AGENDA
REGULAR MEETING OF THE
CITY COUNCIL
AND
SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY
CITY OF IMPERIAL
200 WEST 9TH STREET
IMPERIAL, CA 92251-1637
AUGUST 1, 2018
6:30 PM CLOSED SESSION
7:00 PM OPEN SESSION

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN THIS MEETING, PLEASE CONTACT THE BUILDING & SAFETY DIRECTOR, (760) 355-1152. NOTIFICATION 48 HOURS PRIOR TO THE MEETING WILL ENABLE THE CITY TO MAKE REASONABLE ARRANGEMENTS TO ENSURE ACCESSIBILITY TO THIS MEETING [28CFR 35.102-35.104 ADA TITLE II]

A. CITY COUNCIL CONVENES TO CLOSED SESSION AT 6:30 PM

A-1 SUBJECT: PUBLIC EMPLOYEE PERFORMANCE EVALUATION (GC 54954.5(e))

Title: City Manager

B. CITY COUNCIL CONVENES TO OPEN SESSION AT 7:00 PM

ROLL CALL
PLEDGE OF ALLEGIANCE
ADJUSTMENTS TO THIS AGENDA
ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

C. PUBLIC APPEARANCES:

C-1. Matters not appearing on the agenda. If you wish to address the COUNCIL concerning any item within the COUNCIL'S jurisdiction, please raise your hand and be acknowledged by the MAYOR, and at that time state your name and address for the record. The MAYOR reserves the right to place a time limit on each person's presentation of three (3) minutes. It is requested that longer presentations be submitted to the Council in writing.

C-2. Matters appearing on the agenda. If you wish to address the COUNCIL concerning any item appearing on the agenda, please raise your hand and be acknowledged by the MAYOR, and at that time state your name and address for the record. The MAYOR reserves the right to place a time limit on each person's presentation of three (3) minutes.

D. CONSENT AGENDA:

All items appearing under "Consent Agenda" will be acted upon by the City Council by one motion without discussion. Should any Council member or other person request that any item be considered separately, that item will then be taken up at the time as determined by the **MAYOR.**

D-1. Approval of claims/warrants report.
D-2 Approval to waive reading in full and adopt Ordinance No. 800, An Ordinance of the City of Imperial,

Amending the Imperial City Code to Change the Zoning Designation From C-1 Neighborhood Commercial to R-A Residential Apartments for the Following APNs: 064-434-005, 064-434-006, and 064-434-016.

D-3. Approval to waive reading in full and adopt Ordinance No. 801, An Ordinance of the City of Imperial, Amending the Imperial City Code to Change the Zoning Designation From R-1 Residential Single Family to R-a Residential Apartments for APN: 064-103-012.

D-4. Approval to waive reading in full and adopt Ordinance No. 802, An Ordinance of the City of Imperial, Adding Article VII to Chapter 10 of the City of Imperial Municipal Code Relating to the Prohibition of Scavenging.

D-5. Approval of minutes for Regular meetings: May 16, 2018; June 6, 2018; and June 20, 2018 and Special meeting: May 16, 2018 and Work session: May 16, 2018.

E. ACTION ITEMS: (DISCUSSION/ACTION – APPROVE-DISAPPROVE)

E-1 SUBJECT: DISCUSSION/ACTION: SUPPORTING THE RESTORATION OF THE SALTON SEA.

1. APPROVAL OF RESOLUTION NO. 2018-52, TO SUPPORT THE MEMORANDUM OF UNDERSTANDING BETWEEN COUNTY OF IMPERIAL AND RIVERSIDE COUNTY BOARD OF SUPERVISORS TO RESTORE THE SALTON SEA

E-2. SUBJECT: DISCUSSION/ACTION: ENGINEERING DESIGN AND CONSTRUCTION MANAGEMENT SERVICES FOR VARIOUS WATER AND WASTEWATER PROJECTS.

1. APPROVE PROPOSAL FROM ALBERT A. WEBB ASSOCIATES IN THE AMOUNT OF $326,840.00
   *Marshall Road Sewer Replacement
   *13th Street Sewer Slip Line
   *Barioni Blvd. Waterline Hwy 86 Crossing
   *Brick Manhole Repair/Replacement Standard
   *Filter Waste Modifications at the Water Treatment Plant

E-3. SUBJECT: DISCUSSION/ACTION: ENDING PARTICIPATION IN CALPERS HEALTH INSURANCE FOR CERTAIN CITY EMPLOYEES AND ELECTED OFFICIALS.

1. APPROVAL OF RESOLUTION NO. 2018-53, A RESOLUTION ELECTING CEASE TO BE SUBJECT TO THE PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT WITH RESPECT TO A RECOGNIZED EMPLOYEE ORGANIZATION (MANAGEMENT)
2. APPROVAL OF RESOLUTION NO. 2018-54, A RESOLUTION ELECTING CEASE TO BE SUBJECT TO THE PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT WITH RESPECT TO A RECOGNIZED EMPLOYEE ORGANIZATION (SUPERVISORS (NON-SWORN))
3. APPROVAL OF RESOLUTION NO. 2018-55, A RESOLUTION ELECTING CEASE TO BE SUBJECT TO THE PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT WITH RESPECT TO A RECOGNIZED EMPLOYEE ORGANIZATION (CONFIDENTIAL)
4. APPROVAL OF RESOLUTION NO. 2018-56, A RESOLUTION ELECTING CEASE TO BE SUBJECT TO THE PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT WITH RESPECT TO A RECOGNIZED EMPLOYEE ORGANIZATION (ELECTED OFFICIALS-NON-PERS)

E-4. SUBJECT: DISCUSSION/ACTION: CITY MANAGER CONTRACT

1. APPROVAL OF THIRD (3RD) AMENDMENT TO THE CITY MANAGER'S CONTRACT BETWEEN THE CITY OF IMPERIAL AND STEFAN T. CHATWIN

E-5. SUBJECT: DISCUSSION/ACTION: ELECTIONS WORK GROUP FORMATION

1. APPOINTMENT OF CITY REPRESENTATIVE TO THE COUNTY OF IMPERIAL AD-HOC COMMITTEE TO ADDRESS THE ISSUE OF IMPROVING PUBLIC AWARENESS OF THE ELECTION PROCESS.

E-6. SUBJECT: DISCUSSION/ACTION: DECLARE OFFICE DESKS AND CHAIRS AS SURPLUS AND AUTHORIZE DISPOSAL.

1. DECLARE OFFICE DESKS AND CHAIRS AS SURPLUS AND AUTHORIZE SALE OR SALVAGE OF ITEMS.

E-7. SUBJECT: DISCUSSION/ACTION: PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SERVICES FOR ROADWAY IMPROVEMENTS AT THE INTERSECTION OF CROSS ROAD AND ATEN ROAD.

1. APPROVE PROFESSIONAL SERVICES AGREEMENT BETWEEN CITY OF IMPERIAL AND VEXER ENGINEERING IN AN AMOUNT NOT TO EXCEED $19,825.00

F. SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY (DISCUSSION-ACTION-APPROVE-DISAPPROVE)

F-1. SUBJECT: DISCUSSION/ACTION: DEVELOPMENT & DISPOSITION AGREEMENT (DDA) BETWEEN CITY OF IMPERIAL AND EAH, INC.

1. REVIEW AND APPROVE UPDATED DEVELOPMENT & DISPOSITION AGREEMENT BETWEEN CITY OF IMPERIAL AND EAH, INC FOR IMPERIAL SENIOR APARTMENT PROJECT.

G. REPORTS:

G-1. SUBJECT: MAYOR AND COUNCIL MEMBER REPORTS.

G-2. SUBJECT: DEPARTMENT HEAD AND STAFF REPORTS

G-3. SUBJECT: CITY MANAGER REPORT.

ADJOURN CITY COUNCIL MEETING UNTIL THE NEXT REGULARLY SCHEDULED MEETING, WEDNESDAY, AUGUST 15, 2018 AT 7:00 P.M.

NOTE: Any documents produced by the City and distributed to a majority of the City Council/Agency Board regarding any item on this agenda will be made available at the front counter at City Hall, located at 420 S. Imperial Avenue, during normal business hours.

Check Register Report

Date: 07/27/2018
Time: 11:10am
Page: 1

CITY OF IMPERIAL BANK: UNION BANK

Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
UNION BANK Checks							
82674	07/12/2018	Printed		6281	AIDA BARRAGAN		11.99
82675	07/12/2018	Printed		6268	ALICIA FLORES		45.41
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82677	07/12/2018	Printed		195	ALLIED WASTE		93,860.40
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82679	07/12/2018	Printed		6287	ARCHIVE SOCIAL		2,388.00
82680	07/12/2018	Printed		1851	AT&T LONG DISTANCE		224.75
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82682	07/12/2018	Printed		6280	BRIAN & RACHEL CRULL		13.97
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82687	07/12/2018	Printed		2316	CLARK BAKER		154.53
82688	07/12/2018	Printed		6276	CLAUDIA CASTRO		67.46
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82690	07/12/2018	Printed		6033	CRISTINA LEAL		63.11
82691	07/12/2018	Printed		1302	DAVID TURCH & ASSOCIATES		5,000.00
82692	07/12/2018	Printed		1056	DELL MARKETING LP.		2,274.86
82693	07/12/2018	Printed		339	DEPARTMENT OF CONSERVATION		1,501.95
82694	07/12/2018	Printed		2815	DEVELOPMENT MANAGEMENT GROUP		4,000.00
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82696	07/12/2018	Printed		4063	DLT SOLUTIONS		2,346.28
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82701	07/12/2018	Printed		6277	GABRIELA FLORES		**24.31**
82702	07/12/2018	Printed		264	HINDERLITER, DE LLAMAS &		4,300.00
82703	07/12/2018	Printed		1052	HUTCHINSON & BLOODGOOD LLP		39,674.00
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82718	07/12/2018	Printed		5230	LABOR COMPLIANCE CONSULTANTS		675.00
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82721	07/12/2018	Printed		1316	MARIO LUNA		364.00

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82729	07/12/2018	Printed		6270	PERLINA & RON LAMADRID		10.67
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82734	07/12/2018	Printed		6274	SANDY JIMENEZ		148.35
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82736	07/12/2018	Printed		6282	SETH GAGLIARDI		101.64
82737	07/12/2018	Printed		6285	STEVEN CRUM		78.05
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82751	07/12/2018	Printed		6289	ZACHARY TAYLOR		151.84
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82883	07/18/2018	Printed		6222	CODE EXXPERTS, LLC		534.00
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82887	07/18/2018	Printed		3659	DALLANA GOMEZ		735.00
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Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
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82893	07/18/2018	Printed		3386	DON EUHUS		148.27
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82917	07/18/2018	Printed		2099	IMPERIAL VALLEY OCCUPATIONAL M		105.00
82918	07/18/2018	Printed		350	IMPERIAL VALLEY PAINT CENTER		619.46
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82925	07/18/2018	Printed		6300	JUSTIN ROBERTSON		68.32
82926	07/18/2018	Printed		868	K-C WELDING & RENTALS, INC.		48.25
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82934	07/18/2018	Printed		6293	MICHAEL GUZ		27.50
82935	07/18/2018	Printed		6299	MICHAEL NICHOLAS		91.62
82936	07/18/2018	Printed		5581	MORNINGSIDE APARTMENT HOMES		65.60
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Check Number	Check Date	Status	Void/Stop Date	Vendor Number	Vendor Name	Check Description	Amount
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82949	07/18/2018	Printed		694	REXEL OF AMERICA, LLC		**448.48**
82950	07/18/2018	Printed		1637	ROMEO'S CAR WASH		121.00
82951	07/18/2018	Printed		801	RUBEN MIRELES		1,920.00
82952	07/18/2018	Printed		6294	**SARAH ENZ**		431.00
82953	07/18/2018	Printed		1239	SHERWIN-WILLIAMS		1,147.09
82954	07/18/2018	Printed		1367	SHRED-IT		109.98
82955	07/18/2018	Printed		4569	SIERRA MATERIAL TESTING		2,640.00
82956	07/18/2018	Printed		5955	SITEIMPROVE, INC		3,470.00
82957	07/18/2018	Printed		2365	SPARKLETTS		376.82
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82965	07/18/2018	Printed		141	WAL-MART COMMUNITY		23.15
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82970	07/25/2018	Printed		933	ANTHEM BLUE CROSS		22,118.84
82971	07/25/2018	Printed		6302	ANTONIA MENDEZ		89.50
82972	07/25/2018	Printed		5440	CHARLES GIPSON		13.73
82973	07/25/2018	Printed		028	IMPERIAL IRRIGATION DISTRICT		8,651.99
82974	07/25/2018	Printed		2782	PRINCIPAL-SBD GRAND ISLAND		4,089.67
82975	07/25/2018	Printed		3262	SIMNSA HEALTH PLAN		8,185.45

Total Checks: 189	Checks Total (excluding void checks):	1,776,335.97
Total Payments: 189	Bank Total (excluding void checks):	**1,776,335.97**
Total Payments: 189	Grand Total (excluding void checks):	1,776,335.97

Agenda Item No. D-2

DATE SUBMITTED	7/25/2018	COUNCIL ACTION	(X)
		PUBLIC HEARING REQUIRED	( )
SUBMITTED BY	COMMUNITY DEVELOPMENT DIRECTOR	RESOLUTION	( )
		ORDINANCE 1ST READING	( )
DATE ACTION REQUIRED	8/1/2018	ORDINANCE 2ND READING	(X)
		CITY CLERK'S INITIALS	

IMPERIAL CITY COUNCIL
AGENDA ITEM

SUBJECT: DISCUSSION/ACTION: ZONE CHANGE AND GENERAL PLAN AMENDMENT FROM A C-1 (COMMERCIAL NEIGHBORHOOD) ZONE TO A R-A(RESIDENTIAL APARTMENTS) FOR THE FOLLOWING APN#'S: 064-434-005, 064-434-006, AND 064-434-016

1. 2nd READING BY TITLE ONLY OF ORD. NO. 506 APPROVING THE ZONE CHANGE AND GENRAL PLAN AMENDMENT FROM C-1 (COMMERCIAL GENERAL) TO R-A (RESIDENTIAL APARTMENT) ZONE.

DEPARTMENT INVOLVED: COMMUNITY DEVELOPMENT

BACKGROUND/SUMMARY:

The applicant is requesting that the zoning designation on the following three (3) parcel APN#'s: 064-434-005, 064-434-006, and 064-434-016 be changed from C-1 (Neighborhood Commercial) to R-A (Residential Apartment) to allow for the development of multi-family apartment complexes. This zone change and general plan amendment would allow for Phase II of Morningside Apartments. Morningside Apartments Phase I, have been completed and are currently rented out.
A Mitigated Negative Declaration will be prepared by staff based on the findings within the Initial Study.

Planning Commission recommended this item for approval to City Council on June 13, 2018.
City Council conducted the 1st Reading of the Zone Change and General Plan Amendment on July 18, 2018.

FISCAL IMPACT: NO FISCAL IMPACT	ADMIN SERVICES SIGN INITIALS VF OM
STAFF RECOMMENDATION: Staff recommends approval of Ordinance 506	DEPT. INITIALS
MANAGER'S RECOMMENDATION:	CITY MANAGER's INITIALS

MOTION:

SECONDED:
AYES:
NAYES:
ABSENT:

APPROVED ( ) REJECTED ( )
DISAPPROVED ( ) DEFERRED ( )

REFERRED TO:

ORDINANCE NO. 800

AN ORDINANCE OF THE CITY OF IMPERIAL AMENDING THE IMPERIAL CITY CODE TO CHANGE THE ZONING DESIGNATION FROM C-1 (COMMERCIAL NEIGHBORHOOD) TO R-A (RESIDENTIAL APARTMENT) FOR THE FOLLOWING APNS: 064-434-005, 064-434-006, AND 064-434-016

Pursuant to Section 24.19.600 et al, the City Council of the City of lmperial, State of California, does hereby ordain as follows:

SECTION 1: The "Official Zoning Map" of the City of Imperial, Imperial County, adopted at Section 24.01.140 of Chapter 24 of the Imperial City Code is hereby conditionally amended pursuant to Section 24.19.600, et seq. as set forth in this ordinance.

SECTION 2: The property affected by this ordinance is shown in Exhibit A, specifically known as APNS: 064-434-005, 064-434-006, AND 064-434-016

SECTION 3: The new zone for said property is hereby changed from C-1 Commercial Neighborhood to R-A (Residential Apartment)

SECTION 5: Effective Date. This Ordinance shall take effect and shall be in force thirty (30) days after the date of adoption, and prior to the expiration of fifteen (15) days from the passage thereof, shall be published at least once in a newspaper of general circulation printed and published in the County of Imperial, together with the names of the members of the City Council voting for and against the same.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Imperial, this 1st day of August, 2018.

_____

Geoff Dale, Mayor

ATTEST:

_____

Debra Jackson, City Clerk

Agenda Item No. D-3

DATE SUBMITTED	7/25/2018	COUNCIL ACTION	(X)
		PUBLIC HEARING REQUIRED	( )
SUBMITTED BY	COMMUNITY DEVELOPMENT DIRECTOR	RESOLUTION	( )
		ORDINANCE 1ST READING	( )
DATE ACTION REQUIRED	8/1/2018	ORDINANCE 2ND READING	(X)
		CITY CLERK'S INITIALS	

IMPERIAL CITY COUNCIL
AGENDA ITEM

SUBJECT: DISCUSSION/ACTION: ZONE CHANGE AND GENERAL PLAN AMENDMENT FROM A R-1 (RESIDENTIAL SINGLE FAMILY) ZONE TO A R-A(RESIDENTIAL APARTMENTS) FOR THE FOLLOWING APN#: 064-103-012

1. 2nd READING BY TITLE ONLY OF ORD. NO. 801 APPROVING THE ZONE CHANGE AND GENRAL PLAN AMENDMENT FROM C-1 (COMMERCIAL GENERAL) TO R-A (RESIDENTIAL APARTMENT) ZONE.

DEPARTMENT INVOLVED: COMMUNITY DEVELOPMENT

BACKGROUND/SUMMARY:

The City of Imperial recently has been treating the City Apartments located at 101 W 6th Street which are adjacent parcel # 064-103-012; the parcel in question. When analyzing the vacant parcel and the current location and surrounding area, City Staff determined that the best physical use of the land would be for Residential Apartment use due to the adjacent parcels (which both consist of apartment complexes) and neighboring area which is predominantly used for multifamily housing. City Staff decided to initiate a zone change and general plan amendment for this parcel. Staff has determined that the proposed zone change from R-1 to an R-A designation would be consistent with the location of the parcel the surrounding environment, developments and the future growth planned for that area. The parcel is a "flag lot" (A flag lot is a real estate term that describes a land parcel that lies at the end of a long driveway. A flag lot may lie behind residences, buildings, or open land, and it is usually not visible from a road.) Due to the location and topography of the parcel a variance is required in order to allow the deviation from the required minimum lot square-footage for a parcel in an R-A (Residential Apartment) zone which is 7,500 square feet.

For CEQA, a Categorical Exemption will be filed.
Planning Commission recommended this item for approval to City Council on June 27, 2018.
City Council conducted the 1st Reading on July 18, 2018.

Please see attachments.

- Location Map.
- CEQA: Categorical Exemption
- Ordinance No._____

FISCAL IMPACT: NO FISCAL IMPACT	ADMIN SERVICES SIGN INITIALS
STAFF RECOMMENDATION: Staff recommends approval of Ordinance 801	DEPT. INITIALS
MANAGER'S RECOMMENDATION:	CITY MANAGER's INITIALS

MOTION:

SECONDED:	APPROVED	( )	REJECTED ( )
AYES:	DISAPPROVED	( )	DEFERRED ( )
NAYES:			
ABSENT:	REFERRED TO:		

ORDINANCE NO. 801

AN ORDINANCE OF THE CITY OF IMPERIAL AMENDING THE IMPERIAL CITY CODE TO CHANGE THE ZONING DESIGNATION FROM R-1 (RESIDENTIAL SINGLE FAMILY) TO R-A (RESIDENTIAL APARTMENT) FOR THE FOLLOWING APN: 064-103-012

Pursuant to Section 24.19.600 et al, the City Council of the City of lmperial, State of California, does hereby ordain as follows:

SECTION 1: The "Official Zoning Map" of the City of Imperial, Imperial County, adopted at Section 24.01.140 of Chapter 24 of the Imperial City Code is hereby conditionally amended pursuant to Section 24.19.600, et seq. as set forth in this ordinance.

SECTION 2: The property affected by this ordinance is shown in Exhibit A, specifically known as APN: 064-103-012.

SECTION 3: The new zone for said property is hereby changed from R-1 (Residential Single Family) to R-A (Residential Apartment).

SECTION 5: Effective Date. This Ordinance shall take effect and shall be in force thirty (30) days after the date of adoption, and prior to the expiration of fifteen (15) days from the passage thereof, shall be published at least once in a newspaper of general circulation printed and published in the County of Imperial, together with the names of the members of the City Council voting for and against the same.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Imperial this 1st day of August 2018.

_____
Geoff Dale, Mayor

ATTEST:

_____
Debra Jackson, City Clerk

Agenda Item No. D-4

DATE SUBMITTED	7/26/18	COUNCIL ACTION	(X)
SUBMITTED BY	CITY ATTORNEY	PUBLIC HEARING REQUIRED	( )
DATE ACTION REQUIRED	8/1/18	RESOLUTION	( )
		ORDINANCE 1ST READING	( )
		ORDINANCE 2ND READING	(X)
		DEPUTY CITY CLERK'S INITIALS	

IMPERIAL CITY COUNCIL
AGENDA ITEM

SUBJECT: DISCUSSION/ACTION: SCAVENGING OF MATERIALS PLACED FOR COLLECTION

1. 2nd READING IN TITLE ONLY OF ORDINANACE NO. 'ROHIBITING THE SCAVENGING OF MATERIALS PLACED FOR COLLECTION.

DEPARTMENT INVOLVED: CITY ATTORNEY

BACKGROUND/SUMMARY:

Per the City Council's action taken on July 18, 2018 to institute Ordinance No. .o prohibit the scavenging of materials placed for collection this item is being placed on the August 1, 2018 Regular Meeting of the City Council for the 2nd Reading in Title Only to take place.

FISCAL IMPACT:

To be determined based upon resources allocated to enforcement.

FINANCE INITIALS

STAFF RECOMMENDATION: N/A

DEPT. INITIALS

MANAGER'S RECOMMENDATION: N/A

CITY MANAGER's INITIALS

MOTION:

SECONDED:
AYES:
NAYES:
ABSENT:

APPROVED ( ) REJECTED ( )
DISAPPROVED ( ) DEFERRED ( )

REFERRED TO:

ORDINANCE NO. 802

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL ADDING ARTICLE VII TO CHAPTER 10 OF THE CITY OF IMPERIAL MUNICIPAL CODE RELATING TO THE PROHIBITION OF SCAVENGING

The City Council of the City of Imperial does hereby ordain as follows:

SECTION 1: Article VII of Chapter 10 of the Imperial Municipal Code is hereby enacted to read as follows:

Article VII

Scavenging Prohibition

Section 10-50	Findings
Section 10-51	Purpose and Intent
Section 10-52	Definitions
Section 10-53	Ownership of Recyclable Materials
Section 10-54	Disturbance of Recyclable Materials or Garbage
Section 10-55	Collecting or Transporting Recyclable Materials or Garbage
Section 10-56	Civil Action by Permittee
Section 10-57	Violations and Penalties
Section 10-58	Survivorship

Section 10-50. Findings

WHEREAS, THE California Integrated Waste Management Act (AB939) required that jurisdictions such as the City of Imperial ("City") reduce their waste stream by 50% by the year 2000;and

WHEREAS, the City has entered into an agreement ("Agreement") for the pick-up, sorting, and distribution of recyclable materials and collection and disposal of garbage; and

WHEREAS, the Agreement contemplates recycling of specified materials such as glass, plastics, metals and green waste by residents and businesses of the City; and

WHEREAS, the City wishes to discourage the stealing or scavenging, of recyclable materials; and

WHEREAS, a notice to file a negative declaration has been filed with the County Clerk's Office and prepared in accordance with the California Environmental Quality Act; and

WHEREAS, significant environmental impacts will not occur as a result of Ordinance No.

