitation, the selection of Tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The County shall have no responsibility over management of the Development. Owner shall retain a professional property management company approved by the County in its reasonable discretion to perform Owner's management duties hereunder. An on-site property management representative is required to reside at the Property.

Section 5.2 Management Agent.

Owner shall cause the Development to be managed by an experienced management agent reasonably acceptable to the County, with demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing (as approved, the "**Management Agent**"). The County approves Eden Housing Management, Inc. as the initial Management Agent. Owner shall submit for the County's approval the identity of any proposed Management Agent. Owner shall also submit such additional information about the background, experience and financial condition of any proposed management agent as is reasonably necessary for the County to determine whether the proposed management agent meets the standard for a qualified management agent set forth above. If the proposed management agent meets the standard for a qualified management agent set forth above, the County shall approve the proposed management agent by notifying Owner in writing. Unless the proposed management agent is disapproved by the County within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved.

Section 5.3 Periodic Performance Review.

The County reserves the right to conduct an annual (or more frequently, if deemed necessary by the County) review of the management practices and financial status of the Development. The purpose of each periodic review will be to enable the County to determine if

the Development is being operated and managed in accordance with the requirements and standards of this Agreement. Owner shall cooperate with the County in such reviews.

Section 5.4 Replacement of Management Agent.

(a) If, as a result of a periodic review, the County determines in its reasonable judgment that the Development is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, the County shall deliver written notice to Owner of its intention to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days after receipt by Owner of such written notice, County staff and Owner shall meet in good faith to consider methods for improving the financial and operating status of the Development, including, without limitation, replacement of the Management Agent.

(b) If, after such meeting, County staff recommends in writing the replacement of the Management Agent, Owner shall promptly dismiss the current Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a management agent set forth in Section 5.2 above and approved by the County pursuant to Section 5.2 above.

(c) Any contract for the operation or management of the Development entered into by Owner shall provide that the Management Agent may be dismissed and the contract terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute a default under this Agreement, and the County may enforce this provision through legal proceedings as specified in Section 6.5 below.

Section 5.5 Property Maintenance.

(a) County Standards. The County places prime importance on quality maintenance to protect its investment and to ensure that all County-assisted housing projects within the County are not allowed to deteriorate due to below-average maintenance. Normal wear and tear of the Development will be acceptable to the County assuming Owner agrees to provide all necessary improvements to assure the Development is maintained in good condition. Owner shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

(b) Maintenance Requirements. For the entire Term of this Agreement Owner shall maintain all interior and exterior improvements, including landscaping, on the Property in decent, safe and sanitary condition, and good condition and repair (and, as to landscaping, in a healthy condition), in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. Owner shall cause the Development to be free of all health and safety defects. Owner shall correct any life-threatening maintenance deficiencies, immediately upon notification.

(c) Violation of Maintenance Requirements. In the event that Owner breaches any of the covenants contained in this Section and Owner does not commence to cure such breach within (i) a period of five (5) business days after written notice from County (and diligently prosecute such cure to completion within ten (10) business days following such notice) with respect to graffiti, debris, waste material, landscaping and general maintenance or (ii) a period of ten (10) business days after written notice from the County (and diligently prosecute such cure to completion within sixty (60) days following such notice) with respect to building improvements, then the County, in addition to whatever other remedy it may have at law or in equity or pursuant to the Ground Lease, shall have the right to enter upon the Development and Owner's interest in the Property and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, the County shall be permitted (but is not required) to enter upon the Development and Owner's interest in the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Development and Owner's interest in the Property, and to attach a lien on the Development and Owner's interest in the Property, or to assess on the Development and Owner's interest in the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the County and/or costs of such cure, which amount shall be promptly paid by Owner to the County upon demand.

Section 5.6 Inspections.

(a) The County shall have the right, but not the obligation, to perform an on-site inspection of the Development when deemed necessary by the County, upon reasonable notice to Owner to ensure compliance with the requirements of this Agreement. Owner agrees to cooperate in such inspection.