Section 10-51. Purpose and Intent

To reduce the waste stream generated by residents and businesses within the city of Imperial, The City has adopted certain residential and commercial/industrial recycling programs. Scavenging of recyclables from these programs undermines their economic viability and thereby undermines their success. This chapter is intended to eliminate scavenging of recyclables. Further, this ordinance is intended to prevent the prevention of public nuisances associated with debris removed from waste and recycle containers and left on the ground.

Section 10-52. Definitions

Whenever the following words and phrases are used in this Article, they shall have the definition or meaning established by this Section, unless it is clearly apparent from the context in which the word or phrase appears, that a different definition or meaning is intended.

(a) "City Agent" shall mean any person designated by the City Council or City Manager as being responsible for administering, directing, supervising, collecting, or providing for the disposal of refuse and waste.

(b) "Garbage" includes the material set forth in Section 10-1 of this Chapter.

(c) "Permittee" shall mean a recycling operator and/or garbage collector perfonning services pursuant to a permit issued by or a contract awarded by the City.

(d) "Recyclable Materials" shall mean paper, glass, cardboard, plastic, ferrous metals, aluminum, compostable yard matter, or other materials which may be recycled for use in an altered form that has been segregated from other solid waste and placed at a designated collection location for the purpose of collection and recycling.

(e) "Recycling Operator" shall mean a person or persons, firm, partnership, joint venture, association, or corporation engaged in the collection and recycling of waste and other discarded materials.

Section 10-53. Ownership of Recyclable Materials

Recyclable materials placed at the curbside of residential, commercial, or industrial or public or quasi-public facilities or properties or placed for collection on residential, commercial, or industrial or public or quasi-public facilities or properties for pick up by the city's permittee shall become the property of the permittee at the time of placement in either the City's or permittee's recycling containers or otherwise set out for collection under the City's recycling program. Such materials shall be deemed discarded by a property owner or occupant at the time the material is placed in the container or otherwise set out for collection.

Section 10-54. Disturbance of Recyclable Materials or Garbage

It is unlawful for any person to bum, break, destroy, scatter, scavenge, collect or take any recyclable materials or garbage without the consent of the resident or occupant of a premises or a permittee.

Section 10-55. Collecting or Transporting Recyclable Materials or Garbage

(a) No person shall collect or transport recyclable materials or garbage within the City unless such person is a permittee of the City or is exempt in accordance with subsections (1) and (2) of this Section. No person shall permit, allow, or enter into any agreement whatsoever for the collection of recyclable materials or garbage from any residential unit, commercial or industrial premises, or public or quasi-public facility with any person who is not a permittee as herein defined, except as permitted in subsections (1) and (2) of this Section.

(1) The collection and removal of grass clippings and shrubbery by individual residents, business owners, and by individuals doing business as professional landscapers/gardeners, when the collection is directly related to their work and having a valid business license issued by the City of Imperial, shall be exempt from the permit Section.

(2) The removal of recyclable materials or garbage from a residential, commercial, industrial, or public or quasi-public facility by the owner or occupant shall be exempt from the permit Section.

Section 10-56. Civil Action by Permittee

Nothing in this chapter shall be deemed to limit the right of an authorized permittee to bring civil action against any person who violates the above described sections of this chapter, nor shall a conviction for such violation exempt any person from civil action brought by a City permittee.

Section 10-57. Violations and Penalties

Violation of any part of this Article shall be a misdemeanor.

Section 10-58. Survivorship

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Imperial hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, phrase, or portion may be declared invalid or unconstitutional.

SECTION 2. This Ordinance shall take effect thirty days (30) after its adoption. The City Clerk or her duly appointed deputy, shall certify to the adoption of this Ordinance and shall cause this Ordinance to be published as required by law.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial, Imperial County, State of California, this 1st day of August, 2018.

_____
Mayor

ATTEST:

_____
Debra Jackson, City Clerk

Agenda Item No. E-1

DATE SUBMITTED	7/27/2018	COUNCIL ACTION	(X)
SUBMITTED BY	CITY MANAGER'S OFFICE	PUBLIC HEARING REQUIRED	( )
		RESOLUTION	(X)
		ORDINANCE 1ST READING	( )
DATE ACTION REQUIRED	8/1/2018	ORDINANCE 2ND READING	( )
		CITY CLERK'S INITIALS	

IMPERIAL CITY COUNCIL
AGENDA ITEM

SUBJECT: DISCUSSION/ACTION: RESOLUTION TO SUPPORT THE RESTORATION OF THE SALTON SEA;

1. APPROVAL OF RESOLUTION NO. ____ TO SUPPORT THE MEMORANDUM OF UNDERSTANDING BETWEEN COUNTY OF IMPERIAL AND RIVERSIDE COUNTY BOARD OF SUPERVISORS TO RESTORE THE SALTON SEA.

DEPARTMENT INVOLVED: CITY MANAGER'S OFFICE/COUNTY OF IMPERIAL

BACKGROUND/SUMMARY:

In an effort to stabilize and restore the Salton Sea, County of Imperial Board of Supervisors have entered into a non-binding Memorandum of Understanding with the Riverside County Board of Supervisors. The County of Imperial has asked local jurisdiction to support their efforts to establish a unified strategy that will complement the State of California's Salton Sea Management Plan. Attached for your review and approval you will find the support resolution.

FISCAL IMPACT: N/A	FINANCE INITIALS
STAFF RECOMMENDATION:	DEPT. INITIALS
MANAGER'S RECOMMENDATION: n/a	CITY MANAGER's INITIALS

MOTION:

SECONDED:
AYES:
NAYES:
ABSENT:

APPROVED ( ) REJECTED ( )
DISAPPROVED ( ) DEFERRED ( )

REFERRED TO:

RESOLUTION NO. 2018-52

RESOLUTION OF THE CITY OF IMPERIAL IN SUPPORT OF THE MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF IMPERIAL AND THE COUNTY OF RIVERSIDE ON THE SALTON SEA

WHEREAS, on June 26, 2018, the County of Imperial, a political subdivision of the State of California, and the County of Riverside, a political subdivision of the State of California (Counties) entered into a Memorandum of Understanding representing a mutual good faith commitment and common goals made in the spirit of cooperation and collaboration to benefit the Salton Sea; and

WHEREAS, it is the desire of the County of Imperial and the County of Riverside to work together with other local agencies in a collaborative manner and support common goals to further Salton Sea restoration and management efforts as well as the development potential of the Salton Sea; and

WHEREAS, the Counties encourage outreach to the surrounding communities and seek supportive resolutions from all cities and other agencies; and

WHEREAS, mitigation water inflows to the Salton Sea ended on December 31, 2017, pursuant to the Quantification Settlement Agreement (QSA), , and without stabilization and restoration measures, the Salton Sea will rapidly decline; and

WHEREAS, California law requires the California Natural Resources Agency to develop a Salton Sea plan in cooperation and consultation with local agencies; and

WHEREAS, the State of California, through departments within the California Natural Resources and Environmental Protection Agencies (State), ~~has~~ developed a Ten Year Salton Sea Management Program (SSMP) through departments within the California Natural Resources and Environmental Protection Agencies which identifies a phased series of projects; and

WHEREAS, the State is obligated to pay for certain costs related to mitigation of impacts associated with the QSA including wildlife habitat, air and water quality; and

WHEREAS, the State has not appropriated money to pay said mitigation thereby placing the Salton Sea and surrounding communities at substantial risk of irreversible damage to wildlife and public health; and

WHEREAS, it is the intent of the Counties to take coordinated and cooperative action with other agencies to stabilize and restore the Salton Sea in order to protect and improve public health, air quality, water quality and wildlife habitat; and

WHEREAS, it is the desire and intent of the Counties to work together with local agencies on agreed projects and financing mechanisms such as an Enhanced Infrastructure Finance District that would support projects and stimulate economic development around the Salton Sea; and

WHEREAS, the Counties recognize and support the value of working with other local agencies to enhance opportunities for renewable energy and geothermal development to the region

which would further the State's Renewable Portfolio Standard and Greenhouse Gas Reduction goals and which could provide funding for QSA mitigation projects; and

WHEREAS, the benefits of said integrated projects would include economic development, recreational activity, and reduction in air and water quality impacts as well as optimize the potential opportunities at the Salton Sea; and

WHEREAS, the City of Imperial supports the common goal of a locally managed and efficient process to expedite QSA mitigation and other projects at the Salton Sea to avert ~~a~~ further decline ~~at~~ of the Salton Sea.

WHEREAS, the City of Imperial is in support of the North Lake vision which would complement the State's SSMP plan by providing an in-sea barrier around the contours of the north shoreline with a deep lake and respectfully request the State's support and recognition in the SSMP as an important integrated project; and

WHEREAS, the City of Imperial is supportive of the Perimeter Lake concept which would ~~also~~ include a South Lake component and resemble a flowing river with a system of low profile levees bordering the Salton Sea shoreline; and

WHEREAS, the City of Imperial respectfully requests to have the Perimeter Lake incorporated into the State's SSMP long-term plan; and

WHEREAS, it is the intent of the City of Imperial to improve the public health, economic opportunity and overall quality of life of the disadvantaged communities around the Salton Sea; and

WHEREAS, it is the intent of the City of Imperial to support public-private partnerships and will encourage private entities to define and develop projects around the Salton Sea.

NOW, THEREFORE BE IT RESOLVED AS FOLLOWS:

1. The forgoing recitals are hereby incorporated as if fully set forth herein.

2. The City Council of the City of Imperial hereby adopts this Resolution in support of the Counties' MOU and agrees to collaborate on the development of a strategy to support common goals which would stabilize and restore the Salton Sea.

APPROVED, PASSED AND ADOPTED at the regular meeting of the City Council this _____ day of _____, 2018.

_____

Mayor of the City of Imperial

ATTEST:

_____

Debra Jackson, City Clerk

DATE SUBMITTED 07/26/2018

SUBMITTED BY PUBLIC SERVICES DIR.

DATE ACTION REQUIRED 08/01/2018

Agenda Item No E-2

CITY COUNCIL ACTION (X)
PUBLIC HEARING REQUIRED ( )
RESOLUTION ( )
ORDINANCE 1ST READING ( )
ORDINANCE 2ND READING ( )
CITY CLERK'S INITIALS

IMPERIAL CITY COUNCIL
AGENDA ITEM

SUBJECT: **ENGINEERING DESIGN AND CONSTRUCTION MANAGEMENT SERVICES FOR VARIOUS WATER AND WASTEWATER PROJECTS.**

1. APPROVE PROPOSAL FROM ALBERT A WEBB ASSOCIATES FOR VARIOUS PROJECTS IN THE AMOUNT OF $326,840.00

DEPARTMENT INVOLVED: City Manager

BACKGROUND/SUMMARY:
Staff has met with engineers from Albert A Webb Associates to discuss various projects/developments within the city to determine whether the current infrastructure is able to handle increased capacity and/or continuity of use of certain lines and components. Several projects have been identified in which current capacity and/or aging infrastructure requires replacement/upgrades. Webb Associates has prepared a proposal for the design and construction management costs for the following projects:

*Marshall Road Sewer Replacement
*13th Street Sewer Slip Line
*Barioni Blvd. Waterline Hwy 86 Crossing
*Brick Manhole Repair/Replacement Standard
*Filter to Waste Modifications at the Water Treatment Plant

FISCAL IMPACT: $326,840.00

STAFF RECOMMENDATION: Council approve the proposal as submitted by Albert A. Webb Associates.

MANAGER'S RECOMMENDATION: MANAGER'S INITIAL

MOTION:

SECONDED:
AYES:
NAYES:
ABSENT:

APPROVED ( ) REJECTED ( )
DISAPPROVED ( ) DEFERRED ( )
REFERRED TO:

ALBERT A. WEBB ASSOCIATES

Corporate Headquarters
3788 McCray Street
Riverside, CA 92506
951.686.1070

Palm Desert Office
36-951 Cook Street #103
Palm Desert, CA 92211
760.568.5005

Murrieta Office
41391 Kalmia Street #320
Murrieta, CA 92562
951.686.1070

July 13, 2018

Mr. Jackie Loper
Public Services Director
City of Imperial
420 S. Imperial Avenue
Imperial, CA 92251

RE: Proposal for Engineering Services for Marshall Road Sewer Replacement, 13th Street Sewer Slip Line Project, Barioni Blvd. Waterline HWY 86 Crossing, Brick Manhole Repair/Replacement Standard Plan, and Filter to Waste Modifications at the Water Treatment Plant.

Dear Jackie,

Pursuant to your request Albert A. Webb Associates (Webb) has prepared the following proposal to provide engineering services for the subject projects. Webb's tasks will be to prepared final engineering plans and specifications ready for bidding and construction. The plans will include all necessary civil, and structural engineering design information and will be signed by a registered engineer in the state of California. Webb will also prepare the necessary paperwork required by CEQA, it is assumed that these projects will qualify for Categorical Exemptions and no further environmental documentation or special studies will be required.

Based upon our understanding of the projects, Webb's scope of work will include the following tasks for each project:

SCOPE OF SERVICES

Marshall Road Sewer Replacement

The existing 8-inch diameter sewer located in Marshall Road is at capacity and is in need or replacement from the Claypool Lift Station to Aten Road (appox. 2,900 LF) It is proposed that the 8-inch diameter sewer will be replaced with a 12-inch diameter sewer line. A portion of the existing sewer line in Aten Road from the intersection of Marshall Road and Aten Road, across HWY 86 will also be replaced as part of this project (approx. 850 LF). This portion of the project will require a jack and bore to cross HWY 86. Engineering services proposed for this project is as follows.

1. Field topo by Holt Group including key shots of valve cans, manholes, telephone poles, curbs, ROW, property lines, easements, etc.
2. Evaluate ability of proposed sewer replacement to flow by gravity and evaluate the need of potential lift station. Incorporate the required improvements into the project plans and specifications for construction.
3. Prepare plans, specifications and bid documents for construction. Drawings will be prepared on 24" x 36" sheets for pipelines at 1"=40' horizontal scale and 1"=4' vertical scale showing all appropriate connection details and construction notes per City requirements and applicable jurisdiction requirements.
4. Apply for Caltrans encroachment permit (City to pay all fees)
5. Provide construction management services including:
   a. Responding to contractor RFIs
   b. Submittal review
   c. Field inspection (Holt Group)
   d. Field visits during construction

Schedule and Compensation

It is anticipated that the design will be completed within 20 weeks after the execution of contracts, notice to proceed, and easement acquisition. These services will be performed on a lump sum basis not to exceed $145,405. A breakdown of the fee is included in the attached spreadsheet. Estimated Construction Cost is $1.5 Million.

13th Street Sewer Slip Line

Based on a recent sewer line evaluation performed by the City, the existing 8-inch and 12-inch diameter sewer line in 13th Street from HWY 86 to C Street is damaged and requires repair. The City is proposing to repair the damaged portion of sewer line using a trenchless slip lining method. Engineering services proposed for this project is as follows:

1. Field topo by Holt Group including key shots of valve cans and manholes.
2. Prepare plans, specifications and bid documents for construction. Drawings will be prepared on 24" x 36" sheets for pipelines at 1"=40' horizontal scale and 1"=4' vertical scale showing all appropriate connection details and construction notes per City requirements and applicable jurisdiction requirements.
3. Review construction bids and prepare recommendation for award
4. Provide construction management services including:
    a. Responding to contractor RFIs
    b. Submittal review
    c. Field inspection (Holt Group)
    d. Field visits during construction

Schedule and Compensation

It is anticipated that the design will be completed within 12 weeks after the execution of contracts and notice to proceed. These services will be performed on a lump sum basis not to exceed $46,915. A breakdown of the fee is included in the attached spreadsheet. Estimated Construction Cost is $300,000.

Barioni Blvd. Waterline, Hwy 86 Crossing

An existing 4-inch diameter waterline extending across HWY 86 in Barioni Blvd. requires replacement with an 8-inch diameter waterline to improve system hydraulics and fire flows for the water system. The proposed 8-inch diameter waterline will extend across Barioni Blvd. and connect to the existing waterlines on each side of the HWY 86 right-of-way (approx.. 300 L.F.). A Encroachment Permit from Caltrans will be required for this project. Design and construction management services assumed for this project are as follows:

1. Field topo by Holt Group including key shots of valve cans, manholes, telephone poles, curbs, ROW, property lines, easements, etc.
2. Prepare plans, specifications and bid documents for construction. Drawings will be prepared on 24" x 36" sheets for pipelines at 1"=40' horizontal scale and 1"=4' vertical scale showing all appropriate connection details and construction notes per City requirements and applicable jurisdiction requirements.
3. Review construction bids and prepare recommendation for award
4. Prepare permit applications and associated documentation for Caltrans encroachment permit (City to pay permit fees)
5. Provide construction management services including:
    a. Responding to contractor RFIs
    b. Submittal review
    c. Field inspection (Holt Group)
    d. Field visits during construction

Schedule and Compensation

It is anticipated that the design will be completed within 20 weeks after the execution of contracts and notice to proceed. These services will be performed on a lump sum basis not to exceed $57,800. A breakdown of the fee is included in the attached spreadsheet. Estimated Construction Cost is $520,000.

Brick Manhole Repair/Replacement Standard Plan

The remaining brick manholes within the sewer system are beginning to fail and the City desires that a standard plan be created for both the repair of the brick manhole or replacement of the manhole as required. Webb will prepare standard details and a specification for the repair or replacement of a brick manhole as required. Webb will evaluate potential methods of repair and provide the City with a recommendation as it pertains to the most feasible repair method. Following selection by the City, Webb will prepare a standard plan with specifications for brick manhole repair and a separate plan with specifications for brick manhole replacement.

Schedule and Compensation

It is anticipated that the design will be completed within 8 weeks after the execution of contracts and notice to proceed. These services will be performed on a lump sum basis not to exceed $8,505. A breakdown of the fee is included in the attached spreadsheet. The City estimates that there are approximately 7-10 brick manholes that this project will apply to.

Filter to Waste Modifications at the Water Treatment Plant

The existing Dual-Media Gravity Filters at the Water Treatment Plant do not currently have the ability to take filtered water leaving the filters to waste following a backwash event. The ability to take filtered water to waste immediately following a backwash event would allow the turbidity from the backwash event to decrease prior to passing through the turbidity meter, decreasing the amount of violations that have occurred due to high levels of turbidity in the filter effluent. The assumed scope of work for this project is as follows:

1. Evaluate as-built drawings to determine location of piping/valving modifications
2. Field visit to determine location of piping/valving modifications
3. Possible modifications/programming to PLC to incorporate any new valving
4. Preparation of plans and specifications to incorporate piping/valving modifications.
5. Review construction bids and prepare recommendation for award
6. Provide construction management services including:
    a. Responding to contractor RFIs
    b. Submittal review
    c. Field inspection (Holt Group)
    d. Field visits during construction

Schedule and Compensation

It is anticipated that the design will be completed within 12 weeks after the execution of contracts and notice to proceed. These services will be performed on a lump sum basis not to exceed $68,215. A breakdown of the fee is included in the attached spreadsheet. Estimated Construction Cost is $400,000.

CONSTRUCTION SERVICES

Unless indicated elsewhere, the scope of construction services that Webb Associates will be providing for these projects are as follows:

1. Prepare bid addenda as necessary (assume 1 addendum)
2. Review contractor bids and proved recommendations for award
3. Respond to RFI's during bid period
4. Review contractor submittals
5. Attend a jobsite pre-construction meeting
6. Full time field inspection on pipeline projects
7. Perform three field visits during construction and one field visit to verify project performance and compliance with construction documents.
8. Provide telephone/email coordination during construction
9. Prepare record documents based upon contractor's redline markups

PROJECT TEAM

The primary personnel assigned to these projects will be as follows:

- Mr. Shane Bloomfield, PE (Senior Engineer) will serve as project manager and responsible engineer over all the projects.
- Mr. Brian Knoll, PE (Vice President) will serve as Principal-in-charge and will oversee the projects through completion.
- Mr. Kris Danielson, PE (Associate Engineer) will be the project engineer on these projects and will be responsible for overseeing the development of the design documents and project specifications.
- The Holt Group will provide survey and inspection services for the pipeline replacement projects.

EXCLUTIONS

The following items have been specifically excluded from Webb's scope of work for these projects.

1. City will be responsible to post and file the Notice of Exemption with the appropriate authority
2. Preparation of permit applications and paying for permits unless specifically indicated in the proposed scope of work
3. Construction staking and surveying during construction
4. Property acquisition
5. Material testing
6. Traffic control plans
7. Utility relocation plans
8. Preparation of easement documents

As detailed above, based upon each project's Scope of Work, our engineering services budget for these projects is as follows:

Project Name	Budget
Marshall Road Sewer Replacement	$145,405
13th Street Sewer Slip Line	$ 46,915
Barioni Blvd. Waterline, HW 86 Crossing	$ 57,800
Brick Manhole Repair/Replacement Standard	$ 8,505
Filter to Waste Modifications at the WTP	$ 68,215
TOTAL DESIGN/CONSTRUCTION MANAGEMENT COSTS	**$326,840**

We thank you for the opportunity to continue working with the City of Imperial on these critical projects. Should you have any questions, please contact me at (951) 686-1070.

Sincerely,
ALBERT A. WEBB ASSOCIATES

Shane Bloomfield, P.E.
Senior Engineer

Cc: Brian Knoll, WEBB
Kris Danielson, WEBB

MANPOWER AND FEE ESTIMATE
CITY OF IMPERIAL

Proposal for Design Engineering Services for:
Marshall Road Sewer, 13th Street Sewer, Barioni Blvd. Waterline, Brick Manhole Standard Plan, and Filter to Waste Modifications

Task	Personnel Hours					Budget [1]
Description	Principal Engineer	Senior Engineer	Associate Engineer	Project Coordinator	Total Hours	Labor
Task 1 - Marshall Road Sewer Replacement						**$ 145,405**
1.1 - Design (Utility Research)		2	6	8	16	$ 2,150
Design (60% Plans)	12	36	80	6	134	$ 25,070
Design (90% Plans & Spec.)	10	24	60	6	100	$ 18,550
Design (100% Plans & Spec.)	8	18	40	6	72	$ 13,290
1.2 - Process Required Permits	12	18	24	4	58	$ 11,320
1.3 - Construction Management	24	60	40	20	144	$ 27,300
1.A - Subcontractor - Survey						$ 9,775
1.B - Subcontractor - Inspection						$ 37,950
Task 2 - 13th Street Sewer Slip Line						**$ 46,915**
2.1 - Design (Utility Research)		1	6	4	11	$ 1,600
Design (90% Plans & Spec.)	4	12	30	4	50	$ 9,110
Design (100% Plans & Spec.)	4	12	15	2	33	$ 6,315
2.2 - Construction Management	6	15	24	4	49	$ 9,190
2.A - Subcontractor - Survey						$ 5,175
2.B - Subcontractor - Inspection						$ 15,525
Task 3 - Barioni Blvd. Waterline, Hwy 86 Crossing						**$ 57,800**
3.1 - Design (Utility Research)		1	6	4	11	$ 1,600
Design (60% Plans)	2	10	40	2	54	$ 9,770
Design (90% Plans & Spec.)	2	8	30	2	42	$ 7,600
Design (100% Plans & Spec.)	2	8	16	2	28	$ 5,150
3.2 - Process Required Permits	4	12	12	8	36	$ 6,300
3.3 - Construction Management	6	24	12	4	46	$ 8,980
3.A - Subcontractor - Survey						$ 5,175
3.B - Subcontractor - Inspection						$ 13,225
Task 4 - Brick Manhole Repair/Replacement Standard						**$ 8,505**
3.1 - Brick Manhole Repair Research	2	4		2	8	$ 1,510
3.2 - Recommendations to the City	1	2		1	4	$ 755
3.3 - Prepare Repair Standard Plan and	2	4	8	2	16	$ 2,910
3.4 - Prepare Replacement Standard Plan and	2	6	8	2	18	$ 3,330
Task 5 - Filter to Waste Modifications at the Water Treatment Plant						**$ 68,215**
5.1 - Review Record Drawings - Site Evaluation	10	16	4	1	31	$ 6,645
5.2 - Design (90% Plans & Spec)	6	24	40	2	72	$ 13,710
Design (100% Plans & Spec.)	4	16	25	2	47	$ 8,905
5.3 - Construction Management	4	24	12	4	44	$ 8,480
5.A - Subcontractor - Electrical						$ 30,475
5.B - Subcontractor - Inspection						$ 7,475
TOTAL BUDGET	127	357	538	102	1124	$ 326,840

[1]The amounts indicated for each individual project task are estimated budget amounts and accordingly the actual amounts may be more or less than shown. However, the total budget will not be exceeded without written authorization from the City.

Agenda Item No. E-3

DATE SUBMITTED	July 25, 2018	COUNCIL ACTION	(x)
		PUBLIC HEARING REQUIRED	( )
SUBMITTED BY	HUMAN RESOURCES DIRECTOR GADDIS	RESOLUTION	( )
		ORDINANCE 1ST READING	( )
DATE ACTION REQUIRED	August 1, 2018	ORDINANCE 2ND READING	( )
		CITY CLERK'S INITIALS	( )

IMPERIAL CITY COUNCIL
AGENDA ITEM

SUBJECT: DISCUSSION/ACTION:

APPROVE THE RESOLUTIONS FOR MANAGEMENT, CONFIDENTIAL, SUPERVISORY (NON-SWORN), AND ELECTED OFFICIALS ENDING PARTICIPATION IN CALPERS MEDICAL HEALTH

DEPARTMENT INVOLVED: CITY ADMINISTRATION/HUMAN RESOURCES

BACKGROUND/SUMMARY:

City of Imperial is withdrawing from participating under the Public Employees' Medical and Hospital Care Act (ACT) for CalPERS Medical Health. Section 22938 of the Act stipulates how a contracting agency may withdraw and how medical coverage of its employees, retirees and elected officials ends with an approved Resolution by the Council. CalPERS regulations stipulate that once approved the Resolution to terminate its participation under the ACT must be filed within a specified timeline. The election to terminate is irrevocable and future participation in CalPERS Medical Health may not occur for a period of five (5) years from termination. CalPERS will notify all affected employees and retirees of the pending loss of coverage. Coverage ends on 12/31/2018. Employees impacted by this change will be allowed to participate in the City's current Employee Benefit Program through a special open enrollment. Attached for your review and consideration, are the health Resolutions for Management, Confidential, Supervisory (Non-Sworn), and Elected Officials.

FISCAL IMPACT: NONE ASD INITIALS:

STAFF RECOMMENDATION:

1. APPROVE THE RESOLUTIONS FOR MANAGEMENT, CONFIDENTIAL, SUPERVISORY (NON-SWORN), AND ELECTED OFFICIALS ENDING CALPERS MEDICAL COVERAGE EFFECTIVE 12/31/2018.

MANAGER'S RECOMMENDATION: MANAGER'S INITIALS

MOTION:

SECONDED:
AYES:
NAYES:
ABSENT:

APPROVED ( ) REJECTED ( )
DISAPPROVED ( ) DEFERRED ( )

REFERRED TO:

RESOLUTION NO. Number 2018.53

ELECTING CEASE TO BE SUBJECT TO THE PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT WITH RESPECT TO A RECOGNIZED EMPLOYEE ORGANIZATION

WHEREAS, (1) Government Code Section 22938 provides that a contracting agency which has elected to be subject to the Public Employees' Medical and Hospital Care Act (the "Act") may cease to be so subject by proper application by the contracting agency; and

WHEREAS, (2) City of Imperial is a contracting agency under Government Code Section 22920 and subject to the Act for participation by members of 001 Management; now, therefore be it

RESOLVED, (a) City of Imperial elects to cease to be subject to the Act; and be it further

RESOLVED, (b) That coverage under the Act cease on December 31, 2018.

Adopted at a regular or special meeting of the Governing Board at Location, this Day day of Month, Year.

Signed: _____
(President, Chairman, etc.)

Attest: _____
(Secretary or appropriate officer)

RESOLUTION NO. Number 2018-54

ELECTING CEASE TO BE SUBJECT TO THE PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT WITH RESPECT TO A RECOGNIZED EMPLOYEE ORGANIZATION

WHEREAS, (1) Government Code Section 22938 provides that a contracting agency which has elected to be subject to the Public Employees' Medical and Hospital Care Act (the "Act") may cease to be so subject by proper application by the contracting agency; and

WHEREAS, (2) City of Imperial is a contracting agency under Government Code Section 22920 and subject to the Act for participation by members of 002 Supervisors (Non-Sworn); now, therefore be it

RESOLVED, (a) City of Imperial elects to cease to be subject to the Act; and be it further

RESOLVED, (b) That coverage under the Act cease on December 31, 2018.

Adopted at a regular or special meeting of the Governing Board at Location, this Day day of Month, Year.

Signed: _____
(President, Chairman, etc.)

Attest: _____
(Secretary or appropriate officer)

RESOLUTION NO. Number 2018-55

ELECTING CEASE TO BE SUBJECT TO THE PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT WITH RESPECT TO A RECOGNIZED EMPLOYEE ORGANIZATION

WHEREAS, (1) Government Code Section 22938 provides that a contracting agency which has elected to be subject to the Public Employees' Medical and Hospital Care Act (the "Act") may cease to be so subject by proper application by the contracting agency; and

WHEREAS, (2) City of Imperial is a contracting agency under Government Code Section 22920 and subject to the Act for participation by members of 003 Confidential; now, therefore be it

RESOLVED, (a) City of Imperial elects to cease to be subject to the Act; and be it further

RESOLVED, (b) That coverage under the Act cease on December 31, 2018.

Adopted at a regular or special meeting of the Governing Board at Location, this Day day of Month, Year.

Signed: _____
(President, Chairman, etc.)

Attest: _____
(Secretary or appropriate officer)

RESOLUTION NO. Number 2018-5

ELECTING CEASE TO BE SUBJECT TO THE PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT WITH RESPECT TO A RECOGNIZED EMPLOYEE ORGANIZATION

WHEREAS, (1) Government Code Section 22938 provides that a contracting agency which has elected to be subject to the Public Employees' Medical and Hospital Care Act (the "Act") may cease to be so subject by proper application by the contracting agency; and

WHEREAS, (2) City of Imperial is a contracting agency under Government Code Section 22920 and subject to the Act for participation by members of 004 Elected Official (Non-PERS); now, therefore be it

RESOLVED, (a) City of Imperial elects to cease to be subject to the Act; and be it further

RESOLVED, (b) That coverage under the Act cease on December 31, 2018.

Adopted at a regular or special meeting of the Governing Board at Location, this Day day of Month, Year.

Signed: _____
(President, Chairman, etc.)

Attest: _____
(Secretary or appropriate officer)

Agenda Item No. 12-4

DATE SUBMITTED	7/27/2018	COUNCIL ACTION	(x)
		PUBLIC HEARING REQUIRED	( )
SUBMITTED BY	CITY ATTORNEY	RESOLUTION	( )
		ORDINANCE 1ST READING	( )
DATE ACTION REQUIRED	8/1/2018	ORDINANCE 2ND READING	( )
		CITY CLERK'S INITIALS	

IMPERIAL CITY COUNCIL
AGENDA ITEM

SUBJECT: DISCUSSION/ACTION: CITY MANAGER CONTRACT AMENDMENT

1. APPROVAL OF THIRD (3RD) AMENDMENT TO THE CITY MANAGER CONTRACT BETWEEN THE CITY OF IMPERIAL AND STEFAN T. CHATWIN.

DEPARTMENT INVOLVED: CITY ATTORNEY/CITY COUNCIL

BACKGROUND/SUMMARY:

Per City Council direction to the City Attorney attached for review and approval is third amendment to the City Manager's contract.

FISCAL IMPACT: $4,714.30	FINANCE INITIALS
STAFF RECOMMENDATION: n/a	DEPT. INITIALS
MANAGER'S RECOMMENDATION: n/a	CITY MANAGER's INITIALS

MOTION:

SECONDED:
AYES:
NAYES:
ABSENT:

APPROVED ( ) REJECTED ( )
DISAPPROVED ( ) DEFERRED ( )

REFERRED TO:

THIRD AMENDMENT TO CITY OF IMPERIAL
CITY MANAGER EMPLOYMENT AGREEMENT

THIS AGREEMENT is made and entered into this 1st day of August, 2018, by and between the City of Imperial, California, a municipal corporation of the State of California, ("Employer") and Stefan Thomas Chatwin ("Employee").

WITNESSETH:

WHEREAS, the parties hereto entered an employment agreement dated September 27, 2016, a First Amendment to the employment agreement dated June 21, 2017 and a Second Amendment to the employment agreement dated December 20, 2017 (collectively "Agreements"); and

WHEREAS, the parties wish to amend the Agreements as set forth herein to provide Employee a salary increase.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. The above referenced recitals are true and correct and are incorporated herein by this reference.

2. Section 6 of the Agreement is rescinded and restated as follows:

   Employer agrees to pay Employee for his services rendered pursuant hereto an annual base salary of one hundred sixty-one thousand five hundred thirty-one dollars and eighty cents ($161,531.80), effective July 1, 2018 and payable in installments at the same time as other management employees of the Employer are paid. Commencing with the 2018-19 fiscal year and each fiscal year thereafter and subject to City Council approval, Employee is eligible to receive increases at the same time and in an amount not to exceed that received by other employee bargaining units.

3. Except as specifically set forth herein, the terms of the Agreements shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this agreement to be signed and executed to be effective on the date first above written.

EMPLOYER:

City of Imperial, California

By_____
Mayor

EMPLOYEE:

_____
Stefan Thomas Chatwin

ATTEST:

By_____
Debra Jackson, City Clerk

DATE SUBMITTED 07/26/2018

SUBMITTED BY CITY CLERK

DATE ACTION REQUIRED 08/01/2018

Agenda Item No E-5

CITY COUNCIL ACTION (X)
PUBLIC HEARING REQUIRED ( )
RESOLUTION ( )
ORDINANCE 1ST READING ( )
ORDINANCE 2ND READING ( )
CITY CLERK'S INITIALS

IMPERIAL CITY COUNCIL
AGENDA ITEM

SUBJECT: DISCUSSION/ACTION: ELECTIONS WORK GROUP FORMATION

1. APPOINTMENT OF CITY REPRESENTATIVE TO THE COUNTY OF IMPERIAL AD-HOC COMMITTEE TO ADDRESS THE ISSUE OF IMPROVING PUBLIC AWARENESS OF THE ELECTION PROCESS

DEPARTMENT INVOLVED:

BACKGROUND/SUMMARY:

On July 17, 2018, the County Board of Supervisors took action to create an Ad Hoc committee to address the issue of improving public awareness of the election process. The Board approved to have the following representatives on the committee:

1. Seven City Representatives – one per city
2. Five District Representatives – one per district
3. One member of the Board of Supervisors
4. One County/Elected Official
5. PIO/Election Rep
6. One CEO

   The county is requesting that an appointee be named from the City to be a member of this group.

FISCAL IMPACT:

STAFF RECOMMENDATION: Council name an appointee to this working group as requested.

MANAGER'S RECOMMENDATION: MANAGER'S INITIAL_____

MOTION:

SECONDED:
AYES:
NAYES:
ABSENT:

APPROVED ( ) REJECTED ( )
DISAPPROVED ( ) DEFERRED ( )

REFERRED TO:

COUNTY EXECUTIVE OFFICE

Tony Rouhotas, Jr.
County Executive Officer
tonyrouhotas@co.imperial.ca.us
www.co.imperial.ca.us

County Administration Center
940 Main Street, Suite 208
El Centro, CA 92243
Tel: 442-265-1001
Fax: 442-265-1010

July 12, 2018

Imperial County Board of Supervisors
940 Main St.
El Centro, CA, 92243

Subject: Elections Work Group Formation

Honorable Boardmembers:

Background:

During the July 10, 2018 Board meeting, Supervisor Ryan Kelley proposed that the board consider forming an Ad Hoc working group to address the issue of improving public awareness of the election process. He suggested that the group could possibly consist of elected officials, county staff and members of the public. Subsequent to the board meeting, County Registrar of Voters, ITS and CEO staff met and began to discuss some ideas such as improving the Elections website, holding candidate workshops, developing a comprehensive elections manual and providing online access to election-related forms. It is requested that the Board give direction to staff on the makeup of this committee and the priority of issues to be addressed.

Requested Action:

Discussion/Action regarding creation of an Ad Hoc working group consisting of public, elected and County staff members, to improve public awareness of the elections process.

Respectfully submitted,

Tony Rouhotas Jr.

BOARD AGENDA FACT SHEET

CLERK USE ONLY
BOS ACTION
#

County Executive Office
Department /Agency

July 17, 2018
Requested Board Date

1. Request:

Board Approval	X	**Information Only/Presentation**	
Other (specify) _____		**Schedule Hearing Time:** _____	

2. Requested Action: *Type requested action below*

Discussion/Action regarding creation of an Ad Hoc working group consisting of public, elected and County staff members, to improve public awareness of the elections process.

3. Cost $ N/A **Source:** N/A

4. If approval of Contract, reviewed/approved by County Counsel on: N/A

By: N/A **Action Request #** N/A
Assigned by County Counsel's Office

5. If approval of position allocation change, approved by Human Resources on: N/A

By: N/A

6. Electronic copy submittal date: _____ **By:** _____

_____
Department Head/Agency Representative

INSTRUCTIONS: ***Back-up must be submitted 11 BUSINESS days prior to requested date. Back-up submitted must contain an Original and 6 copies. Copies must be submitted double sided and three (3) hole punched. Back-up must be submitted in a PDF format to cobstaff@co.imperial.ca.us.***

CEO/CLERK USE ONLY:

DATE STAMP

BOARD DATE: 07/17/18

Action X **Filing** _____

Consent _____ **Presentation** _____

Hearing _____ **CEO Approval** _____

Other (specify) _____

_____ 07/12/18
CEO ***Date***

Debra Jackson

From: Cynthia Figueroa <CynthiaFigueroa@co.imperial.ca.us>
Sent: Wednesday, July 18, 2018 4:01 PM
To: Isavala@brawley-ca.gov; cityclerk@calexico.ca.gov; c_hoff@calipatria.com; dcaldwell@cityofelcentro.org; dgarcia@holtville.ca.gov; Debra Jackson; Sally Traylor City of Westmor
Subject: Board of Supervisors' request for nomination

Good Afternoon Clerks,

During yesterday's Board of Supervisors meeting an item regarding an Ad Hoc committee relating to elections was discussed. The Board approved to have the following representatives in the committee

1. Seven City Representatives – one (1) per city
2. Five District Representative – one (1) per District
3. One (1) member of the Board of Supervisors
4. One (1) County Elected Official
5. PIO/Election Rep
6. One (1) CEO

We would like to see if you could assist us in providing your city representative nominee in order to proceed with creation of the Ad Hoc Committee.

Should you have any questions please feel free to contact me.

Thank you in advance for your help

Cynthia Figueroa
Assistant Clerk of the Board
Clerk of the Board's Office
940 Main St., Suite 209
El Centro, CA. 92243
P: (442)265-1020
F: (442) 265-1027

Agenda Item No. E-6

DATE SUBMITTED	07/25/18	COUNCIL ACTION	(x)
		PUBLIC HEARING REQUIRED	( )
SUBMITTED BY	Imperial Police Dept.	RESOLUTION	( )
		ORDINANCE 1ST READING	( )
DATE ACTION REQUIRED		ORDINANCE 2ND READING	( )
		CITY CLERK'S INITIALS	

IMPERIAL CITY COUNCIL
AGENDA ITEM

SUBJECT: DISCUSSION/ACTION: **DECLARE OUT OF SERVICE OFFICE EQUIPMENT AND CHAIRS AS SURPLUS AND AUTHORIZE THE SALE OR SALVAGE OF ITEMS.**

1. Declare out of service office equipment and chairs as surplus and authorize the sale or salvage of items.

DEPARTMENT INVOLVED: Police Dept.

BACKGROUND/SUMMARY:

Office desks and 10 black office chairs are no longer in use and would like to have items declared as surplus and allowed to be sold as is. Proceeds from the sale will be utilized to purchase office equipment as needed.

FISCAL IMPACT: None	ADMIN SERVICES SIGN INITIALS
STAFF RECOMMENDATION: Request Council approval to have items declared as surplus	DEPT. INITIALS
MANAGER'S RECOMMENDATION:	CITY MANAGER's INITIALS

MOTION:

SECONDED:
AYES:
NAYES:
ABSENT:

APPROVED ( ) REJECTED ( )
DISAPPROVED ( ) DEFERRED ( )

REFERRED TO:

Agenda Item No. E-7

DATE SUBMITTED	7/27/2018	COUNCIL ACTION	(X)
	City Manager's	PUBLIC HEARING REQUIRED	( )
SUBMITTED BY	Office	RESOLUTION	( )
		ORDINANCE 1ST READING	( )
DATE ACTION REQUIRED	8/1/2018	ORDINANCE 2ND READING	( )
		CITY CLERK'S INITIALS	( )

IMPERIAL CITY COUNCIL
AGENDA ITEM

SUBJECT: DISCUSSION/ACTION: PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SERVICES

1. APPROVE PROFESSIONAL SERVICES AGREEMENT BETWEEN CITY OF IMPERIAL AND VEXER ENGINEERING FOR ENGINEERING SERVICES.

DEPARTMENT INVOLVED: COMMUNITY DEVELOPMENT DEPARTMENT/CITY MANAGER'S OFFICE

BACKGROUND/SUMMARY:

The City of Imperial and Vexer Engineering wish to enter into a Professional Services Agreement for Construction Engineering Services for the Roadway Improvements at the Intersection of Cross Road and Aten Road in the City of Imperial. For your review and approval please find the contract and proposal. Work shall commence within ten (10) days of the notice to proceed and be completed no later than October 1, 2018 (60 days).

FISCAL IMPACT: Not to Exceed $19,825.00

**Funds will be administered through LTA-Measure D.*

FINANCE INITIALS

STAFF RECOMMENDATION: It is staff's recommendation to approve and enter into a professional services agreement with Vexer Engineering for engineering services.

DEPT. INITIALS

MANAGER'S RECOMMENDATION: The City Manager agrees with staff's recommendation.

CITY MANAGER's INITIALS

MOTION:

SECONDED:
AYES:
NAYES:
ABSENT:

APPROVED ( ) REJECTED ( )
DISAPPROVED ( ) DEFERRED ( )

REFERRED TO:

AMENDMENT TO CONSULTING SERVICES AGREEMENT FOR CONSTRUCTION ENGINEERING SERVICES

This PROFESSIONAL SERVICE AGREEMENT ("AGREEMENT"), is made and entered by and between the City of Imperial, a municipal corporation of the State of California ("Agency") and Vexer Engineering ("CONSULTANT").

RECITALS

Whereas, AGENCY desires to engage CONSULTANT to perform certain professional services, as provided herein; and

WHEREAS, the Consultant is qualified and desires to accept such engagement

Now, THEREFORE, In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

I. TERM

This AGREEMENT shall commence on first day of August, 2018 and shall remain and continue in effect until tasks described herein are completed, but in no event later than October 1, 2018 unless sooner terminated pursuant to the provisions of this AGREEMENT.

II. SERVICES

CONSULTANT shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. CONSULTANT shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A. To the extent that Exhibit A is a proposal from CONSULTANT, such proposal is incorporated only for the description of the scope of services, pay schedule, performance schedule and assignment of CONSULTANT employees. No other terms and conditions from any such proposal shall apply to this AGREEMENT unless specifically agreed to in writing.

III. PERFORMANCE

CONSULTANT shall at all times faithfully, competently and to the best of his/her ability, experience, and talent, perform all tasks described herein. CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of CONSULTANT hereunder in meeting its obligations under this AGREEMENT. All work shall commence ten (10) calendar days after receiving a written Notice to Proceed from the AGENCY. Services shall be completed within sixty (60) consecutive calendar days.

IV. AGENCY MANAGEMENT

AGENCY'S Manager shall represent AGENCY in all matters pertaining to the administration of this AGREEMENT, review and approval of all products submitted by CONSULTANT. AGENCY's Manager, shall be authorized to act on AGENCY's behalf and to execute all necessary documents which enlarge the Tasks to Be Performed or change CONSULTANT's compensation, subject to Section V hereof.

V. PAYMENT

A. The AGENCY agrees to pay CONSULTANT within thirty (30) days upon receipt of invoice, in accordance with the payment rates and terms and the schedule of payment, set forth Exhibit B incorporated herein by this reference. This amount shall not exceed nineteen thousand eight hundred twenty five dollars ($19,825.00) for the total term of the AGREEMENT unless additional payment is approved as provided in this AGREEMENT.

B. CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the AGENCY Manager. CONSULTANT shall be compensated for any additional services in the amounts and in the manner as agreed to by Agency Manager and CONSULTANT at the time AGENCY's written authorization is given to CONSULTANT for the performance of said services. The AGENCY Manager may approve additional work but in no event shall the total amount to be paid pursuant to this AGREEMENT exceed ten-thousand dollars ($10,000.00) without prior approval by the AGENCY Council.

C. CONSULTANT shall submit in invoice in an amount not to exceed nineteen thousand eight hundred twenty five dollars ($19,825.00) upon completion of Tasks called for by this AGREEMENT. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the AGENCY disputes any of CONSULTANT's fees it shall give written notice to CONSULTANT within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this AGREEMENT shall be made within thirty (30) days of receipt of an invoice therefore.

VI. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

A. The AGENCY may at any time, for any reason, with or without cause, suspend or terminate this AGREEMENT, or any portion hereof, by serving upon the CONSULTANT at least thirty (30) days prior written notice. Upon receipt of said notice, the CONSULTANT shall immediately cease all work

under this AGREEMENT, unless the notice provides otherwise. If the AGENCY suspends or terminates a portion of this AGREEMENT such suspension or termination shall not make void or invalidate the remainder of this AGREEMENT.

B. In the event this AGREEMENT is terminated pursuant to this Section, the AGENCY shall pay to CONSULTANT the actual value of the work performed up to the time of termination, provided that the work performed is of value to the AGENCY. Upon termination of the AGREEMENT pursuant to this Section, the CONSULTANT will submit an invoice to the AGENCY pursuant to Section V.

VII. DEFAULT OF CONSULTANT

A. The CONSULTANT's failure to comply with the provisions of this AGREEMENT shall constitute a default. In the event that CONSULTANT is in default for cause under the terms of this AGREEMENT, AGENCY shall have no obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and can terminate this AGREEMENT immediately by written notice to the CONSULTANT. If such failure by the CONSULTANT to make progress in the performance of work hereunder arises out causes beyond the CONSULTANT's control, and without fault or negligence of the CONSULTANT, it shall not be considered a default.

B. If the AGENCY Manager, or his designee, determines that the CONSULTANT is in default in the performance of any of the terms or conditions of this AGREEMENT, he/she shall cause to be served upon the CONSULTANT a written notice of the default. The CONSULTANT shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the CONSULTANT fails to cure its default within such period of time or fails to present the AGENCY with a written plan for the cure of the default, the AGENCY shall have the right, notwithstanding any other provision of this AGREEMENT, to terminate this AGREEMENT without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this AGREEMENT.

VIII. OWNERSHIP OF DOCUMENTS

A. CONSULTANT shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by AGENCY that relate to the performance of services under this AGREEMENT. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible.