(b) After the completion of an inspection, the County shall deliver a copy of the inspection report to Owner. If the County determines as a result of such inspection that there are any life-threatening health and safety related deficiencies, Owner has the obligation to correct such deficiencies immediately. If the County determines as a result of the inspection that there are any deficiencies for any of the inspectable items in the Development, Owner shall correct such deficiencies within fifteen (15) days from the delivery of the inspection report or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Owner must begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible. In addition, Owner acknowledges that the County may reinspect the Development to verify all deficiencies have been corrected or rely on third party documentation submitted by Owner for non-hazardous deficiencies.

Section 5.7 Asset Management.

Owner is responsible for all asset management functions with respect to the Development, including, without limitation, the oversight of the Management Agent, maintaining accurate and current books and records for the Development, and promptly paying costs incurred in connection with the Development. The County shall have no responsibility over asset management of the Development.

ARTICLE 6
MISCELLANEOUS

Section 6.1 Nondiscrimination.

(a) Owner covenants by and for Owner, its assigns, and all persons claiming under or through Owner, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, familial status, source of income, ancestry or national origin, Vietnam era veteran's status, political affiliation, HIV/AIDS, or any other arbitrary basis, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor shall Owner or any person claiming under or through Owner, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the construction, operation and management of any Unit. Notwithstanding the above, with respect to familial status, the above should not be construed to apply to housing for older persons as defined in Section 12955.9 of the Government Code and other applicable sections of the Civil Code as identified in Health and Safety Code Section 33050(b).

(b) Nothing in this Section prohibits Owner from requiring Affordable Units in the Development to be available to and occupied by eligible households in accordance with this Agreement.

(c) Owner shall accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under (i) Section 8 of the United States Housing Act, or its successor, and (ii) other federal, state or local tenant-based assistance. Owner shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective Tenants, nor shall Owner apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of units by such prospective Tenants.

Section 6.2 Application of Provisions.

The provisions of this Agreement shall apply to the Development and Owner's interest in the Property for the entire Term. This Agreement binds any successor, heir or assign of Owner, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the County. The County enters into the Ground Lease on the condition, and in consideration of, this provision, and would not do so otherwise.

Section 6.3 Notice of Expiration of Term.

(a) At least six (6) months prior to the expiration of the Term, Owner shall provide by first-class mail, postage prepaid, a notice to all Tenants containing (i) the anticipated date of the expiration of the Term, (ii) any anticipated increase in Rent

upon the expiration of the Term, (iii) a statement that a copy of such notice will be sent to the County, and (iv) a statement that a public hearing may be held by the County on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. Owner shall also file a copy of the above-described notice with the County.

(b) In addition to the notice required above, Owner shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11. Such notice requirements include: (i) a three (3) year notice to existing tenants, prospective tenants and Affected Public Agencies (as defined in California Government Code Section 65863.10(a)) prior to the expiration of the Term, (ii) a twelve (12) month notice to existing tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term; (iii) a six (6) month notice requirement to existing tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term; (iv) a notice of an offer to purchase the Development to "qualified entities" (as defined in California Government Code Section 65863.11(d)), if the Development is to be sold within five (5) years of the end of the Term; (iv) a notice of right of first refusal within the one hundred eighty (180) day period that qualified entities may purchase the Development.

Section 6.4 Covenants to Run With the Land.

The County and Owner hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land and shall bind all successors in title to the Development; provided, however, that on the expiration of the Term, said covenants and restrictions expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Development or Owner's interest in the Property or any portion thereof, is to be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the County expressly releases such conveyed portion of the Development or Owner's interest in the Property from the requirements of this Agreement.

Section 6.5 Enforcement by the County.