B. Upon completion of, or in the event of termination or suspension of this AGREEMENT, all original documents, reports, financial statements, materials, files and other documents prepared in the course of providing the services to be performed pursuant to this AGREEMENT shall become the sole property of the AGENCY and may be used, reused, or otherwise disposed of by the AGENCY without the permission of the CONSULTANT. With respect to computer files, CONSULTANT shall make available to the AGENCY, at the CONSULTANT's office and upon reasonable written request by the AGENCY, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. CONSULTANT hereby grants to AGENCY all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by CONSULTANT in the course of providing the services under this AGREEMENT.

IX. INDEMNIFICATION AND DEFENSE

A. Indemnity

To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless AGENCY and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs, caused in whole or in part by the negligent or wrongful act, error or omission of CONSULTANT, its officers, agents, employees or subconsultants (or any agency or individual that CONSULTANT shall bear the legal liability thereof) in the performance of services under this AGREEMENT. CONSULTANT's duty to indemnify and hold harmless AGENCY shall not extend to the AGENCY's sole or active negligence.

B. Duty to defend

In the event the AGENCY, its officers, employees, agents and/or volunteers are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this AGREEMENT, and upon demand by AGENCY, CONSULTANT shall defend the AGENCY at CONSULTANT's cost or at AGENCY's option, to reimburse AGENCY for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters to the extent the matters arise from, relate to or are caused by CONSULTANT's negligent acts, errors or omissions. Payment by AGENCY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONSULTANT and AGENCY, as to whether liability arises from the sole or active negligence of the AGENCY or its officers, employees, or agents, CONSULTANT will be obligated to pay for AGENCY's defense until such time as a final judgment has been entered

adjudicating the AGENCY as solely or actively negligent. CONSULTANT will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

X. INSURANCE

CONSULTANT shall maintain prior to the beginning of and for the duration of this AGREEMENT insurance coverage as specified in Exhibit B attached to and incorporated herein as part of this AGREEMENT.

XI. INDEPENDENT CONSULTANT

A. CONSULTANT is and shall at all times remain as to the AGENCY a wholly independent consultant and/or independent contractor. The personnel performing the services under this AGREEMENT on behalf of CONSULTANT, as identified and incorporated herein as Exhibit A, shall at all times be under CONSULTANT's exclusive direction and control. Neither AGENCY nor any of its officers, employees, or agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees, or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the AGENCY. CONSULTANT shall not incur or have the power to incur any debt, obligation, or liability whatever against AGENCY, or bind AGENCY in any manner.

B. No employee benefits shall be available to CONSULTANT in connection with the performance of this AGREEMENT. Except for the fees paid to CONSULTANT as provided in the AGREEMENT, AGENCY shall not pay salaries, wages, or other compensation to CONSULTANT for performing services hereunder for AGENCY. AGENCY shall not be liable for compensation or indemnification to CONSULTANT for injury or sickness arising out of performing services hereunder.

XII. LEGAL RESPONSIBILITIES

The CONSULTANT shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this AGREEMENT. The CONSULTANT shall at all times observe and comply with all such laws and regulations. The AGENCY, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the CONSULTANT to comply with this Section.

XIII. UNDUE INFLUENCE

CONSULTANT declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the AGENCY in connection with the award, terms or implementation of this AGREEMENT, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the AGENCY has or will receive compensation, directly or indirectly, from CONSULTANT, or from any officer, employee or agent of CONSULTANT, in connection with the award of this AGREEMENT or any work to be conducted as a result of this AGREEMENT. Violation of this Section shall be a material breach of this AGREEMENT entitling the AGENCY to any and all remedies at law or in equity.

XIV. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of AGENCY, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this AGREEMENT.

XV. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

A. All information gained by CONSULTANT in performance of this AGREEMENT shall be considered confidential and shall not be released by CONSULTANT without AGENCY's prior written authorization. CONSULTANT, its officers, employees, agents, or subconsultants, shall not without written authorization from the Agency Manager or unless requested by the Agency Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this AGREEMENT or relating to any project or property located within the AGENCY. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives AGENCY notice of such court order or subpoena.

B. CONSULTANT shall promptly notify AGENCY should CONSULTANT, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this AGREEMENT and the work performed there under or with respect to any project or property located within the AGENCY, unless the AGENCY is a party to any lawsuit, arbitration, or administrative proceeding connected to such Discovery, or unless CONSULTANT is prohibited by law from informing the AGENCY of such Discovery. AGENCY retains the right, but has no obligation, to represent

CONSULTANT and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless AGENCY is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to CONSULTANT in such proceeding, CONSULTANT agrees to cooperate fully with AGENCY and to provide the opportunity to review any response to discovery requests provided by CONSULTANT. However, AGENCY's right to review any such response does not imply or mean the right by AGENCY to control, direct, or rewrite said response.

XVI. NOTICES

Any notices which either party may desire to give to the other party under this AGREEMENT must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To AGENCY:
City of Imperial
420 South Imperial Avenue
Imperial, CA 92251
Attention: Stefan Chatwin, City Manager

To CONSULTANT:
Vexer Engineering
653 W Main Street, Suite 103
El Centro, CA 92243
Attention: Roberto C. Martinez, P.E. #74,475

XVII. ASSIGNMENT

The CONSULTANT shall not assign the performance of this AGREEMENT, nor any part thereof, nor any monies due hereunder, without prior written consent of the AGENCY. Because of the personal nature of the services to be rendered pursuant to this AGREEMENT, only CONSULTANT as identified in Exhibit A shall perform the services described in this AGREEMENT. CONSULTANT may use assistants, under his/her direct supervision, to perform some of the services under this AGREEMENT. CONSULTANT shall provide AGENCY fourteen (14) days' notice prior to the departure from CONSULTANT's employ. Should he/she leave CONSULTANT's employ, the AGENCY shall have the option to immediately terminate this AGREEMENT, within ten (10) days of the close of said notice period. Upon termination of this Agreement, CONSULTANT's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the Governing Board and the CONSULTANT. Before retaining or

contracting with any CONSULTANT for any services under this AGREEMENT, CONSULTANT shall provide AGENCY with the identity of the proposed CONSULTANT, a copy of the proposed written contract between CONSULTANT and such sub-consultant which shall include and indemnity provision similar to the one provided herein and identifying AGENCY as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed sub-consultant carries insurance at least equal to that required by this AGREEMENT or obtain a written waiver from AGENCY for such insurance.

XVIII. LICENSES

At all times during the term of this AGREEMENT, CONSULTANT shall have in full force and effect, all licenses required of it by law for the performance of the services described in this AGREEMENT.

XIX. GOVERNING LAW

The AGENCY and CONSULTANT understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this AGREEMENT and also govern the interpretation of this Agreement. Any litigation concerning this AGREEMENT shall take place in the municipal, superior, or federal district court with jurisdiction over the AGENCY.

XX. ENTIRE AGREEMENT

This AGREEMENT contains the entire understanding between the parties relating to the obligations of the parties described in this AGREEMENT. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this AGREEMENT or with respect to the terms and conditions of this AGREEMENT, are merged into this AGREEMENT and shall be of no further force or effect. Each party is entering into this AGREEMENT based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

XXI. CONTENTS OF PROPOSAL

CONSULTANT is bound by the contents of the proposal submitted by the CONSULTANT, Exhibit "A" hereto. In the event of conflict, the requirements of AGENCY's Request for Proposals and this AGREEMENT shall take precedence over those contained in the CONSULTANT's proposals. The incorporation of the CONSULTANT's proposal shall be for the scope of services to be provided only, and any other terms and conditions included in such proposal shall have no force and effect on this AGREEMENT or the relationship between CONSULTANT and/or AGENCY, unless expressly agreed to in writing.

XXII. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this AGREEMENT on behalf of CONSULTANT warrants and represents that he/she has the authority to execute this AGREEMENT on behalf of the CONSULTANT and has the authority to bind CONSULTANT to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

Vexer Engineering

By:_____

Roberto C. Martinez, P.E. #74,475
Principal

City of Imperial
A Municipal Corporation

By:_____

Stefan T. Chatwin
City Manager

ATTEST:

_____
Debra Jackson, City Clerk

APPROVED AS TO FORM:

By: _____
Dennis H. Morita, City Attorney

Attachments:	Exhibit A	Consultant's Proposal
	Exhibit B	Insurance Requirements

EXHIBIT A

CONSULTANT'S PROPOSAL

EXHIBIT B

INSURANCE REQUIREMENTS

Without limiting CONSULTANT's indemnification of AGENCY, and prior to commencement of Work, CONSULTANT shall obtain, provide and maintain at its own expense during the term of this AGREEMENT, policies of insurance of the type and amounts described below and in a form satisfactory to AGENCY.

General liability insurance. CONSULTANT shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than $1,000,000 per occurrence, $2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. CONSULTANT shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this AGREEMENT, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than $1,000,000 combined single limit for each accident.

Professional liability (errors & omissions) insurance. CONSULTANT shall maintain professional liability insurance that covers the Services to be performed in connection with this AGREEMENT, in the minimum amount of $1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this AGREEMENT and CONSULTANT agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this AGREEMENT.

Workers' compensation insurance. CONSULTANT shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least $1,000,000).

CONSULTANT shall submit to AGENCY, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of AGENCY, its officers, agents, employees and volunteers.

Umbrella or excess liability insurance. [Optional depending on limits required]. CONSULTANT shall obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrency of effective dates with primary policies;
- Policies shall "follow form" to the underlying primary policies; and
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

Other provisions or requirements

Proof of insurance. CONSULTANT shall provide certificates of insurance to AGENCY as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by Agency's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with AGENCY at all times during the term of this contract. AGENCY reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by CONSULTANT, his agents, representatives, employees or subconsultants.

Primary/noncontributing. Coverage provided by CONSULTANT shall be primary and any insurance or self-insurance procured or maintained by AGENCY shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of AGENCY before the AGENCY's own insurance or self-insurance shall be called upon to protect it as a named insured.

Agency's rights of enforcement. In the event any policy of insurance required under this AGREEMENT does not comply with these specifications or is canceled and not replaced, AGENCY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by AGENCY will be promptly reimbursed by CONSULTANT or AGENCY will withhold amounts sufficient to pay premium from CONSULTANT payments. In the alternative, AGENCY may cancel this AGREEMENT.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI

(or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the Agency's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against AGENCY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONSULTANT or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONSULTANT hereby waives its own right of recovery against AGENCY, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). CONSULTANT acknowledges and agrees that any actual or alleged failure on the part of the AGENCY to inform CONSULTANT of non-compliance with any requirement imposes no additional obligations on the AGENCY nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the AGENCY requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the AGENCY.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to AGENCY with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that AGENCY and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to AGENCY and approved of in writing.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass through clause. CONSULTANT agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by CONSULTANT, provide the same minimum insurance coverage and endorsements required of CONSULTANT. CONSULTANT agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. CONSULTANT agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to AGENCY for review.

Self-insured retentions. Any self-insured retentions must be declared to and approved by AGENCY. AGENCY reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by AGENCY.

Timely notice of claims. CONSULTANT shall give AGENCY prompt and timely notice of claims made or suits instituted that arise out of or result from CONSULTANT's performance under this AGREEMENT, and that involve or may involve coverage under any of the required liability policies. Notice to Agency not to exceed ten (10) days.

Additional insurance. CONSULTANT shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

VEXER ENGINEERING

CIVIL-STRUCTURAL-DESIGN

Response to Task Order Request for Construction Engineering Services for the Roadway Improvements at the Intersection of Cross Road and Aten Road in the City of Imperial

Submitted on May 30, 2018

May 30, 2018

Jesus Villegas
Project Manager
City of Imperial
Imperial, CA 92251

Subject: Response to Task Order Request for Design Engineering for Roadway Improvements at Cross Road and Aten Road

Dear Mr. Villegas,

Vexer Engineering is a local firm located at 653 West Main Street, Suite 103 in El Centro. As previously discussed, we are currently on the On Call Engineering contract with the City of Imperial. We are pleased to submit this proposal in response to your Task Order Request ("TOR") seeking **Design Engineering for Roadway Improvements at Cross Road and Aten Road.**

Work Interpretation and Project Summary

Vexer's interpretation and understanding of the request work is the following:

- Create a set of plans ready to be bid by contractors.
- Create a set of Specifications to accurately delineate an asphaltic rehabilitation system. The specifications will accompany the plans and will use City coordination to add on to the City's boiler plate(for bidding purposes).
- Research and find the best system for a push button system to cross the street in that section.
- Create a striping plan.
- Create a plan for replacing or reconstructing ADA ramps and various sidewalk areas.

Statement of Interest & Commitment

With approximately 72 years of combined experience in the development of Caltrans and public works projects, through this response, Vexer Engineering confirms its interest and its commitment to provide the Construction Engineering Services also known as Preliminary Engineering Services. We will be available to service the City at its convenience, and we guarantee a prompt response to all its needs.

Statement of Recommendation

The high demand of Construction Management, Inspection and Engineering services that will be anticipated by the City of Imperial validates the need to support the Small Local Business Enterprises such as Vexer Engineering.

Understanding of the Work

Vexer understands that the City of Imperial needs to create a set of design improvement plans for the intersection mentioned above.

Vexer will conduct weekly meetings with the project manager in order to maintain clear communication of expectations of the bid documents. Other stakeholders may also attend the weekly meetings.

Deliverables (bid documents) are two hard copies of a set of plans that will be bid out to contractors. The plans shall have a Registered Civil Engineer stamp to include a wet signature. Additionally, the City of Imperial will receive a CD containing a copy of the plans in pdf and dwg format including one scanned copy of the plans with the Engineer's signature.

Consultant Agreement or Notice to Proceed

Vexer's disposition to work for the client within the terms of the City's agreement, our relationships with agencies at all levels of government, as well as our "zero" litigation history, makes Vexer a valuable resource to the City of Imperial and its stakeholders.

We are willing to move forward in proceeding with a simple Notice to Proceed as we have previously signed the Consultant Agreement with the City of Imperial for the On Call Engineering Services.

Cost Proposal Structure

Vexer will outline a method which at a later time may be adjusted by the City to see what best fits the budget.

Below is the standard format cost structure of having the Engineer of Record dedicating 24 hours a week, a Draftsman at 40 hours a week(full time) and an administrator for 8 hours a week for organizing files, setting up meetings, documenting meeting minutes and sending correspondences to City staff for their use.

Position	Individual	Hours per Week	Total Work Weeks	Total Hours on This Project	$/Hour	Total "Not to Exceed" Amount
Engineer of Record	Roberto Martinez, P.E.	15	5	75	$85.00	$6,375.00
Engineer Technician	Omar Higareda	40	5	200	$62.00	$12,400.00
Administrator	Crystal Reynoso	6	5	30	$35.00	$1,050.00
					TOTAL "Not to Exceed":	**$19,825.00**

Therefore, the lump sum "not to exceed" price Total is **$19,825.00**.

Itemized Hourly Fee Schedule

Upon any changes, the City may use this fee schedule as a basis for additional work.

Office Position	Hourly Rate
Principal/Architectural	$95.00
Director of Engineering	$95.00
Project Manager/Program Manager	$95.00
Construction Manager	$90.00
Chief Engineer	$100.00
Construction Inspector	$80.00
Engineering Design	$80.00
Survey / Mapping Analyst	$80.00
Asst. Survey/Mapping Analyst	$65.00
Engineering Draftsperson / Engineering Aide	$65.00
Asst. Engineering Draftsperson	$45.00
Clerical / Administrative	$45.00

1. Saturday and overtime charges for Survey Crew are charged at time and one-half Sundays and Holidays at Double Time. Per Diem is $135.00 per day when location of work dictates.
2. Hourly services for Survey Crew are billed portal to portal in accordance with the stated hourly rates here-in, with a minimum four-hour charge.
3. Outside services such as photo work, xerography, blue printing, etc. are billed at cost plus 10%.
4. All fees are fully burdened and loaded, including full compensation for all overhead and profit. Billing rates include provision for normal office costs, including but not limited to office rental, utilities, insurance, cell phone or radio, equipment, normal supplies and materials, in-house reproduction services, and local travel costs.

Conclusion

Our workload has shown us that we are ready to begin the work immediately. We look forward to your response.

Thank you for your time and consideration, we look forward to working with the City of Imperial on this Task Order. Our team is ready to schedule the kick-off meeting as soon as we receive a signed copy of the Notice to Proceed.

Authorized Primary Individual

The primary contact authorized to respond to this Task Order is Vexer's Principal Engineer, Roberto Martinez. He may be reached at the main office at (760) 352–8100 or via e-mail at vexercon@gmail.com.

Should you have any questions, please feel free to reach me on my cell phone number at (760) 554-9336 or via e-mail at vexercon@gmail.com.

Sincerely,

Roberto C. Martinez, P.E. #74,475

Principal-In-Charge

Agenda Item No. 2-1

DATE SUBMITTED	7/25/2018	COUNCIL ACTION	(X)
SUBMITTED BY	COMMUNITY DEVELOPMENT DIRECTOR	PUBLIC HEARING REQUIRED	( )
		RESOLUTION	( )
		ORDINANCE 1ST READING	( )
DATE ACTION REQUIRED	8/1/2018	ORDINANCE 2ND READING	( )
		CITY CLERK'S INITIALS	

IMPERIAL ~~CITY COUNCIL~~ S.A. AGENDA ITEM

SUBJECT: DISCUSSION/ACTION: APPROVE UPDATED DEVELOPMENT & DISPOSITION AGREEMENT BETWEEN CITY OF IMPERIAL AND EAH INC.

1. REVIEW AND APPROVE UPDATED DEVELOPMENT & DISPOSITION AGREEMENT BETWEEN CITY OF IMPERIAL AND EAH INC FOR IMPERIAL SENIOR APARTMENT PROJECT.

DEPARTMENT INVOLVED: COMMUNITY DEVELOPMENT

BACKGROUND/SUMMARY:

The City of Imperial entered into a Development & Disposition Agreement with EAH INC. on March 27, 2013 (Please see attached agreement) for a proposed Senior Apartment Complex. The proposed project is to be a 69 unit Senior Rental Housing complex, including one managers unit (on-site) and a Commercial Space/ Potential Community Center. The Development & Disposition Agreement is currently outdated. The attached document is the proposed new and updated Development & Disposition Agreement between the City and EAH INC with the proposed Senior Housing Project that the City is vested in. The project is compatible with the surrounding land uses, the project is consistent with the General Plan Land Use element and the project is consistent with the Housing Element Goals.

The project is currently in the "Clean-up & Site-preparation" phase.

FISCAL IMPACT: $1.3M from Redevelopment Agency (RDA) Fund.	ADMIN SERVICES SIGN INITIALS
STAFF RECOMMENDATION: Staff recommends approval of the updated Development & Disposition Agreement.	DEPT. INITIALS
MANAGER'S RECOMMENDATION:	CITY MANAGER's INITIALS

MOTION:

SECONDED:
AYES:
NAYES:
ABSENT:

APPROVED ( ) REJECTED ( )
DISAPPROVED ( ) DEFERRED ( )

REFERRED TO:

DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

May 17, 2018

Ms. Laura Gutierrez, Finance Director
City of Imperial
420 South Imperial Avenue
Imperial, CA 92251

Dear Ms. Gutierrez:

Subject: 2018-19 Annual Recognized Obligation Payment Schedule

This letter supersedes the California Department of Finance's (Finance) Recognized Obligation Payment Schedule (ROPS) letter dated April 9, 2018. Pursuant to Health and Safety Code (HSC) section 34177 (o) (1), the City of Imperial Successor Agency (Agency) submitted an annual ROPS for the period of July 1, 2018 through June 30, 2019 (ROPS 18-19) to Finance on January 30, 2018. The Agency requested a Meet and Confer on one or more of the determinations made by Finance. The Meet and Confer was held on April 25, 2018.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer, Finance has completed its review of the specific determinations being disputed.

- Item Nos. 6, 36, and 38 – Various excess housing bond proceeds obligations in the total outstanding amount of $1,503,400 in Bond Proceeds are partially allowed. The Housing Successor Agency desires to use excess housing bond proceeds for the redevelopment, purchase, and maintenance of various housing properties. Finance originally denied these items because the Agency did not provide sufficient documentation to support the balance of Bond Proceeds.

  During the Meet and Confer, the Agency provided documentation that supported available Bond Proceeds totaling $1,308,699. Therefore, Finance approves the use of Bond Proceeds in the amount of $1,300,000 for Item No. 6 and partially approves the use of Bond Proceeds in the amount of $8,699 for Item No. 36. The remaining $90,701 requested for Item No. 36, as well as the entire $104,000 requested for Item No. 38, are not allowed at this time because the Agency was unable to support the availability of these Bond Proceeds.

  To the extent the Agency can support the existence of additional Bond Proceeds in its Fund 95, and the use of those funds are not otherwise restricted or prohibited, it may request the use of those Bond Proceeds in a subsequent ROPS. Additionally, Finance's approval is specifically limited to the use of excess housing bond proceeds pursuant to HSC section 34176 (g). However, such approval should not be construed as approval of the project itself as an enforceable obligation.

- Item No. 37 – 6th Street Apartment Property maintenance costs in the amount of $200,000 is not allowed. Finance continues to deny this item. It is our understanding these costs are for maintenance of various housing properties owned by the Housing Successor Agency.

  HSC section 34176 (a) (1) states if a city, county, or city and county elect to retain the authority to perform housing functions previously performed by a Redevelopment Agency, all rights, powers, duties, obligations, and housing assets shall be transferred to the city, county, or city and county. The Agency requested $180,000 in Administrative Redevelopment Property Tax Trust Fund (RPTTF) and $20,000 in Other Funds. The Agency clarified it intended to request $180,000 in Bond Proceeds. However, as noted above, the Agency was unable to support the balance of excess housing bond proceeds pursuant to HSC section 34176 (g) in an amount sufficient to fund this item.

  Further, the City of Imperial assumed the housing functions; therefore, the property maintenance costs associated with housing properties are the responsibility of the Housing Successor Agency. As a result, this item is not an enforceable obligation and the requested amounts of $180,000 in Administrative RPTTF and $20,000 in Other Funds, totaling $200,000, are not allowed.

In addition, per Finance's letter dated April 9, 2018, we continue to make the following determinations not contested by the Agency during the Meet and Confer:

- Item No. 4 – County of Imperial Public Facilities Construction Agreement in the amount of $273,384 has been reclassified. The Agency requested $10,000 in Bond Proceeds and $263,384 in Administrative RPTTF funding. However, as noted in the bullet below, the amount of Bond Proceeds available could not be determined. Therefore, the requested $10,000 in Bonds Proceeds is reclassified to RPTTF funding. Additionally, the requested $263,384 in Administrative RPTTF is reclassified to RPTTF, for a total of $273,384 ($10,000 + $263,384) reclassified to RPTTF funding.

- Item Nos. 32 through 35 – The Agency erroneously requested bond-related fees/costs to be funded from Administrative RPTTF funding. Therefore, the requested amounts for the following items have been reclassified from Administrative RPTTF to RPTTF:

Item No.	Project Name/Debt Obligation	Amount
32	Bond Trustee Fees	$ 4,500
33	Bond Trustee Fees	4,500
34	Bond Continuing Disclosure Annual Report	1,850
35	Bond Continuing Disclosure Annual Report	1,850
	Total	**$ 12,700**

Further, the Agency has historically identified incorrect funding sources for several items on the ROPS and each ROPS period, Finance has continued to correct these errors. The Agency and Oversight Board (OB) should exercise due diligence to ensure funding requested on subsequent ROPS is correctly identified to limit the number of adjustments needed due to clerical error.

- The administrative costs claimed are within the fiscal year administrative cap pursuant to HSC section 34171 (b) (3). However, the OB has approved an amount that appears excessive, given the number and nature of the obligations listed on the ROPS. HSC section 34179 (i) requires the OB to exercise a fiduciary duty to the taxing entities. Therefore, Finance encourages the OB to apply adequate oversight when evaluating the administrative resources necessary to successfully wind-down the Agency.

The Agency's maximum approved RPTTF distribution for the reporting period is $1,955,878 as summarized in the Approved RPTTF Distribution table on Page 5 (see Attachment).

RPTTF distributions occur biannually, one distribution for the July 1, 2018 through December 31, 2018 period (ROPS A period) and one distribution for the January 1, 2019 through June 30, 2019 period (ROPS B period) based on Finance's approved amounts. Since this determination is for the entire ROPS 18-19 period, the Agency is authorized to receive up to the maximum approved RPTTF through the combined ROPS A and B period distributions.

On the ROPS 18-19 form, the Agency reported cash balances and activity for the period of July 1, 2015 through June 30, 2016. Finance reviews the Agency's self-reported cash balances on an ongoing basis. The Agency should be prepared to submit financial records and bridging documents to support the cash balances reported upon request. Finance's ROPS 18-19 cash balance review indicates the Agency has Funds available to pay for enforceable obligations on the ROPS for the period of July 1, 2019 through June 30, 2020 (ROPS 19-20). HSC section 34177 (l) (1) (E) requires these balances to be used prior to requesting RPTTF.

Pursuant to HSC section 34186 (c), beginning October 1, 2018, the Agency will be required to report the estimated obligations versus actual payments (prior period adjustment) associated with the July 1, 2016 through June 30, 2017 period (ROPS 16-17) to the County Auditor-Controller for review. The Agency will report actual payments for ROPS 16-17 on ROPS 19-20. A prior period adjustment may be applied to the Agency's ROPS 19-20 RPTTF distribution. Therefore, the Agency should retain any unexpended RPTTF from the ROPS 16-17 period.

This is our final determination regarding the obligations listed on the ROPS 18-19. This determination only applies to items when funding was requested for the 12-month period. If a denial by Finance in a previous ROPS is currently the subject of litigation, the item will continue to be deemed denied until the matter is resolved.

The ROPS 18-19 form submitted by the Agency and this determination letter will be posted on our website:

http://dof.ca.gov/Programs/Redevelopment/ROPS/

This determination is effective for the ROPS 18-19 period only and should not be conclusively relied upon for future ROPS periods. All items listed on a future ROPS are subject to review and may be denied even if not denied on this ROPS or a preceding ROPS. The only exception is for items that have received a Final and Conclusive determination from Finance pursuant to HSC section 34177.5 (i). Finance's review of Final and Conclusive items is limited to confirming the scheduled payments as required by the obligation.

The amount available from the RPTTF is the same as the amount of property tax increment available prior to the enactment of redevelopment dissolution law. Therefore, as a practical matter, the ability to fund the items on the ROPS with property tax increment is limited to the amount of funding available to the Agency in the RPTTF.

Please direct inquiries to Nichelle Jackson, Supervisor, or Alexander Watt, Lead Analyst, at (916) 322-2985.

Sincerely,

for

ERIKA LI
Program Budget Manager

cc: Mr. Jeorge Galvan, Planning and Development Director, City of Imperial
Mr. Doug Newland, Auditor-Controller, Imperial County

Attachment

Approved RPTTF Distribution For the period of July 2018 through June 2019			
	ROPS A Period	**ROPS B Period**	**ROPS 18-19 Total**
RPTTF Requested	$ 1,088,553	$ 331,241	$ 1,419,794
Administrative RPTTF Requested	482,084	224,000	706,084
Total RPTTF Requested	**1,570,637**	**555,241**	**2,125,878**
RPTTF Requested	1,088,553	331,241	1,419,794
Adjustments			
Item No. 4*	273,384	0	273,384
Item No. 32	0	4,500	4,500
Item No. 33	0	4,500	4,500
Item No. 34	1,850	0	1,850
Item No. 35	1,850	0	1,850
	277,084	9,000	286,084
RPTTF Authorized	**1,365,637**	**340,241**	**1,705,878**
Administrative RPTTF Requested	482,084	224,000	706,084
Adjustments			
Item No. 4	(263,384)	0	(263,384)
Item No. 32	0	(4,500)	(4,500)
Item No. 33	0	(4,500)	(4,500)
Item No. 34	(1,850)	0	(1,850)
Item No. 35	(1,850)	0	(1,850)
Item No. 37	(90,000)	(90,000)	(180,000)
	(357,084)	(99,000)	(456,084)
Administrative RPTTF Authorized	**125,000**	**125,000**	**250,000**
Total RPTTF Approved for Distribution	**$ 1,490,637**	**$ 465,241**	**$ 1,955,878**

* The figure includes a total reclassification of $273,384 ($10,000 from Bond Proceeds to RPTTF and $263,384 from Admin RPTTF to RPTTF).

AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT

By and Between

CITY OF IMPERIAL

and

EAH INC.

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AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT ("**Agreement**") is entered into as of the _____ day of ~~_____~~, August ~~July~~ ~~2013~~ 2018 by and between the CITY OF IMPERIAL (the "**City**") and EAH INC., a California nonprofit corporation (the "**Developer**"). The City and the Developer agree as follows:

100. SUBJECT OF AGREEMENT

101. Purpose of This Agreement

The development of the Site pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City of Imperial, California (the "**City**"), and the health, safety, morals and welfare of its residents and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

102. Intentionally Deleted

103. Intentionally Deleted

104. The Site

The "**Site**" is approximately square feet and is more particularly shown in the Map of the Site, attached hereto as Attachment No. 1 and incorporated herein by reference (the "**Map of the Site**"), and described in the Legal Description of the Site, attached hereto as Attachment No. 2 and incorporated herein by reference (the "**Legal Description of the Site**"). Prior to the execution of this Agreement, Developer shall have entered into the agreement for the acquisition and purchase of the Site. After the City Acquisition Escrow as hereinafter defined, the Site shall be conveyed to the Developer pursuant to this Agreement for development of an approximately sixty-nine (69) units of senior rental housing together with approximately two thousand ~~one~~eight hundred ~~seventy~~thirty-six (2,~~170~~836) square feet of commercial space ~~61-unit senior rental housing complex including one manager's unit together with approximately four thousand (4,000) square feet of commercial space~~ (the "**Housing Project**").

105. Parties to This Agreement

The City

The office of the City is located at ~~_____~~. 420 South Imperial Avenue, Imperial CA 92251. "**City**," as used in this Agreement, includes the City of Imperial and any assignee of or successor to its rights, powers and responsibilities.

The Developer and Transfers of Site, Control or Management

The Developer is EAH Inc., a California nonprofit corporation. The principal office of the Developer is located at 222 Pelican Way, San Rafael, CA 94901~~169 E. Francisco Blvd., Suite B, San Rafael, CA 94901~~. Wherever the term "Developer" is used herein,

such term shall include any permitted nominee, assignee or successor in interest as herein provided.

The qualifications and identity of the Developer are of particular concern to the City and the City, and it is because of such qualifications and identity that the City has entered into this Agreement with the Developer. No voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein. This Agreement may be terminated by the City and all loans made by the City and secured by the Site may be accelerated by City if there is (i) any conveyance by Developer of the Site or any portion thereof or interest therein (other than normal easements in connection with the development of the Site); (ii) any change in control of the Developer without the City's prior written consent or (iii) any engagement of, or change in, a property manager or asset manager or similar management entity or agent without the City's prior written consent; provided, however, that such consent will not be unreasonably withheld after the City has issued a Certificate of Completion (but it shall be reasonable for the City to withhold such consent on the grounds that the Developer, its transferee or the applicable management entity (as applicable) does not have extensive experience in operating projects such as the Housing Project or is not reputable, as determined in good faith by the City).

The Developer shall not assign all or any part of this Agreement without the prior written approval of the City, except the Developer shall have the right to assign all of its right, title and interest in and to this Agreement to a California limited partnership or a limited liability company in which Developer, or a reputable affiliate of Developer with comparable experience in owning and operating low/mod rental projects, acts as the managing general partner or managing member (a "**Partnership**"). From and after any such assignment, the Partnership shall be deemed entitled to all rights of Developer with respect to this Agreement. Developer shall provide City with organizational documents of the Developer or its successor-in-interest as City deems reasonably necessary to document the power and authority of the Developer and its obligations under this Agreement. In addition, the City hereby approves the following transfers of interest in the Developer: the addition of tax credit investors as limited partners; and the acquisition of a limited partner's interest in the Developer. Developer shall provide City with a copy of any documents evidencing a transfer of interest to the Partnership or any such approved transferee.

In addition, the following transfers of this Agreement and the Housing Project shall be permitted hereunder (each, a "**Permitted Transfer**") upon prior written notice to the City but without the consent of the City:

A. Transfers of partnership interests in Developer between then existing partners in Developer or (b) any withdrawal, removal, and/or replacement of a general partner of Developer pursuant to the terms of the applicable partnership agreement, so long as after the consummation of the foregoing, the controlling general partner of Developer and the general partner of Developer responsible for the day-to-day management of Developer and the Housing Project is a nonprofit entity with reasonable experience in operating, managing and leasing high quality mixed-income multifamily affordable housing projects in the State of California;

B. Any transfer to an affiliate of Developer or any transfers between or among then existing Developer affiliates, so long as (a) Developer or another limited liability company wholly owned or controlled by Developer continues to have a controlling general partnership interest in Developer and remains responsible for the day-to-day management of Developer and the Housing Project, and (b) Developer remains a single purpose entity; for purposes hereof, "affiliate" of Developer or Developer or another limited liability company wholly owned or controlled by Developer shall mean any entity in which Developer is a general partner responsible for the day-to-day management of such entity and of any housing and other real estate projects owned, managed or operated by such entity after the Permitted transfer;

C. The granting, entry into and/or exercise of the purchase option and right of first refusal agreement in accordance with Developer's partnership agreement (in the form and content in which such partnership agreement exists as of the date hereof), so long as (a) the purchasing party in any such exercise is Developer, its affiliate or permitted successor or (b) the exercise of rights under said purchase option and right of first refusal agreement is in accordance with Developer's partnership agreement (which is subject to City review and written approval);

D. Any transfer that results in a mere change in type of entity or form rather than in equity ownership (for example, the conversion of Developer from a general partnership to a limited liability company where the members hold all of the interests of the limited liability company in the same proportion as they previously held the partnership interests in the general partnership);

E. Any transfer of a limited partnership interest in Developer and/or Partnership, including, without limitation, to a tax credit investor; and

F. The removal or withdrawal in lieu of removal of a general partner of Developer by its limited partner for cause in accordance with Developer's limited partnership agreement and replacement of such general partner with an affiliate of the limited partner, so long as such affiliate or a remaining general partner of Developer has at least than ten (10) years experience operating low-income housing projects in California similar to the Housing Project and a good reputation.

200. DISPOSITION OF THE SITE

201. City Purchase of the Property.

(a) Subject to the terms and conditions of the Agreement, the City hereby agrees to accept an assignment from the Developer of all of the equitable right-title and interest of the Developer in the Site as arises under that certain [real estate purchase agreement dated as of]. March 1, 2013.

(b) The City shall acquire the Site as set forth in the Developer Acquisition Assignment Agreement in the form attached hereto as Attachment No. 7 on or prior to the date specified in the Schedule of Performance (the "**City Acquisition Escrow**"). The City agrees to perform all acts necessary to accept title to the Site in accordance with the foregoing provisions.

202. Agreement of the City to Sell the Site to the Developer for the Improvement of the Project. Subject to the Close of the City Acquisition Escrow.

Subject to the City's acquisition of the Property as set forth in the Developer Acquisition Assignment Agreement and further subject to the terms and conditions of this Agreement, the City hereby agrees to sell the Site to the Developer and the Developer agrees to purchase the Site from the City. The purchase price for the Site is Three Hundred Fifty-Thousand Dollars ($350,000) (the "Purchase Price"), which Purchase Price shall be financed by a portion of the City Loan (as hereinafter defined).. The Developer represents and warrants that the Site will be conveyed to the Developer for purposes of development pursuant to this Agreement and not for speculation in undeveloped land.

203. Escrow

The City agrees to open an escrow with Chicago Title Company or any other escrow company approved by the City and the Developer, as escrow agent (the "**Escrow Agent**"), in Imperial, California, within the time established in the Schedule of Performance (Attachment No. 3) (the "**Schedule of Performance**"). This Agreement constitutes the joint escrow instructions of the City and the Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of escrow. The City and the Developer shall provide such additional escrow instructions as shall be necessary and consistent with this Agreement. The Escrow Agent hereby is empowered to act under this Agreement and, upon indicating its acceptance of the provisions of this Section 203 in writing, delivered to the City and to the Developer within five days after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder.

The City and the Developer shall each pay in escrow to the Escrow Agent all fees, charges and costs necessary to close escrow (which shall be divided between the parties as such fees, charges and costs are customarily divided between a seller and buyer in Imperial County, as determined by Escrow Agent, unless specifically provided for herein to the contrary) promptly after the Escrow Agent has notified the City and the Developer of the amount of such fees,

charges and costs, but not earlier than ten (10) days prior to the scheduled date for the close of escrow.

Costs necessary to place title to the Site in the condition for conveyance required by this Agreement shall be borne by the City.

All funds received in the Escrow shall be deposited by the Escrow Agent with other escrow funds of the Escrow Agent in a general escrow account or accounts with any state or national bank doing business in the State of California. Such funds may be transferred to any other such general escrow account or accounts. All disbursements shall be made by check of the Escrow Agent. All adjustments shall be made on the basis of a 30 day month.

The Developer shall deposit into the escrow the following documents, fully executed, acknowledged and in recordable form as applicable:

1. The City Deed of Trust (as hereinafter defined);

2. The City Note (as hereinafter defined);

3. The Affordable Housing Covenant (as hereinafter defined); and

Upon delivery of the Grant Deed to the Escrow Agent by the City pursuant to Section 208 of this Agreement, the Escrow Agent shall record the Grant Deed when title can be vested in the Developer in accordance with the terms and provisions of this Agreement. The Escrow Agent shall buy, affix and cancel any transfer stamps required by law and pay any transfer tax required by law. Any insurance policies governing the Site are not to be transferred.

The Escrow Agent is authorized to:

1. Pay and charge the City and the Developer, respectively, for any fees, charges and costs payable under this Section 203. Before such payments are made, the Escrow Agent shall notify the City and the Developer in writing of the fees, charges and costs necessary to clear title and close the escrow;

2. Disburse funds and deliver the Grant Deed and other documents to the parties entitled thereto when the conditions of this escrow have been fulfilled by the City and the Developer; and

3. Record any instruments delivered through this escrow, if necessary or proper, to vest title in the Developer in accordance with the terms and provisions of this Agreement.

Escrow Agent may, within its discretion, execute and deliver any instrument, affidavit, and statement, and to perform any act reasonably necessary to comply with the provisions of FIRPTA and any similar California state act and regulations promulgated there under. City agrees to execute a Certificate of Non-Foreign Status by individual transferor and/or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform

Act as may be required by Escrow Agent, on the form to be supplied by Escrow Agent. Further, Escrow Agent shall prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

If this escrow is not in condition to close before the time for conveyance established in Section 204 of this Agreement, either party who then shall have fully performed the acts to be performed before the conveyance of title may, in writing, terminate this Agreement in the manner set forth in Section 606.1 or 606.2 hereof, as the case may be, and demand the return of its monies, papers or documents. Thereupon all obligations and liabilities of the parties under this Agreement shall cease and terminate in the manner set forth in Section 606.1 or 606.2 hereof, as the case may be. If neither the City nor the Developer shall have fully performed the acts to be performed before the time for conveyance established in Section 204, no termination or demand for return shall be recognized until 10 days after the Escrow Agent shall have mailed copies of such demand to the other party or parties at the address of its or their principal place or places of business. If any objections are raised within the 10 day period, the Escrow Agent is authorized to hold all monies, papers and documents with respect to the Site until instructed in writing by both the City and the Developer or upon failure thereof by a court of competent jurisdiction. If no such demands are made, the escrow shall be closed as soon as possible. Nothing in this Section 203 shall be construed to impair or affect the rights or obligations of the City or the Developer to specific performance.

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

All communications from the Escrow Agent to the City or the Developer shall be directed to the addresses and in the manner established in Section 701 of this Agreement for notices, demands and communications between the City and the Developer.

The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Sections 203 to 209, both inclusive, of this Agreement.

Neither the City nor the Developer shall be liable for any real estate commissions or brokerage fees that may arise here from. The City and the Developer each represent that neither has engaged any broker, agent or finder in connection with this transaction.

204. Conveyance of Title and Delivery of Possession

Provided that the Developer is not in default under this Agreement and all conditions precedent to such conveyance have occurred and subject to any mutually agreed upon extensions of time, conveyance to the Developer of title to the Site shall be completed on or prior to the date specified in the Schedule of Performance. The City and the Developer agree to perform all acts necessary to convey title in sufficient time for title to be conveyed in accordance with the foregoing provisions.

Possession shall be delivered to the Developer concurrently with the conveyance of title, except that limited access may be permitted before conveyance of title as permitted in Section 214. The Developer shall accept title and possession on or before said date.

205. Form of Grant Deed

The City shall convey to the Developer title to the Site in the condition provided in Section 206 of this Agreement by grant deed in substantially the form set forth in Attachment No. 5 (the "**Grant Deed**").

206. Condition of Title

Within the time set forth in the Schedule of Performance, City shall cause _____, Chicago Title Company or another title company reasonably acceptable to both parties (the "Title Company"), to deliver to Developer a standard preliminary title report (the "Title Report") with respect to title to the Site, dated within 30 days of the date of this Agreement, together with legible copies of the documents underlying the exceptions ("Exceptions") set forth in the Title Report. Developer shall have the right to reasonably approve or disapprove the Exceptions. Developer shall have thirty (30) days from the date of receipt of the Title Report pursuant to this Section 206 to give written notice to City of Developer's approval or disapproval of any of such Exceptions. Developer's failure to give written approval of the Title Report within such time limit shall be deemed disapproval of the Title Report. If Developer notifies City of its disapproval of any Exceptions in the Title Report, City shall have the right, but not the obligation, to remove any disapproved Exceptions within sixty (60) days after receiving written notice of Developer's disapproval or provide assurances satisfactory to Developer that such Exception(s) will be removed on or before the Commencement of the Ground Lease. If City cannot or in its sole discretion does not elect to remove any of the disapproved Exceptions within that period, Developer shall have ten (10) business days after the expiration of such sixty (60) business day period to either give City written notice that Developer elects to proceed with the acquisition of the Site subject to the disapproved Exceptions or to give City written notice that the Developer elects to terminate this Agreement. The title to the Site, with the Exceptions to title approved by Developer as provided herein, shall hereinafter be referred to as the "Approved Conditions of Title." Developer shall have the right to approve or disapprove any Exceptions reported by the Title Company after Developer has approved the Condition of Title for the Site (which are not created by Developer). City shall not voluntarily create any new exceptions to title following the date of this Agreement. Time for and Place of Delivery of Grant Deed and Other Documents

The City shall deposit the Grant Deed, and the Developer (and City where applicable) shall deposit the City Note, City Deed of Trust, and Affordable Housing Covenant with the Escrow Agent on or before the date established for the conveyance of the Site in the Schedule of Performance (Attachment No. 3 hereto). Concurrently with delivery of the City Note and recordation of the City Deed of Trust, the City shall also deliver to or for the benefit of the Developer the original Acquisition and Pre-Construction Note, marked as cancelled.

207. Recordation of Grant Deed and Other Documents

Upon the close of escrow, the Escrow Agent shall file the Grant Deed and all applicable Other Documents in the Official Records, shall deliver the City Note to the City, shall deliver the cancelled Acquisition and Pre-Construction Note to the Developer, shall deliver the remaining City Loan funds (provided for under Section 301.3, below) to or for the benefit of the Developer, and shall deliver to the Developer the Developer Title Policy and to the City the City Title Policy in conformity with Section 209.

208. Title Insurance

Upon the close of escrow, the Title Company, shall provide and deliver to the Developer an ALTA extended coverage owner's policy of title insurance issued by the Title Company, in the amount of $350,000 insuring that title is vested in Developer in accordance with the Approved Conditions of Title (the "**Developer Title Policy**"). The Title Company shall provide the City with a copy of the Developer Title Policy. The Developer shall pay all costs associated with the Developer Title Policy and the City Title Policy hereinafter described. Concurrently with the recording of the Grant Deed, the Title Company shall, if requested by the Developer, provide the Developer with an endorsement to insure the amount of the Developer's estimated development costs of the improvements to be constructed upon the Site, and the Developer shall pay the entire premium for any such increase in coverage.

Upon the close of escrow, the Title Company shall deliver to the City an ALTA extended coverage lender's policy of title insurance (the "**City Title Policy**"), with any endorsements the City may reasonably require, insuring the City in the principal amount of the City Loan, of the validity and the priority of the City Deed of Trust upon the Site, subject only to those liens approved by the City.

209. Taxes and Assessments

Ad valorem taxes and assessments on the Site, if any, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period commencing prior to conveyance of title shall be borne by the City. All such ad valorem taxes and assessments levied or imposed for any period commencing after closing of the escrow shall be paid by the Developer.

210. Conveyance Free of Possession

Except as otherwise provided in the Scope of Development (Attachment No. 4), the Site shall be conveyed free of any possession or right of possession by any person except that of the Developer and any arising from any Approved Conditions of Title.

211. Inspections; Conditions of the Site; Developer Right to Terminate Prior to Closing Based on New, Material Release.

1. Inspections. Within the time established in the Schedule of Performance (Attachment No. 3), the Developer shall conduct its own investigation of the Site (or portion thereof being conveyed), its physical condition, the

soils and toxic conditions of the Site and all other matters which in the Developer's judgment affect or influence the Developer's proposed use of the Site and the Developer's willingness to develop the Site pursuant to this Agreement. The Developer's investigation may include, without limitation, the preparation by a duly licensed soils engineer of a soils report and environmental report for the Site. Within the time set forth in the Schedule of Performance (Attachment No. 3), the Developer shall provide written notice to the City of the Developer's determinations concerning the suitability of the physical condition of the Site. If, in the Developer's reasonable judgment, the physical condition of the Site is unsuitable for the use or uses to which the Site will be put, then the Developer shall have the option either: to (a) take any action necessary to place the Site in a condition suitable for development, at no cost to the City; or (b) terminate this Agreement pursuant to the provisions of Section 606.1. If the Developer has not notified the City of its determinations concerning the suitability of the physical condition of the Site within the time set forth in the Schedule of Performance (Attachment No. 3), the Developer shall be deemed to have waived its right to terminate this Agreement pursuant to this Section. If there is a material release of hazardous substances on the Site after completion of Developer's inspection and prior to the close of escrow, and City knows of such release, City shall notify Developer of such release. If the new release described in City's notice or a new material release otherwise known to Developer is unacceptable to Developer, the Developer may terminate this Agreement prior to close of escrow by written notice to City (describing the material release and why it is unacceptable) given prior to the close of escrow.

2. "As Is." The City shall deliver to the Developer all information of which it has actual knowledge concerning the physical condition of the Site, including, without limitation, information about any Hazardous Materials, as defined below. The Developer acknowledges and agrees that the Site shall be purchased "as is," in its current physical condition, with no warranties, express or implied, as to the physical condition thereof, the presence or absence of any latent or patent condition thereon or therein, including, without limitation, any Hazardous Materials thereon or therein, and any other matters affecting the Site.

3. Indemnity. The Developer agrees, from and after the date of recording of the deed conveying title to the Site from the City to the Developer under this Agreement, to defend, indemnify, protect and hold harmless the City and its officers, beneficiaries, employees, agents, attorneys, representatives, legal successors and assigns ("**Indemnitees**") from, regarding and against any and all liabilities, obligations, orders, decrees, judgments, liens, demands, actions, Environmental Response Actions (as defined herein), claims, losses, damages, fines, penalties, expenses, Environmental Response Costs (as defined herein) or costs of any kind or

nature whatsoever, together with fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), ("**Damages**") whenever arising, and whether or not caused in whole or in part by the City, resulting from or in connection with the actual or claimed generation, storage, handling, transportation, use, presence, placement, migration and/or release of Hazardous Materials (as defined herein), at, on, in, beneath or from the Site (sometimes herein collectively referred to as "**Contamination**"), except if such Damages result from the gross negligence, fraud, misrepresentation or failure to disclose by the Indemnitees. The Developer's defense, indemnification, protection and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim or demand regarding the Contamination, at the Developer's sole cost.