If Owner fails to perform any obligation under this Agreement, and fails to cure the default within thirty (30) days after the County has notified Owner in writing of the default or, if the default cannot be cured within thirty (30) days, failed to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within sixty (60) days, the County shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

(a) Action to Compel Performance or for Damages. The County may bring an action at law or in equity to compel Owner's performance of its obligations under this Agreement, and/or for damages.

(b) Remedies Provided Under Ground Lease. The County may exercise any other remedy provided under the Ground Lease.

Section 6.6 Attorneys' Fees and Costs.

In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including reasonable attorneys' fees. This Section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

Section 6.7 Indemnification.

Owner agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the County) the County, its Board of Supervisors, officers, employees, agents, volunteers, successors, and assigns against any and all suits, actions, claims, causes of action, whether actual or alleged, costs, demands, judgments and liens arising out of or in connection with directly or indirectly, in whole or in part, the: (a) Owner's performance or non-performance under this Agreement; (b) acts or omissions of Owner or any of Owner's contractors, subcontractors, or persons claiming under any of the aforesaid; (c) Owner's ownership, construction, use and operation of the Development (including, but not limited to, any claim made against the County in connection with the approval of this Agreement, the use or operation of the Improvements, any claims related to fair housing laws or accessibility laws, or any other claim made by a Tenant, or a former or prospective Tenant); or (d) Owner's breach of this Agreement: provided, however that this indemnity shall not extend to any claim arising solely from the gross negligence or willful misconduct of the County, or its Board of Supervisors, employees, agents, volunteers, successors, and assigns. The provisions of this Section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 6.8 Recording and Filing.

The County and Owner shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Monterey.

Section 6.9 Governing Law.

This Agreement is governed by the laws of the State of California.

Section 6.10 Waiver of Requirements.

Any of the requirements of this Agreement may be expressly waived by the County in writing, but no waiver by the County of any requirement of this Agreement shall, or shall be deemed to, extend to or affect any other provision of this Agreement.

Section 6.11 Amendments.

This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the Official Records of the County of Monterey. Any legal fees incurred due to any amendment of this Agreement shall be paid for by Owner.

Section 6.12 Notices.

Formal notices, demands, and communications between the Parties shall be sufficiently given if, and shall not be deemed given unless, dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

County:

County of Monterey
Housing and Community Development Department
1441 Schilling Place, 2nd Floor
Salinas, CA 93901
Attention: Craig Spencer, Director

With copy to:

Owner:

With copy to:

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 6.13 Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 6.14 Multiple Originals; Counterparts.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 6.15 Term.

The provisions of this Agreement shall apply to the Property for the entire Term. This Agreement shall bind any successor, heir or assign of Owner, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the

County. The County enters into the Ground Lease on the condition, and in consideration of, this provision, and would not do so otherwise.

[Signatures on following page]

WHEREAS, this Agreement has been entered into by the undersigned as of the date first written above.

COUNTY:

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

By: _____

OWNER:

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, _____, 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.

Notary Public

Name: _____

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, _____, 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.

Notary Public

Name: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

TITLE

I, the Undersigned, certify that I have read and answered fully, and truthfully each of the following questions for all persons in the household who are to occupy a room in this house for which application is made.

<u>Occupant's Name</u>	<u>Social Security #</u>	<u>Age</u>	<u>Place of Employment</u>	<u>Annual Income</u>
1.				
2.				
3.				
4.				
5.				
6.				
7.				
			TOTAL:	

The total anticipated annual household income* for the twelve (12) month period beginning this date (the sum of the final column): \$ _____.

Signed: _____ Date: _____
Head of Household

* The anticipated annual Income as determined by Attachment A.

Owner's Certification of Household Income

Household Name _____

I certify, as Owner/Management Agent for _____ that I have verified this Household's Income by using the following:

- 1. Tax returns _____
- 2. Place of employment verification _____
- 3. Pay stubs _____
- 4. Notarized statement from lessee _____
- 5. Other (please describe) _____

Owner/Management Agent

Date

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