4. Release and Waiver. The Developer hereby releases and waives all rights, causes of action and claims the Developer has or may have in the future against the Indemnitees arising out of or in connection with any Hazardous Materials (as defined herein), at, on, in, beneath or from the Site, except if such cause of action arises from the fraud or misrepresentation or failure to disclose by the City. In furtherance of the intentions set forth herein, the Developer acknowledges that it is familiar with Section 1542 of the Civil Code of the State of California which provides as follows:

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

The Developer hereby waives and relinquishes any right or benefit which it has or may have under Section 1542 of the Civil Code of the State of California or any similar provision of the statutory or no statutory law of any other applicable jurisdiction to the full extent that it may lawfully waive all such rights and benefits pertaining to the subject matter of this Section 213.

5. Definitions.

a. As used in this Agreement, the term "**Environmental Response Actions**" means any and all activities, data compilations, preparation of studies or reports, interaction with environmental regulatory agencies, obligations and undertakings associated with environmental investigations, removal activities, remediation activities or responses to inquiries and notice letters, as may be sought, initiated or required in connection with any local, state or

federal governmental or private party claims, including any claims by the Developer.

b. As used in this Agreement, the term "**Environmental Response Costs**" means any and all costs associated with Environmental Response Actions including, without limitation, any and all fines, penalties and damages.

c. As used in this Agreement, the term "**Hazardous Materials**" means any substance, material or waste that is (1) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of California law; (2) petroleum; (3) asbestos; (4) poly-chlorinated biphenyls; (5) radioactive materials; (6) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (7) defined as a "hazardous substance" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903) or its implementing regulations; (8) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601); or (9) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.

6. Materiality. The Developer acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of the Developer for the benefit of the City set forth in this Agreement are a material element of the consideration to the City for the performance of its obligations under this Agreement, and that the City would not have entered this Agreement unless the Developer's obligations were as provided for herein.

212. Intentionally Deleted.

213. Condition of the Site

The Site shall be conveyed from the City to the Developer in its current "as is" condition, without representation or warranty, express or implied.

It shall be the sole responsibility of the Developer, at the Developer's sole expense, to investigate and determine the soil conditions of the Site and the suitability of such soil conditions for the improvements to be constructed by the Developer. If the soil conditions are not in all respects entirely suitable for the use or uses to which the Site will be put, then it is

the sole responsibility and obligation of the Developer to take such action as may be necessary to place the soil conditions of the Site in a condition suitable for development of the Site.

214. Preliminary Work by the Developer

Prior to the conveyance of title from the City, representatives of the Developer shall have the right of access to the Site at all reasonable times for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. The Developer shall defend, indemnify and hold the City harmless from and against any and all claims, liabilities, damages, losses, costs and expenses arising out of or relating to any injury or damage caused directly or indirectly any activity pursuant to this Section. The Developer shall have access to all data and information on the Site available to the City, but without warranty or representation by the City as to the completeness, correctness or validity of such data and information.

Any preliminary work undertaken on the Site by the Developer prior to conveyance of title thereto shall be done only after written consent of the City and at the sole expense of the Developer. The Developer shall save and protect the City against any claims resulting from such preliminary work, access or use of the Site. Copies of data, surveys and tests obtained or made by the Developer on the Site shall be filed with the City. Any preliminary work by the Developer shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

300. City LOAN(S)

301. City Loan(s)

The City desires to assist the Developer with the costs of development of the Housing Project and creating affordable housing. Subject to the conditions set forth herein, the City shall provide a loan to the Developer in a total amount not to exceed ONE MILLION THREE HUNDRED THOUSAND DOLLARS ($1,300,000) (the "**City Loan**"). The City Loan will consist of the following elements:

1. Pre-Construction. An amount not to exceed FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) to be used to reimburse the Developer for certain design, engineering and other pre-development costs incurred by the Developer for the Housing Project ("**Pre-Construction**"). Upon the execution of this Agreement, Developer shall execute and deliver to City a promissory note in the form attached hereto as Attachment No. 8 and assignments and comments in the forms attached hereto as Attachments No. 11 and 12 from all architects, engineers and contractors (the **"Pre-Construction Note"**). The Pre-Construction Note shall be repayable in accordance with the provisions of the Pre-Construction Note until such time as Developer acquires the Site from the City. Upon close of escrow and conveyance of the Site to the Developer, the Pre-Construction Note shall be "rolled into" and become part of the City Loan evidenced by the City Note and City shall return the Pre-Construction Note to Developer marked "Cancelled", but the assignments

and consents shall remain in effect. If Developer engages any other architects, engineers or contractors, Developer shall promptly provide similar assignments and consents.

2. Development Costs. The remaining amount of EIGHT HUNDRED THOUSAND DOLLARS ($800,000), shall be available for use by the Developer to pay for acquisition of the Site and other costs associated with the construction and development of the Housing Project excluding any development fees, development management fees or similar fees.

3. Disbursements. Except with respect to the THREE HUNDRED FIFTY THOUSAND DOLLARS used to finance Developer's acquisition of the Site, the remaining City Loan funds and all of the Pre-Construction funds shall be disbursed on a construction draw basis to pay for predevelopment, construction and development costs in accordance with and subject to typical construction loan disbursement conditions (including, without limitation, absence of a default by Developer under this Agreement, disbursement no more often than once every 30 days, City's receipt of a written disbursement request indicating the amount requested including the names of all contractors and venders to be paid together with copies of invoices of the costs to be paid, conditional lien releases from all contractors and subcontractors to be paid and unconditional lien releases for all previous contractor invoices for which the previous disbursement of loan proceeds was made). The disbursements of the Pre-Construction funds are also subject to the satisfaction of conditions f, g, h and i set forth below and the disbursement of the remaining balance of City Loan funds are also subject to the satisfaction of conditions a - i set forth below.

Notwithstanding the foregoing, the City Loan shall not exceed an amount necessary to make the Housing Project financially feasible as shall be determined by City in its sole discretion and based upon review of all information which City deems necessary to evaluate the total cost to complete the Housing Project (the "**Project Costs**"), including all debt and tax credit equity available to the Developer to acquire the Site and complete the Housing Project. The City may cease disbursements of the Pre-Construction funds and/or City Loan at any time if the City determines that the City Loan, together with other sources of committed debt and tax credit equity, is insufficient to pay all Housing Project costs.

The following are also conditions precedent to all disbursements of the City Loan and the sale of the Site to Developer, and shall be satisfied as a condition to close of escrow (and if not satisfied as of the scheduled date for Close of Escrow in the Schedule of Performance, City may terminate this Agreement by written notice to Developer):

a. The Developer shall have delivered to the Escrow Agent the City Note, City Deed of Trust, and Affordable Housing Covenant, all duly executed and in recordable form (if applicable);

b. The Title Company (as hereinafter defined) is irrevocably committed to issuing the City Title Policy to the City;

c. The Construction Loan (as hereinafter defined), and all other financing and all commitments for tax credit equity necessary to pay all costs of the Housing Project shall have closed or will close concurrently with the close of escrow (and as to tax credit equity, the limited partnership agreement of the Partnership shall have been delivered to and approved by the City and such Partnership shall have obtained tax credits and commitments for tax credit equity reasonably acceptable to City);

d. All permits and approvals for the construction of the Housing Project shall have been issued (or are ready to be issued, subject only to payment of applicable fees);

e. City shall have received and approved GMAX or a stipulated sum with a reputable contractor for the Housing Project, and if required by other sources of financing, copies of payment and performance bonds;

f. City shall have reviewed and approved a project budget (the "**Project Budget**"), showing all costs for the acquisition of the Site and the design and construction of the Housing Project (collectively, the "**Project Costs**"), including the following materials for City review: (i) sources and uses of funds statement, (ii) cash flow projections, and (iii) first year operating budget.

g. Developer shall have delivered to City the executed assignments described in Sections 401.9 and 401.10 below.

h. Developer shall not be in default under the Agreement.

302. City Note and City Deed of Trust

The Developer's obligation to repay the City Loan shall be evidenced by a promissory note (the "**City Note**") in substantially the form attached hereto as Attachment No. 9 and incorporated herein by reference. The City Loan shall be repaid pursuant to the terms and conditions set forth in the City Note. The City Note shall be secured by a deed of trust (the "**City Deed of Trust**"), in the form attached hereto as Attachment No. 10 recorded against the Site.

303. Additional Financing

In addition to the City Loan, the Developer will use diligent efforts to obtain financing for the Housing Project through a combination of sources, including (i) federal and/or State Low-Income Housing Tax Credits (the "**Tax Credit Financing**"), (ii) construction loan from a reputable institutional lender (the "**Construction Loan**"), and/or (iii) other funding, as may be necessary to pay all costs necessary for the development and construction of the Housing Project, including without limitation, such sources as the Affordable Housing Program of the

Federal Home Loan Bank ("**AHP**"), from the proceeds from the HOME Investment Partnerships Act ("**HOME Program**") (all collectively, the "**Project Financing**").

304. Project Financing

The City shall have the right to disapprove, in its reasonable discretion, the Project Financing. City shall not be obligated to approve tax credit equity without having received true and complete copies of the preliminary reservation and, if available, the carryover allocation and the final allocation of tax credits, and true and complete copies of all documents evidencing the admission of an equity investor and its obligation to contribute the Tax Credit Financing, subject only to reasonable and customary conditions.

305. Affordable Housing Covenant

Concurrently with execution and delivery of the City Note, and prior to and as a condition precedent to funding any remaining portion of the City Loan, the Developer shall also execute and deliver an "**Affordable Housing Covenant**" setting out the Developer's obligations to develop and use the Site for affordable housing purposes, as provided under Section 501. The Affordable Housing Covenant shall be in substantially the form attached hereto as Attachment No. 6 and incorporated herein by reference. The Affordable Housing Covenant shall be recorded against the Site. The City agrees that the Affordable Housing Covenant on the Site shall be subordinate to a regulatory agreement, deed of trust, or other covenants and restrictions relating to the Project Financing, in an amount reasonably approved by the City's Executive Director, subject to the provisions set forth in Paragraph 10 of the Affordable Housing Covenant.

306. Subordination of City Loan

The City agrees to subordinate the City Deed of Trust to regulatory agreements and deed(s) of trust relating to the tax credit financing and other Project Financing secured by the Developer for the Housing Project where such subordination is required in order to obtain the financing needed for the Housing Project; provided the total aggregate amount of all permanent long-term financing secured by the Developer, together with the City Loan, shall not exceed the estimated construction cost of the completed Housing Project, unless otherwise approved by the City; and provided, further, that any such subordination shall be subject to the provisions set forth in this Section 306 and that one (or more) recorded regulatory agreement is required by the other financing or tax credit equity sources and is approved by the Executive Director of the City. Any such subordination shall be pursuant to the terms of the subordination agreements and/or other inter-creditor agreements that may be entered into by the City. The City shall have the right to review and approve the terms and conditions of any such senior financing and subordination agreement(s), which approval shall not be unreasonably withheld. The City shall have the right to record a request that the City receive notice of any default by the Developer under the tax credit financing and other Project Financing obtained by the Developer with respect to the Housing Project. To implement any such subordination, the Executive Director of the City shall have the authority to execute such subordination agreements and/or inter-creditor agreements that may be reasonably required.

400. DEVELOPMENT OF THE SITE

401. Development of the Site by the Developer

Scope of Development

The Site shall be developed as provided in the Scope of Development, attached hereto as Attachment No. 4 and incorporated herein by reference.

Basic Concept Drawings

The Site shall be developed in accordance with Basic Concept Drawings that are subject to approval by the City. Notwithstanding the foregoing and notwithstanding anything else to the contrary in this Agreement, express or implied, Developer shall obtain all permits and governmental approvals for the Housing Project as may be required by applicable law.

Changes to Plans and Cost of Construction

If the Developer desires to make any mastered change in the construction plans after their approval by the City that will alter the number of units or increase or decrease the Project Budget by $75,000 or more in any one instance or $150,000 on a cumulative basis, or affect the number of rental units, the Developer shall submit the proposed change to the City for its approval.

Cost of Construction

The cost of developing the Site and constructing the improvements thereon shall be borne by the Developer except for the loans contemplated herein. The City and the Developer shall each pay the costs necessary to administer and carry out their respective responsibilities and obligations under this Agreement.

Construction Schedule

After the conveyance of title to the Site, the Developer shall promptly begin and thereafter diligently prosecute to completion the construction of the improvements and the development of the Site. The Developer shall begin and complete all construction and development within the times specified in the Schedule of Performance, extended as provided in Section 704. The City's Executive Director, in his or her reasonable judgment, shall have the authority to approve in writing any additional time extensions on behalf of the City.

During the period of construction, but not more frequently than once a month, the Developer shall submit to the City a written progress report of the construction when and as requested by the City. The report shall be in such form and detail as may reasonably be required by the City and shall include a reasonable number of construction photographs taken since the last report submitted by the Developer.

Insurance

From and after the Close of Escrow, Developer shall obtain and maintain at no cost or expense to the City, with an insurance company reasonably acceptable to the City, (i) property insurance for the Improvements in an amount not less than the replacement cost of the Improvements (subject to a deductible not to exceed $10,000) with blanket limits (provided such limits do not limit the amount of property insurance reserved exclusively for the Improvements); (ii) general liability insurance, insuring against claims and liability for bodily injury and property damage arising from the construction, use, occupancy, condition, or operation of the Land, which liability insurance shall provide combined single limit protection of at least $5,000,000 and shall include contractual liability coverage and products and completed operations coverage, and (iii) commercial automobile liability insurance of at least $1,000,000 combined single limit.. Such liability insurance policies shall name the City and the City and their council members, board members, officers, agents and employees as additional insureds.

Developer shall obtain and maintain in force until completion of the Improvements (i) "all risk" builder's risk insurance, including coverage for vandalism and malicious mischief, in a form and amount and with a company reasonably acceptable to the City, and (ii) workers' compensation insurance covering all persons employed by Developer in connection with work on the Project, or any portion thereof. During the construction of Improvements by Developer, such builder's risk insurance shall cover improvements in place and all material and equipment at the job site furnished under contract, but shall exclude contractors', subcontractors', and construction managers' tools and equipment and property owned by contractors' and subcontractors' employees.

Developer shall also furnish or cause to be furnished to the City evidence satisfactory to the City that any contractor with whom it has contracted for the performance of work or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law.

With respect to each policy of insurance required above, Developer and each of Developer's general contractors shall furnish to the City a certificate on the insurance carrier's form setting forth the general provisions of the insurance coverage promptly after written request by City showing the additional insureds. The certificate shall also be furnished by Developer prior to commencement of construction of any Improvements.

All such policies required by this Section shall contain (i) language to the effect that the policies cannot be cancelled or materially changed except after thirty (30) days' written notice by the insurer to the City; (ii) a waiver of the insurer of all rights of subrogation against the City and the other additional insureds; and (iii) an endorsement that said policy is primary and non-contributory. All such insurance shall have deductibles that do not exceed $10,000.

City and Other Governmental City Permits

Before the close of escrow or the commencement of construction or development of any improvements, structures or other work of improvement upon the Site, the

Developer shall, at its own expense, secure or cause to be secured any and all permits that may be required by the City or any other governmental agency affected by such construction, development or work. The City shall provide all assistance deemed appropriate by the City to the Developer in securing these permits.

Construction Bidding/Contract

The Developer shall be permitted to select a general construction contractor (i) has a demonstrated capacity for performing such work contemplated under this Agreement and the Scope of Work, (ii) is prepared to engage in the competitive bidding of all subcontracted work and disclose to the City all such bids received, (iii) will provide performance and labor and materials bonds for any work performed by the general contractor or its subcontractors, and (iv) is willing to enter into a construction contract in form and substance acceptable to the City. The City must approve any general contractor, and the construction contract entered into therewith for construction of the improvements, prior to the close of escrow.

Assignment of Plans and Architect's Contract

Before the close of escrow, the Developer shall, by an instrument substantially in the form attached hereto as Attachment No. 11 (the "Architectural Assignment"), conditionally assign to the City all architectural plans and contracts for the improvements and the project architect's contract. The Developer shall also deliver to the City, in the form included as part of the Architectural Assignment, the written consent of the project architect to said assignment, including, without limitation, to the use by the City of all architectural plans, as well as the ideas, designs, and concepts contained within them. The City acknowledges and agrees that its rights under such assignments shall be subordinate to any such rights assigned to Developer's primary lenders for its Project Financing.

Assignment of Construction Contract

Before the close of escrow, the Developer shall, by an instrument substantially in the form attached hereto as Attachment No. 12 (the "Construction Contract Assignment"), conditionally assign to the City its construction contract. The Developer shall also deliver to the City, in the form included as part of the Construction Contract Assignment, the written consent of the general contractor to said assignment. The City acknowledges and agrees that its rights under such assignments shall be subordinate to any such rights assigned to the Developer's primary lenders for its Project Financing.

Rights of Access

For the purposes of assuring compliance with this Agreement, representatives of the City and the City shall have the reasonable right of access to the Site without charges or fees and at normal construction hours during the period of construction, upon reasonable prior notice, for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Improvements. Such representatives of the City or the City shall be those who are so identified in writing by the Executive Director of

the City. The City and the City shall indemnify the Developer and hold it harmless from any damage caused or liability arising out of this right to access.

Local, State and Federal Laws

The Developer shall carry out the construction of the improvements in conformity with all applicable laws, including all applicable federal and state labor standards.

Antidiscrimination During Construction

The Developer, for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, the Developer will not discriminate against any employee or applicant for employment on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

402. Responsibilities of the City

The City, without expense to the Developer or assessment or claim against the Site, shall perform all work specified herein and in the Scope of Development for the City to perform within the times specified in the Schedule of Performance.

403. Taxes, Assessments, Encumbrances and Liens

The Developer shall pay prior to delinquency all real estate taxes and assessments assessed and levied on the Site for any period subsequent to conveyance of title to or delivery of possession of the Site. Prior to the issuance of a Certificate of Completion, the Developer shall not place or allow to be placed on the Site any mortgage, trust deed, encumbrance or lien unauthorized by this Agreement. The Developer shall remove or have removed any levy or attachment made on the Site (or any portion thereof), or shall assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit the Developer from reasonable contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto.

The Developer understands that under certain conditions, its control of the property or portion thereof under this Agreement may give rise to the imposition of a possessory interest tax on said property, and in such event, the Developer agrees to pay when due any such possessory interest tax.

404. No Release of Liability

In the absence of specific written agreement by the City, no transfer by Developer of the Site or any portion thereof or interest therein shall relieve the Developer or any other party from any obligations under this Agreement.

405. Security Financing; Rights of Holders

No Encumbrances Except Mortgages, Deeds of Trust, Sales and Lease-Backs or Other Financing for Development

Notwithstanding Sections 403 and 404 of this Agreement, mortgages, deeds of trust, sales and lease-backs or any other form of conveyance required for any reasonable method of financing are permitted before issuance of a Certificate of Completion, but only for the purpose of securing loans of funds to be used for financing the acquisition of the Site, the construction of improvements on the Site and any other expenditures necessary and appropriate to develop the Site under this Agreement. The Developer shall notify the City in advance of any mortgage, deed of trust, sale and lease-back or other form of conveyance for financing if the Developer proposes to enter into the same before issuance of a Certificate of Completion. The Developer shall not enter into any such conveyance for financing without the prior reasonable written approval of the Executive Director of the City.

Holder Not Obligated to Construct Improvements

The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion, nor shall any covenant or any other provision in the Grant Deed to be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses or to construct any Improvements thereon other than those uses and improvements provided for or authorized by this Agreement.

Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure

Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction of the Improvements, the City shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement who has previously made a written request to the City therefore. Each such holder shall (insofar as the rights of the City are concerned) have the right, at its option, within 90 days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. In the event there is more than one such holder, the right to cure or remedy a breach or default of the Developer under this Section 405.3 shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of the Developer under this Section 405.3. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect the Improvements or construction already made) without first having expressly assumed the Developer's obligations to the City by written agreement satisfactory to the City. The holder in that event must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates and submit

evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing such improvements shall be entitled, upon written request made to the City, to a Certificate of Completion from the City.

Failure of Holder to Complete Improvements

In any case where, six (6) months after default by the Developer in completion of construction of improvements under this Agreement, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the Site has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, the City may purchase the mortgage, deed of trust or other security interest by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest. If the ownership of the Site has vested in the holder, the City, if it so desires, shall be entitled to a conveyance of the Site from the holder to the City upon payment to the holder of an amount equal to the sum of the following:

a. The unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

b. All expenses with respect to foreclosure;

c. The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Site;

d. The costs of any authorized improvements made by such holder; and

e. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the City.

Right of City to Cure Mortgage, Deed of Trust or Other Security Interest Default

In the event of a default or breach by the Developer of a mortgage, deed of trust or other security interest with respect to the Site prior to the completion of the Improvements, and the holder has not exercised its option to complete the development, the City may cure the default prior to completion of any foreclosure. In such event, the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security interests executed for the sole purpose of obtaining funds to purchase and develop the Site as authorized herein.

406. Right of the City to Satisfy Other Liens on the Site After Title Passes

After the conveyance of title and prior to the issuance of a Certificate of Completion for construction and development, and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Site, the City shall have the right to satisfy any such liens or encumbrances, provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site to forfeiture or sale.

Certificate of Completion

Promptly after completion of all construction and development to be completed by the Developer upon the Site, the City shall furnish the Developer with a "**Certificate of Completion**" upon written request therefore by the Developer. Such Certificate of Completion shall be in such form as to permit it to be recorded in the Official Records.

If, after written request therefore from Developer, City refuses or fails to furnish the applicable Certificate of Completion, City shall, within 30 days after the written request, provide the Developer with a written statement of the reasons City refused or failed to furnish the Certificate of Completion. The statement shall also contain City's opinion of the action(s) Developer must take to obtain the Certificate of Completion. If the reason for such refusal is confined to either (a) the immediate unavailability of specific items or materials for landscaping, or (b) the need only to complete "punch list" items, the City will issue the Certificate of Completion upon the posting of a bond (or other security acceptable to the City) by Developer with City in an amount representing the fair value of the work not yet completed. If the City shall have failed to provide such written statement within said 30-day period, Developer shall be deemed entitled to the Certificate of Completion.

A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the Improvements. Such Certificate of Completion shall not be notice of completion as referred to in Section 3093 of the California Civil Code.

Prevailing Wages

If improvements which are considered to be public works under State law are constructed by or on behalf of Developer, then: (i) the Developer shall and shall cause the general contractor and all subcontractors to pay prevailing wages in the construction of the improvements as those wages are determined pursuant to Labor Code Sections 1720 *et seq.* and implementing regulations of the Department of Industrial Relations and comply with the other applicable provisions of Labor Code Sections 1720 *et seq.* and implementing regulations of the Department of Industrial Relations; and (ii) the Developer shall and shall cause its general contractor and subcontractors to keep and retain such records as are necessary to determine that prevailing wages have been paid as required by law. Copies of the currently applicable per diem prevailing wages are available from the City of Imperial Public Works Department. Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City and

the City) the City and the City 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 Developer, its contractors and subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of Labor Code Sections 1720 *et seq.* and implementing regulations of the Department of Industrial Relations in connection with construction of the improvements or any other work undertaken or in connection with the Site.

500. USE OF THE SITE

501. Uses

The Developer shall develop the Site as a senior affordable housing complex (the "Housing Project") consisting of approximately sixty-~~one (61)~~nine (69) rental dwelling units, one of which will be a manager's unit. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest, that at least ~~sixty-one (61)~~ thirty-three (33) of the Units (each an "Affordable Unit" and collectively, the "Affordable Units") shall be rented to Lower Income Households as described in the Affordable Housing Covenant (Attachment No. 6). For purposes hereof, "Lower Income Households" means households whose annual gross income that does not exceed the qualifying limits, adjusted for household size and other factors, for a "low-income family" as defined under the United States Housing Act of 1937 as amended, and as determined from time to time by HUD for the Imperial County Statistical Area. If HUD should cease making such determination, "low income" shall be defined as equal to or less than 60% of Area Median Income, or City in its reasonable discretion may designate another definition of "low income" used by any other federal or state agency.

The Monthly Rent for the Affordable Units to be rented to Lower Income Households shall not exceed the maximum rent allowable under Section 42 of the Internal Revenue Code, and the rules and regulations implementing the foregoing, for a tenant earning sixty percent (60%) of the Imperial County area median income for a household size appropriate to the unit. For purposes of this Agreement, "Monthly Rent" means the total of monthly payments for (a) use and occupancy of each Affordable Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by the Developer which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Developer. In the event that all utility charges are paid by the landlord rather than the tenant, no utility allowance shall be deducted from the rent.

Rental restrictions establishing the criteria for rental of the Affordable Units to Lower Income Households shall be as set forth in the Affordable Housing Covenant (Attachment No. 6), which shall be recorded against the Site as a condition to close of escrow. The Affordable Housing Covenant shall provide that each Affordable Unit shall remain affordable for a period of not less than fifty-five (55) years from the date of completion of the Housing Project.

The foregoing covenants shall "run with the land".

The Housing Project shall include approximately two thousand ~~one~~eight hundred ~~seventy~~thirty-six (2,~~170~~836) ~~4,000~~ leasable square feet of ground floor retail space developed as warm shell space (including plumbing, flooring, ceilings, bathrooms, and HVAC). The City shall have the right to master lease the retail space pursuant to the terms of a master lease in a form substantially similar to the form attached hereto as Attachment No. 13 (the "**Master Lease**"). The City and Developer agree that the terms and form of the Master Lease shall be subject to the review and approval Developer's lenders and investors. Without limiting the foregoing, the City and Developer presently contemplate that in~~tht~~ the Master Lease shall included the following terms: (i) a lease term of least at least 55 years (duration of the affordale housing project)~~15 years,~~ (ii) the city will not have to nor be subject to pay rent or any fees during the term of the lease ~~be a triple net lease with a discounted rental rent of $0.70 per square foot per month, inflated at 2.5% annually,~~ and (iii) City shall have the right to sublet the commercial space~~, subject to Developer's (and its lenders' and investor's) reasonable consent.~~

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502. Maintenance of the Site; Project Management

For so long as the Affordable Housing Covenant shall remain in effect, Developer covenants that it shall maintain, or cause to be maintained, the Site, in a manner consistent with the provisions set forth therefore in the Imperial Municipal Code, and shall keep the Site reasonably free from any accumulation of debris or waste materials prior to and after completion of the Housing Project. The City shall have the right of access to the Site, without charges or fees, to inspect the Affordable Units during normal business hours, provided that Developer and the occupant(s) are given notice prior to such inspection. If, at any time, Developer fails to maintain and operate the Site in accordance with this Agreement, the City shall have the right to take necessary corrective action pursuant to the provisions set forth in the City Note and the Affordable Housing Covenant. Failure by Developer to maintain, or cause to be maintained, the Site in the condition provided in this Section shall, following expiration of all applicable notice and cure periods, constitute a default hereunder and under the City Note, the City Deed of Trust and the Affordable Housing Covenant; provided, however, that nothing herein or in the City Note, the City Deed of Trust, or the Affordable Housing Covenant shall be deemed to provide Developer with more than one notice and cure period for each event of default

In implementing this Section, the Developer shall maintain (i) a comprehensive management plan for the Housing Project, including a fair housing component; and (ii) a reputable and experienced property manager for management of the Housing Project. The management plan, property manager and property management agreement must be approved by the City prior to the close of escrow. Any changes in the property manager and any modifications or amendments to the management plan or the property management agreement shall be subject to review and approval by the City.

503. Obligation to Refrain From Discrimination

The Developer covenants and agrees by and for itself, its successors and assigns and every successor in interest to the Site, or any part thereof, that there shall be no discrimination against or segregation of any person or group of person on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of

Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Developer or any person claiming under or through the Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land in accordance with Section 33438 of the Health and Safety Code and shall remain in effect in perpetuity.

504. Form of Nondiscrimination and Nonsegregation Clauses

The Developer shall refrain from restricting the rental, sale or lease of any portion of the Site on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. Pursuant to Sections 33337 and 33436 of the Health and Safety Code or any successor statute, all such deeds, leases or contract shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. **In deeds:** (a) "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

2. **In leases:** "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

> "That there shall be no discrimination against or segregation of any person or group of persons on account of as basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her,

establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein leased."

3. **In contracts:** "There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

505. Effect and Duration of Covenants

The covenants contained in Sections 501 and 502 of this Agreement shall be deemed to run with the land in accordance with Section 33334.3(f) of the Health and Safety Code or any successor statute and shall remain in effect for the longer of: (a) a period of not less than fifty-five (55) years from the date of completion of the Housing Project, or (b) until payment in full of all amounts owed to the City under the City Note and City Deed of Trust. The covenants against discrimination contained in Sections 503 and 504 of this Agreement shall be deemed to run with the land in accordance with Section 33438 of the Health and Safety Code or any successor statute and shall remain in effect in perpetuity. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on the part of the Developer and any successors and assigns to the Site or any part thereof, and the tenants, lessees, sublessees and occupants of the Site, for the benefit of and in favor of the City, the City and their successors and assigns and any successor in interest thereto and may be enforced by the City, the City and their successors and assigns

506. Rights of Access – Public Improvements and Facilities

The City, for itself and for the City and other public agencies, at their sole risk and expense, reserves the right to enter the Site or any part thereof at all reasonable times and with as little interference as possible for the purposes of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Site. Any such entry shall be made only after reasonable notice to the Developer, and the City shall indemnify and hold the Developer harmless from any claims or liabilities pertaining to any entry. Any damage or injury to the Site resulting from such entry shall be promptly repaired at the sole expense of the public agency responsible for the entry.

600. DEFAULTS, REMEDIES AND TERMINATION

601. Defaults – General

Subject to the extensions of time set forth in Section 704, failure or delay by either party to perform any term or provision of this Agreement or the Deed of Trust or any other loan secured in whole or in part by the Site or any portion thereof or interest therein that is not cured within any contractual cure period applicable thereto, constitutes a default under this Agreement; provided that, except for the failure by Developer to meet a deadline in the Schedule of Performance or comply with the Affordable Housing Covenant, or with Section 105.2 hereof, Developer shall not be in default unless Developer shall have failed to cure the default within thirty (30) days after written notice from City or the City's Executive Director.

The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Except as required to protect against further damages and except as otherwise expressly provided in Sections 604 and 605 of this Agreement, the injured party may not institute proceedings against the party in default until 30 days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default. IF WRITTEN REQUEST IS MADE BY DEVELOPER, City SHALL ALSO DELIVER A COPY OF DEFAULT NOTICE TO DEVELOPER'S LIMITED PARTNER. ANY PARTNER OF DEVELOPER SHALL HAVE THE RIGHT TO CURE ANY DEFAULT WITHIN THE APPLICABLE CURE PERIODS SET FORTH HEREINABOVE, WHETHER IN ITS OWN CAPACITY OR ON BEHALF OF DEVELOPER, AND City SHALL ACCEPT SUCH CURE AS IF TENDERED BY DEVELOPER.

Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies.

602. Legal Actions

Institution of Legal Actions

In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, or recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Imperial, State of California.

Applicable Law; Interpretation

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

This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has

been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

Acceptance of Service of Process

In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the Executive Director of the City or in such other manner as may be provided by law.

In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon the Developer or in such other manner as may be provided by law and shall be valid whether made within or without the State of California.

603. Rights and Remedies are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

604. Damages

If the Developer or the City defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured or commenced to be cured by the defaulting party within 90 days after service of the notice of default, the defaulting party shall be liable to the other party for any damages caused by such default.

605. Specific Performance

If the Developer or the City defaults under any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not commenced to be cured by the defaulting party within 45 days of service of the notice of default, the nondefaulting party, at its option, may institute an action for specific performance of the terms of this Agreement.

606. Remedies and Rights of Termination Prior to Conveyance of the Site to the Developer

Financing Conditions; Termination Developer

The parties agree that the following matters ("Feasibility Contingencies") are conditions precedent to the Close of Escrow. Developer shall use good faith and diligent

efforts to meet the following Feasibility Contingencies for the Development by the time set forth in the Development Schedule for the Close of Escrow:

a. The reservation of the Tax Credit Financing;

b. Having obtained a reservation of Tax Credit Financing for the Housing Project, the balance of the Project Financing on reasonable terms and conditions.

In the event that a Feasibility Contingency does not occur despite Developer's good faith effort, City may terminate this Agreement and, so long as Developer is in full compliance with this Agreement and has used its good faith and diligent efforts to cause it to occur, then Developer may also terminate this Agreement by delivering written notice to City. In the event that this Agreement is so terminated, then provided Developer is not in default under this Agreement, Developer shall not be obligated to repay the Pre-Construction Note, but the assignments of architect, engineer and contractor agreements and plans and specs (and consents thereto) shall remain in effect.

Termination by the City

In the event that Developer defaults hereunder prior to conveyance of title to the Site to the Developer, then this Agreement, and any rights of the Developer or any assignee or transferee in this Agreement pertaining thereto or arising therefrom with respect to the City, may, at the option of the City, be terminated by the City by written notice thereof to the Developer; provided, however, with respect to any default or failure that does not consist of a failure to meet a deadline in the Schedule of Performance, Developer shall have 30 days after the date of written notice of the default by the City to cure such default.

In the event of termination for any reason other than a default by City or a termination under Section 606.1 above, the Developer shall repay to the City all amounts due to the City under the Pre-Construction Note.

607. Option to Repurchase, Reenter and Repossess

After the Close of Escrow, the City shall have the right at its option to repurchase the Site with all improvements thereon, if prior to the issuance of the Certificate of Completion therefore, the Developer shall:

1. Fail to commence construction of approved improvements on the Site by the applicable date in the Schedule of Performance, for any reason whatsoever; for purposes of this provision, the Developer shall be deemed to "commence construction" when and only when the Developer has commenced vertical construction on the Site pursuant to a permit issued by the City for the construction of the improvements provided for herein; or

2. Once construction has been commenced in accordance with subparagraph 1 above, fail to diligently prosecute construction of the improvements through completion, where such failure has not been cured within one (1) month; or

3. Abandon or substantially suspend construction of the improvements for a period of one (1) month; or

4. Any violation of Section 105.2 above.

This option shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

1. Any mortgage, deed of trust or other security instrument permitted by this Agreement; or

2. Any rights or interests provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments.

700. GENERAL PROVISIONS

701. Notices, Demands and Communications Between the Parties

Formal notices, demands and communications between the City and the Developer shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the City and the Developer as set forth in Section 105 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail.

702. Conflicts of Interest

The Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

703. Nonliability of City, City Officials and Employees

No member, official or employee of the City shall be personally liable to the Developer in the event of any default or breach by the City or for any amount that may become due to the Developer or on any obligations under the terms of this Agreement.

Developer acknowledges and agrees that:

1. City neither undertakes nor assumes any responsibility to review, inspect, supervise, approve (other than for aesthetics) or inform Developer of any matter in connection with the Housing Project, including, but not limited to, matters relating to: (i) any drawings or construction plans, (ii) architects, contractors, subcontractors and materialmen, or the workmanship of or materials used by any of them, or (iii) the progress of

the Housing Project and its conformity with the final approved plans under Section 301.4; and Developer shall rely entirely on its own judgment with respect to such matters and acknowledge that any review, inspection, supervision, approval or information supplied to the Developer by the City in connection with such matters is solely for the protection of the City and that neither the Developer nor any third party is entitled to rely on it;

2. Notwithstanding any other provision of this Agreement: (i) City is not a partner, joint venturer, developer, alter-ego, manager, controlling person or other business associate or participant of any kind of Developer and City does not intend to ever assume any such status; (ii) City shall not be deemed responsible for or a participant in any acts, omissions or decisions of Developer;

3. City shall not be directly or indirectly liable or responsible for any loss or injury of any kind to any person or property resulting from any construction on, or occupancy or use of, any portion of the Site arising from: (i) any defect in any building, grading, landscaping or other onsite or offsite improvement; (ii) any act or omission of the Developer or any of Developer's agents, employees, contractors, licensees or invitees; or (iii) any accident on any portion of the Site or any fire or other casualty or hazard thereon not caused by the Indemnitees; and

4. By accepting or approving anything required to be performed or given to it under this Agreement, including any certificate, financial statement, survey, appraisal or insurance policy, City shall not be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by City to anyone.

704. Enforced Delay: Extension of Times of Performance

In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; act of terrorism; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of another party; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the City shall not excuse performance by the City); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other parties more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice.

705. Inspection of Books and Records

The City has the right, upon not less than seventy-two (72) hours notice, at all reasonable times, to inspect the books and records of the Developer pertaining to the Site as pertinent to the purposes of this Agreement.

706. Plans and Data

Where the Developer does not proceed with the purchase and development of the Site, and when this Agreement is terminated pursuant to Section 506.2 hereof for any other reason, the Developer shall deliver to the City any and all plans and data concerning the Site, and the City or any other person or entity designated by the City shall be free to use such plans and data, including plans and data previously delivered to the City, for any reason whatsoever without cost or liability therefore to the Developer or any other person.

707. Attorneys' Fees

Should any action be brought arising out of this Agreement including, without limitation, any action for declaratory or injunctive relief, the prevailing party shall be entitled to reasonable attorneys' fees and costs and expenses of investigation incurred, including those incurred in appellate proceedings or in any action or participation in, or in connection with, any case or proceeding under Chapter 7, 11 or 13 of the Bankruptcy Code or any successor statutes, and any judgment or decree rendered in any such actions or proceedings shall include an award thereof.

708. Reimbursement of City

Developer shall, within 15 days after written demand, reimburse the City for all costs reasonably incurred by City (including the reasonable fees and expenses of attorneys, accountants, appraisers and other consultants) in connection with City's enforcement of any documents in connection with the Housing Project or the City Loan and all related matters, including, without limitation, the following: (a) City's commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights or obligations of the parties to any such document; and (b) all claims, demands, causes of action, liabilities, losses, and other costs against which City is indemnified under such documents. Such reimbursement obligations shall bear interest from the date occurring 15 days after City makes written demand to the Developer at the rate of 12% per annum. Such reimbursement obligations shall survive termination of this Agreement and issuance of the Certificate of Completion.

709. Project Sign

If Developer or any project entity places a sign on the Site during construction stating the names of the Housing Project participants, it shall also name "City of Imperial" as a participant in the Housing Project. The City's name on the sign shall be in letters not less than the size of letters used to name any of the other participants. The design, content and dimensions of such sign shall be subject to the prior approval of City, which approval shall not be unreasonably withheld or delayed.

710. Counterparts

This Agreement may be executed in counterparts, all of which, taken together, shall be deemed to be one and the same document.

711. Prior Agreements; Amendments; Consents

This Agreement contains the entire agreement between City and Developer with respect to the Site and the Housing Project, and all prior negotiations, understandings and agreements are superseded by this Agreement. No modification or amendments of this Agreement (including waivers of rights and conditions) shall be effective unless in writing and signed by the party against whom enforcement of such modification is sought, and then only in the specific instance and for the specific purpose given.

712. Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Assuming proper service of process, Developer and City waive any objection regarding personal or in rem jurisdiction and agree that venue shall be proper in the County of Imperial California.

713. Severability of Provisions

No provision of this Agreement that is held to be unenforceable or invalid shall affect the remaining provisions, and to this end all provisions of this Agreement are hereby declared to be severable.

714. Headings

Article and section headings are included in this Agreement for convenience of reference only and shall not be used in construing this Agreement.

800. SPECIAL PROVISIONS

801. Intentionally Deleted.

802. Submission of Documents to the City for Approval

Whenever this Agreement requires the Developer to submit plans, drawings or other documents to the City for approval, and there is no time specified herein for such approval, the Developer may submit a letter requiring approval or rejection by the City within 30 days after submission. Except where such approval is expressly reserved to the sole discretion of the approving party, all approvals required hereunder by either party shall be reasonable and not unreasonably withheld, conditioned or delayed.

803. Amendments to this Agreement

The Developer and the City agree to mutually consider reasonable requests for amendments to this Agreement that may be made by any of the parties hereto, lending institutions, investors, or bond counsel or financial consultants to the City.

The City Manager shall have the authority to approve or grant, on behalf of the City, any approval, consent or waiver required under this Agreement by the City to the extent any such approval, consent or waiver does not constitute a material adverse change to the Housing Project and is consistent with the intent and business terms set forth in this Agreement.

900. ENTIRE AGREEMENT

This Agreement is executed in four duplicate originals, each of which is deemed to be an original. This Agreement comprises pages 1 through ___, 34, inclusive, and Attachment Nos. 1 through 13, attached hereto and incorporated herein by reference, all of which constitute the entire understanding and agreement of the parties.

City:

CITY OF IMPERIAL, a public body, corporate and politic

By: _____

Attest: _____
City Clerk

APPROVED AS TO FORM:

By: _____

DEVELOPER:

EAH INC., a California nonprofit corporation

By: _____
Matthew Steinle, Assistant Secretary

ATTACHMENT NO. 1

MAP OF THE SITE

(attached)

ATTACHMENT NO. 2

LEGAL DESCRIPTION OF THE SITE

(attached)

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

ACTION	DATE
Opening of Escrow. The City and Developer shall open an escrow for conveyance of the Site to the Developer. (Section 202)	Within 30 days after City purchases the land
Developer Inspections; Condition of the Site. The Developer shall complete its investigation of the Site; its physical condition, the soils and toxic conditions of the Site and all other matters that may affect the Developer's ability to develop the Site pursuant to this Agreement. (Section 212)	By December 31, 2013
Determination Letter from the Department of Finance or such other documentation that the City's source of funds intended to be used for the City Loan is a permissible use under applicable law.	By March 31, 2014, or extended as necessary by the City if delayed by the Department of Finance
Submission- Project Budget and Project Financing. The Developer shall submit to the City for review and approval a revised Project Budget and the proposed Project Financing. (Section 304)	Within 20 days after written request by the City staff from time to time
Applications and Awards for Tax Credit. The Developer shall make application to the California Tax Credit Allocation Committee for 9% tax credits.	Initially, in one of the cycles in 2019 (no later than July 1, 2019); ~~then, if necessary, in 2020~~
Close of Escrow. The Escrow Agent shall close the escrow in accordance with Section 202, and the City shall convey title to the Site to the Developer, and the Developer shall accept such conveyance. (Section 203)	Within 180 days after award of tax credit reservation by TCAC, but in no event later than December 31, 2020
Submission - Certificates of Insurance. The Developer shall furnish to the City duplicate originals or appropriate certificates of bodily injury and property damage insurance policies. (Section 401.7)	Prior to Close of Escrow
Commencement of Construction of Developer's Improvements. The Developer shall commence construction of the improvements to be constructed on the Site. (Section 401.6)	Within 60 days after the Close of Escrow

~~(attached)~~

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

(attached)

ATTACHMENT NO. 5

FORM OF GRANT DEED

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:	
Exempt from recording fee per Gov. Code § 27383	

(Space Above This Line for Recorder's Use Only)

Exempt from documentary transfer tax; conveyance for no consideration
(California Revenue & Taxation Code Section 11911).

GRANT DEED

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

The **CITY OF IMPERIAL**, a public body, corporate and politic, (herein called "**Grantor**" or "**City**") hereby grants to **EAH INC.**, a California nonprofit corporation (herein called "**Grantee**"), the land (the "**Site**") described in Exhibit A hereto.

1. The Grantee shall refrain from restricting the rental, sale or lease of the Site, or any portion thereof or any dwelling constructed thereon, on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses.

All deeds, leases or contracts made relative to the Site, the improvements thereon or any part thereof shall contain or be subject to substantially the following nondiscrimination clauses:

a. **In deeds**. "The grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor

shall the grantee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

b. **In leases**. "The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee himself, or any person claiming under or through him, 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 in the land herein leased."

c. **In contracts**. "There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

The provisions of this Paragraph 1. shall run with the land and shall be contained in each subsequent grant deed conveying title to the Site to any subsequent owner.

2. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by the DDA.

3. The covenants contained herein shall be binding for the benefit of the Grantor, its successors and assigns, the City of Imperial and any successor in interest to the Site or any part

thereof, and such covenants shall run in favor of the Grantor and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. The Grantor and such aforementioned parties, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The covenants contained in this Grant Deed shall be for the benefit of and shall be enforceable only by the Grantor, its successors and such aforementioned parties.

CITY OF IMPERIAL, a public body, corporate and politic

By:_____

State of California

County of _____

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

State of California

County of _____

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A TO GRANT DEED

DESCRIPTION OF SITE

(attached)

ATTACHMENT NO. 6

FORM OF AFFORDABLE HOUSING COVENANT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

_____
_____
_____

This document is exempt from recording fees
pursuant to Government Code § 27383.

AFFORDABLE HOUSING COVENANT

For valuable consideration, the receipt of which is hereby acknowledged, **EAH INC.**, a California nonprofit corporation ("**Developer**"), and the **CITY OF IMPERIAL** ("**City**") agree as follows with reference to the following facts:

A. Developer owns that certain real property legally described on Exhibit A (the "**Site**").

B. City has entered into a Amended and Restated Disposition and Development Agreement dated _____, between Developer and City (the "**DDA**") pursuant to which the City has conveyed the Site to the Developer, and the Developer shall construct on the Site a senior residential complex consisting of ~~61~~ 69 units of housing (including one Manager's unit) and related improvements, including approximately two thousand ~~one~~eight hundred ~~seventy~~thirty-six (2,~~170~~836) square feet of commercial space~~four thousand square fee of commercial space~~ (the "**Housing Project**"). Under the DDA, the City has provided the Developer with loans in the total amount not to exceed One Million Three Hundred Thousand Dollars ($1,300,000) (the "**City Loan**"). Developer has executed a promissory note evidencing the City Loan (the "**City Note**"), which is secured by a deed of trust recorded against the Site (the "**City Deed of Trust**").

C. Developer and City agree that the Site shall be subject to the conditions and restrictions, and the rights of City under this Affordable Housing Covenant (the "Covenant") as specified below.

Now, therefore, the City and Developer hereby agree as follows:

ARTICLE 1. RENT AND INCOME RESTRICTIONS

1.01. Rent and Income Restrictions. Developer agrees to make available, restrict occupancy in ~~sixty (60)~~thrity-three (33) of the Housing Units to Lower Income Households (the "Affordable Units").

For purposes hereof:

"Lowcr Incomc Houschold" mcans an annual gross income that does not exceed the qualifying limits, adjusted for household size and other factors, for a " low-income family" as defined under the United States Housing Act of 1937 as amended, and as determined from time to time by HUD for the Imperial Metropolitan Statistical Area. If HUD should cease making such determination, "low income" shall be defined as equal to or less than 60% of Area Median Income, or City in its reasonable discretion may designate another definition of "low income" used by any other federal or state agency.

The Monthly Rent for the Affordable Units to be rented to Lower Income Households hall not exceed the maximum rent allowable under the Tax Credit Rules for a tenant earning sixty percent (60%) of the Imperial County area median income for a household size appropriate to the unit. For purposes of this Agreement, "Monthly Rent" means the total of monthly payments for (a) use and occupancy of each Affordable Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by the Developer which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Developer. In the event that all utility charges are paid by the landlord rather than the tenant, no utility allowance shall be deducted from the rent.

ARTICLE 2. REPORTING REQUIREMENTS

2.01 Reporting Requirements. Annual reports and annual income certifications or re-certifications must be submitted to the City in form and content approved by the City. The reports, at a minimum, shall include:

(1) The number of persons per unit;

(2) Tenant name;

(3) Initial occupancy date;

(4) Rent paid per month;

(5) Gross income per year;

(6) Percent of rent paid in relation to income; and

(7) Copies of those documents used by Developer to certify the tenant as an Eligible Household.

The first annual report and annual income certification (the "**Initial Report**") shall be submitted to the City within thirty (30) days after the date of the initial rental of all the Affordable Units on the Site, or as otherwise agreed to by the City. Subsequent annual reports and annual income certifications or re-certifications shall be submitted to the City on the anniversary date of submittal of the Initial Report. The City may, from time to time during the term of this Covenant, request additional or different information and Developer shall promptly supply such information in the reports required hereunder. Developer shall maintain all necessary books and records, including property, personal and financial records, in accordance with requirements prescribed by the City with respect to all matters covered by this Covenant. Developer, at such time and in such forms as the City may require, shall furnish to City statements, records, reports, data and information pertaining to matters covered by this Covenant. Upon request for examination by the City, Developer, at any time during normal business hours, shall make available all of its records with respect to all matters covered by this Covenant. Owner shall permit the City to audit, examine and make excerpts or transcripts from these records.

ARTICLE 3. PROVISION OF SERVICES, MAINTENANCE AND MANAGEMENT OF PROPERTY

3.01. Maintenance. During the term of this Covenant, Developer and all successors in interest shall maintain, or cause to be maintained, the Site in a manner consistent with the provisions set forth therefore in the Imperial Municipal Code, and shall keep the entire Site reasonably free from any accumulation of debris or waste materials prior to and after construction.

If, at any time, Developer fails to maintain the Site, and has either failed to commence to cure such condition or to diligently prosecute to completion the condition or the condition is not corrected after expiration of thirty (30) days from the date of written notice from the City to the Developer, City may perform the necessary corrective maintenance, and Developer shall pay such costs as are reasonably incurred for such maintenance. The City shall have the right to place a lien on the Site should Developer not reimburse City for such costs within sixty (60) days follow City's written demand to Developer for reimbursement of such costs. Developer, on behalf of itself, its heirs, successors and assigns, hereby grants to City and its officers, employees and agents, an irrevocable license to enter upon the Site to perform such maintenance during normal business hours after receipt of written notice from City as hereinabove described and Developer's failure to sure or remedy such failure within thirty (30) days of such notice. Any such entry shall be made only after reasonable notice to Developer, and City shall indemnify and hold Developer harmless from any claims or liabilities pertaining to any such entry by City.

3.02. Management and Management Plan. Developer shall maintain (i) a comprehensive management plan for the housing project on the Site, including a fair housing component; and (ii) a reputable and experienced property manager for management of the housing project. The management plan, asset and property manager and property management agreements must be approved by the City. Any changes in the property manager, asset manager

or modifications or amendments to the management plan or any management agreement shall be subject to review and approval by the City.

ARTICLE 4. NO TRANSFER

4.01. Prohibition. The identity and qualifications of Developer as an experienced and successful Developer and operator of affordable rental housing developments are of particular concern to the City. It is because of this identity and these qualifications that the City has entered into this Covenant with the Developer. Except with respect to Permitted Transferees (as defined below), no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Covenant by assignment or otherwise, nor shall Developer make any total or partial sale, transfer, conveyance, encumbrance to secure financing, assignment or lease of the whole or any part of the Housing Project without the prior written approval of the City, which approval shall not be unreasonably withheld.

4.02. Permitted Transfers. Notwithstanding any other provision of this Covenant to the contrary, City approval of an assignment or transfer of this Covenant, the City Loan, the City Note, the City Deed of Trust, the DDA, or conveyance of the Site or any part thereof shall not be required in connection with any of the following (the "Permitted Transfers"):

A. The lease or rental of Affordable Units to Eligible Households.

B. Assignment for financing purposes, and any foreclosure thereunder, subject to such financing being considered and approved by the City as permitted by the DDA.

C. Transfer of the Housing Project to (a) an entity which has the Developer or an affiliate as the general partner, managing member or controlling entity, or (b) an entity in which Developer or an affiliate are a "controlling person" (as defined in Section 20(a) of the Securities Exchange Act of 1934, as amended); all subject to and in accordance with the terms of the DDA.

D. In the event of an assignment by Developer pursuant to subparagraph C. not requiring the City's prior approval, Developer nevertheless agrees that at least thirty (30) days prior to such assignment or transfer it shall give written notice to City of such assignment or transfer.

E. Any other transfer expressly permitted by the express terms of the DDA.

Changes in the control or management of Developer and any management company shall be governed by Section 105.2 of the DDA and shall require City's consent to the extent described therein.

4.03. City Consideration of Requested Transfer. Any request for approval made pursuant to this Section 4.03 shall be accompanied by and subject to (a) a description with the proposed assignee or transferee's operational experience and capability, and, net worth and resources, (it being understood that those of the proposed assignee or transferee must be comparable to those of the proposed transferor or assignor), and (c) the assignee or transferee written assumption of the obligations of the Developer under this Agreement (contingent upon

approval of the transfer by the City). The City (acting through its Executive Director) shall approve or disapprove the request within forty-five (45) days of its receipt of the Developer's notice and all information and materials required herein. In no event, however, shall the City be obligated to approve the assignment or transfer of the City Loan, City Note or City Deed of Trust, except to an approved transferee or assignee of the Developer's rights in and to the Housing Project.

ARTICLE 5. NO DISCRIMINATION

5.01. No Discrimination. Developer covenants, by and for itself and any successors in interest, that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall Developer, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, subleases or vendees in the Site.

ARTICLE 6. NONDISCRIMINATION AND NONSEGREGATION CLAUSES

All deeds, leases or contracts made relative to the Site, the improvements thereon or any part thereof, shall contain or be subject to substantially the following nondiscrimination and nonsegregation clauses:

1. **In deeds:** (a) "The grantee herein covenants, by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee, himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, subleases or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (a) shall be construed to affect Section 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code relating to housing for senior citizens. Subdivisions (d) of Section 51 and Section 1360 of the Civil Code and subdivision (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (a).

2. **In leases:** "The lessee herein covenants, by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

   (a) "That there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee, himself or herself or any person claiming under or through him or her, 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, subleases, subtenants or vendees in the land herein leased."

   (b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivisions (d) of Section 51 and Section 1360 of the Civil Code and subdivision (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (a).

3. **In contracts:** "There shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee, himself or herself or any person claiming under or through him or her, 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, subleases, subtenants or vendees in the land."

ARTICLE 7. NO IMPAIRMENT OF LIEN

No violation or breach of the covenants, conditions, restrictions, provisions or limitation contained in this Covenant shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument; provided, however, that any successor of Developer to the Site shall be bound by such covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

ARTICLE 8. DURATION

The covenants contained in Article 1 of this Covenant shall be deemed to run with the land for fifty-five (55) years following the completion of construction of the Housing Project.

ARTICLE 9. SUCCESSORS AND ASSIGNS

The covenants contained in the Covenant shall be binding for the benefit of the City and its respective successors and assigns, third party beneficiaries, and any successor in interest to the Site or any part thereof, and such covenants shall run in favor of the City and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard as to whether the City is or remains an owner of any land or interest therein to which such covenants relate. The City, and such aforementioned parties, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The covenants contained in the Covenant shall be for the benefit of and shall be enforceable only by the City, and its respective successors and assigns, third party beneficiaries, and such aforementioned parties.

ARTICLE 10. SUBORDINATION

Upon written request by Developer, City shall agree that the terms and conditions of this Covenant shall be subject to and subordinate to a regulatory agreement and deed of trust for Developer's Tax Credit Financing, and regulatory agreements and deeds of trust for other financing obtaining by the Developer pursuant to the DDA, through a lender acceptable to the City (the "Lender") and upon terms and conditions reasonably approved by the City, for Tax Credit Financing, or any other construction or permanent financing obtained by Developer, to be secured by a deed of trust against the Site; provided the total aggregate amount of permanent loan financing secured by Developer, together with the City Note provided for under the DDA, shall not exceed the estimated value of the Housing Project upon completion; and provided, further, that in any requested subordination agreement, the senior Lender must agree to the following conditions: (i) the Lender shall give to City copies of any notices of default issued by Lender to Developer; (ii) City shall have the right to cure any default by Developer within forty-five (45) days after it receives a notice of default; (iii) City shall have the right to foreclose its Deed of Trust without Lender accelerating its debt, provided City has cured or is attempting to cure any defaults under the deed of trust; and (iv) City shall, with the written consent of Lender, which consent shall not be unreasonably withheld, have the right to transfer the Housing Project to another nonprofit corporation, or to a limited partnership whose general partner is a nonprofit corporation, who shall own and operate the Housing Project as an affordable rental housing project.

[Signatures to appear on the following page.]

IN WITNESS WHEREOF, City and Developer have caused this Covenant to be executed on their behalf by their respective officers thereunto duly authorized.

Dated for reference purposes only as of _____, 20___.

"City"

CITY OF IMPERIAL, a public body, corporate and politic

By:_____

APPROVED AS TO FORM:

_____

"DEVELOPER"

EAH INC., a California nonprofit corporation

By:_____
Matthew Steinle, Assistant Secretary

ACKNOWLEDGMENTS

State of California

County of _____

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGMENTS

State of California

County of _____

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A

DESCRIPTION OF SITE

(attached)

ATTACHMENT NO. 7

Developer Acquisition Escrow Assignment Agreement

ASSIGNMENT AND ASSUMPTION OF PURCHASE AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF REAL PROPERTY PURCHASE AGREEMENT (the "Assignment Agreement") is made as of _____, 2009, by and between _____ (the "Assignor") and the _____ (the "Assignee"), with reference to the following:

RECITALS

A. **WHEREAS**, on _____, Assignor, as purchaser, and _____, as seller (the "Seller"), entered into that certain Standard Offer, Agreement, and Escrow Instructions for Purchase of Real Estate (the "Purchase Agreement") for the purchase of certain property described therein located in the City of Imperial, County of Imperial, State of California more particularly described on attached Exhibit "A," incorporated in this Assignment Agreement (the "Property");

B. **WHEREAS** a copy of the Purchase Agreement is attached hereto as Exhibit "B;"

C. **WHEREAS**, in order to conduct the sale of the Property pursuant to the Purchase Agreement, Assignor and Seller have opened Escrow No. _____ (the "Escrow") at _____ (the "Escrow Holder");

D. **WHEREAS** Assignor and Seller have executed those certain Escrow Instructions attached hereto as Exhibit "C" (the "Escrow Instructions");

E. **WHEREAS**, in connection with the Purchase Agreement and Escrow Instructions, Assignor has deposited the sum of $_____ in Escrow (the "Deposit");

F. **WHEREAS** Assignor desires to assign to Assignee and Assignee is willing, on certain conditions, to assume all rights and obligations of Assignee under the Purchase Agreement and Escrow Instructions.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. Assignment and Assumption. Assignor hereby assigns to Assignee all of Assignor's right, title and interest under the Purchase Agreement and Escrow Instructions, including, without limitation, all right, title and interest in and to the Deposit (the "Assignment"). Assignee assumes and agrees to perform and observe all of the obligations and covenants of

Assignor in the Purchase Agreement and Escrow Instructions to be performed on or after the date hereof.

2. Reimbursement of Deposit. As of the date hereof, Assignee shall reimburse to Assignor, in immediately available funds, a sum equal to the Deposit.

3. Representations and Warranties. Assignor represents and warrants to Assignee as follows:

The Purchase Agreement attached hereto is a true and complete copy of the Purchase Agreement and the Purchase Agreement has not been otherwise amended, modified or supplemented in any respect except as set forth in the Escrow Instructions. The Purchase Agreement (as supplemented and amended by the Escrow Instructions) represents the entire agreement between Assignor and Seller with respect to the Property.

The Escrow Instructions are a true and complete set of Escrow Instructions as of the date hereof.

Assignor is the holder of the entire buyer's interest under the Purchase Agreement. Assignor has not assigned, hypothecated or otherwise transferred all or any portion of its interest in the Purchase Agreement.

4. Successors and Assigns. This Assignment Agreement shall be binding upon and shall inure to the benefit of Assignor and Assignee and their respective successors and assigns.

5. Governing Law. This Assignment Agreement shall be governed and construed in accordance with California Law.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have executed this Assignment Agreement as of the date first set forth above.

"Assignor"

By: _____

Name: _____

Title: _____

"Assignee"

By: _____

Name: _____

Title: _____

ATTACHMENT NO. 8

FORM OF PRE-CONSTRUCTION NOTE

PROMISSORY NOTE
(Pre-Construction)

Not to Exceed
$500,000.00

_____, 2013
Imperial, California

FOR VALUE RECEIVED, EAH INC., a California nonprofit public benefit corporation (the "Maker" or "Developer"), having an address of 22 Pelican Way, San Rafael, CA 94901~~2169 E. Francisco, San Rafael, CA~~, promises to pay the CITY OF IMPERIAL, or order ("Holder" or "City"), the principal sum of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS **($500,000.00),** or so much of said amount which may be advanced from time to time pursuant to Section 301 that certain Amended and Restated Disposition and Development Agreement dated _____ between Developer and City (the "DDA"), with no interest until Developer's acquisition of the Site under the DDA. All capitalized terms not defined in this Note shall have the meaning set forth in the DDA.

1. This is a promissory note for the repayment to Holder of funds advanced to or on behalf of Maker under the DDA, to pay certain predevelopment costs incurred in connection with the development of the Housing Project.

2. Pursuant to the DDA, upon close of escrow for conveyance of the Site to the Developer, the Pre-Construction evidenced by this Note will be "rolled over" and shall constitute a portion of the entire City Loan being provided to the Developer under the DDA, and this Note shall thereupon be cancelled. If for any reason the Site is not conveyed to the Developer in accordance with the DDA, for any reason other than an uncured default of the City under the DDA or a termination under Section 606.1 of the DDA, the entire outstanding principal balance and all interest accrued hereunder shall be due and payable. Maker may prepay this Note, in full or in part, at any time without penalty or premium.

3. Payment shall be made in lawful money of the United States to Holder, at 420 South Imperial Avenue, Imperial, CA 92251. The place of payment may be changed from time to time as the Holder may from time to time designate in writing.

Upon the occurrence of any Event of Default by Developer under the DDA (meaning a default that has not been cured within any applicable cure period expressly provided in the DDA), at the option of the Holder hereof and without notice, the entire unpaid principal and interest owing on this Note shall become immediately due and payable. This option may be exercised at any time following any such event, and the acceptance of any payments shall not constitute a waiver of Holder's option. Holder's failure to exercise such option shall not constitute a waiver of such option with respect to any subsequent event. Holder's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the

indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

4. At all times when Maker is in default hereunder by reason of Maker's failure to pay principal due under this Note or any amounts due under any loan documents securing this Note, the interest rate on the sums as to which Maker is in default (including principal, if Holder has elected to declare it immediately due and payable), shall be the lower of (i) the highest rate then allowed by law or (ii) two percent (2%) over the prime interest rate announced by Wells Fargo Bank, N.A., as of the date of the default.

5. Maker and any endorsers hereof and all others who may become liable for all or any part of this obligation, severally waive presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment of this Note, and expressly consent to any extension of the time of payment hereof or of any installment hereof, to the release of any party liable for this obligation, and any such extension or release may be made without notice to any of said parties and without any way affecting or discharging this liability.

6. Maker agrees to pay immediately upon demand all costs and expenses of Holder including reasonable attorneys' fees, (i) if after default this Note be placed in the hands of an attorney or attorneys for collection, or (ii) if after a default hereunder or under the DDA, Holder finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against Maker, any guarantor or any other party liable therefore or to the protection of its rights under this Note, the DDA or other loan document.

7. Any notices provided for in this Note shall be given by mailing such notice by certified mail, return receipt requested at the address stated in this Note or at such address as either party may designate by written notice.

8. This Note shall be binding upon Maker, its successors and assigns.

9. This Note shall be construed in accordance with and be governed by the laws of the State of California.

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

11. Except for misrepresentation, waste and willful misconduct, the obligation to repay this Note is a nonrecourse obligation of the Borrower.

EAH INC., a California nonprofit public benefit corporation

By: _____
Matthew Steinle, Assistant Secretary

ATTACHMENT NO. 9

FORM OF CITY NOTE

_____, 201__

$1,300,000 Imperial, California

FOR VALUE RECEIVED, **EAH INC.,** a California nonprofit corporation (the "Maker"), having an address of 22 Pelican Way, San Rafael, CA 94901~~2169 E. Francisco Blvd., Suite B, San Rafael, CA 94901~~, promises to pay the **CITY OF IMPERIAL**, or order ("Holder"), the initial principal sum of **ONE MILLION THREE HUNDRED THOUSAND ($1,300,000.00),** or so much of said amount which may be advanced from time to time, with simple interest at the rate of **Three Percent (3%)** per annum. As of the date of this Note, the outstanding principal balance hereof is $_____. The remaining $_____ will be disbursed by the City from time to time in accordance with the terms of Section 301 of the DDA (as defined below) for costs of constructing the Housing Project.

1. This Note is made pursuant to Section 301 of that Amended and Restated Disposition and Development Agreement dated as of _____ (the "DDA") between Maker and Holder. All capitalized terms not otherwise defined herein shall have the meaning set forth in the DDA.

Pursuant to the DDA, Maker has acquired that certain real property defined in the DDA as the "Site", and will construct on the Site a senior residential housing project consisting of 6~~1~~9 residential units (the "Units"), ~~one of which shall be a manager's units and the rest of which~~ 33 of which shall be rented to qualified low income persons and families (the "Housing Project"), as described in the DDA and the Affordable Housing Covenant dated concurrently herewith between Developer and City.

2. Payment of this Note is secured by a deed of trust, assignment of rents, security agreement and fixture filing (the "Deed of Trust") from Maker to Holder upon the Site.

3. Payments of interest and principal shall be made to Holder from Fifty Percent (50%) of "Surplus Cash" which is hereinafter defined. To the extent there is Surplus Cash available from the Housing Project, Maker shall pay to Holder, on an annual basis, payments all such Surplus Cash (as defined below). The first payment under this Note shall be due on the first May 1 after the earlier of (i) of six (6) months after the issuance of a certificate of occupancy for any portion of the Housing Project or (ii) closing of permanent financing for the Project as determined in good faith by Holder. Each subsequent payment shall be due on May 1 of each calendar year thereafter.

Any unpaid principal amount owing from year to year shall continue to accrue interest. All payments made hereunder shall be credited first to any accrued but unpaid interest, then to current interest due and owing and lastly to principal. Interest not paid current shall accrue and shall not be compounded.

Notwithstanding the foregoing, the entire outstanding balance of principal and interest owing under this Note shall be due and payable on the date that is fifty-five (55) years from the date hereof.

4. "Surplus Cash" for purposes of this Note shall mean the sum of money computed on a 12 month basis based on the Maker's fiscal year as follows:

(a) All rents, revenues, consideration or income (of any form) derived by Maker in connection with or relating to the ownership or operation of the Housing Project, including any Excess Refinancing Proceeds (hereinafter defined) derived from any refinancing of the Housing Project but excluding initial loan proceeds, insurance proceeds and partner capital contributions and also excluding all of the following: (i) all customary and reasonable costs and expenses in connection with the operation and maintenance of the Housing Project; (ii) a reasonable, fair market property management fee, as approved by Holder; (iii) principal and interest paid by Maker on account of any loan(s) or other obligations approved by Holder; (iv) amounts (previously approved by Holder) expended to restore the Housing Project after a casualty loss or condemnation; (v) reasonable and customary cost for accounting and auditing the books and records of the Housing Project; (vi) an administrative or asset management fee charged by a tax credit investment partner ("Investor Asset Management Fee") not to exceed $7,000 adjusted annually by up to 3%; (vii) any deferred developer fee (where such deferred developer fee was previously approved by Holder); (viii) a management fee ("Partnership Management Fee") not to exceed the lesser of (i) $25,000 (which amount may be adjusted annually by three percent (3%), beginning on the first anniversary date of this Note and continuing for each year thereafter) or (ii) a fair market partnership management fee, such Partnership Management Fee is paid to the general partner for performing its general partnership duties, including but not limited to reviewing the monthly operating budget; overseeing the performance of the property manager; meetings, coordination and conflict resolution with the adjacent property owner; review and approval of the annual operating budget; prepare, review and approval of annual partnership reports; review and approval of tax returns; coordination with the investor limited partner; and resolution of miscellaneous issues normally associated with the ownership and operation of senior housing; (ix) reasonable salary and benefit costs (reasonably approved by Holder) to match the part-time social services staff position accounted for in the annual operating budget, in order to provide a staff position to serve the residents and tenants of the Housing Project; and (x) amounts (previously approved by Holder) reserved by Maker as an operating contingency reserve account and a replacement reserve account (and deposited in an account approved by Holder) and other reserves required under the Tax Credit Financing (as defined in the DDA) or other senior financing secured for the Housing Project.

(b) As used herein, the term "Excess Refinancing Proceeds" shall mean refinancing proceeds less (a) the amount of the repayment of the refinanced debt, (b) all reasonable out-of-pocket costs and expenses paid by Borrower to third parties in obtaining such refinancing, (c) all costs and expenses paid by Borrower for all capital improvements to the completed Housing Project completed by Borrower in accordance with the terms of the loan documents or consented to in writing by City for which

Borrower's funds and not loan or grant funds are used (and for purposes of this clause (c), such costs may include, without limitation, reasonable architects' and engineers' fees and other reasonable "soft" costs relating to the making of such permitted capital improvements), (d) the amount by which the Borrower's increases its reserves for the Project as a condition imposed by the refinancing lender, its investors, or otherwise as deemed prudent by Borrower to insure the long term feasibility of the Project, and (e) any amount paid to the limited partner in borrower for any repurchase or redemption of such partner's limited partnership interest in Borrower completed by Borrower in accordance with the terms of the Borrower's partnership agreement approved in writing by City, or otherwise expressly consented to in writing by City, and in either case based on a reasonable and customary fair market value calculation for such limited partnership interest.

(c) Notwithstanding the generality of the foregoing, the following items are not expenses or deductible in computing Surplus Cash:

(i) Except as may be expressly described in clause (a) above, payment of any rents, revenues or income to Maker or any affiliate of Maker;

(ii) Income taxes imposed upon Maker's income;

(iii) Payment of interest on any indebtedness of Maker to any affiliate of Maker (individual or entity) or to any other third-party lender or partner not otherwise approved in writing by Holder; and

(iv) Depreciation, cost recovery, amortization and similar items which do not involve the expenditure of cash.

5. Maker shall deliver annual balance sheets showing all revenues and expenses of the Housing Project. An audited financial statement shall be delivered within ninety (90) days of the end of each calendar year along with payment of fifty percent (50%) of Surplus Cash. Holder shall have the right to inspect and audit Maker's books and records concerning the calculation of Surplus Cash within thirty (30) days from receipt of Maker's statement. Failure to timely object shall be deemed acceptance. If Holder does object, Holder shall specify the reasons for disapproval. Maker shall have thirty (30) days to reconcile any disapproved item. If Maker and Holder cannot agree on the amount of the Surplus Cash, an independent auditor mutually selected by Maker and Holder shall resolve any disputed items. The cost of the auditor shall be shared equally by Maker and Holder.

6. Maker shall prepare and submit to Holder a proposed annual operating budget for the management and operation of the Project for the following calendar year by no later than November 1 of each year until this Note is paid in full. The proposed budget shall include a line item showing the projected Surplus Cash from the Project for the year. Holder will review the proposed budget and, if acceptable, approve it, which approval shall not be unreasonably withheld. If the budget is not acceptable, Holder shall specify the reasons for disapproval. The intent of this paragraph is to provide Holder an opportunity to disapprove any unreasonable expenses which would diminish the Surplus Cash from the Project. Once approved, any changes

to the budget relating to discretionary items which exceed ten percent (10%) of the total budget shall require Holder's prior written consent, which consent shall not be unreasonably withheld.

7. Notwithstanding anything to the contrary provided herein, in the event that the Project is in material default under the terms of the Affordable Housing Covenant or the Tax Credit Financing provisions such that the affordability restrictions are no longer in effect, or if there shall have been an event of default under this Note or the Deed of Trust securing this Note, all of the foregoing subject to applicable cure periods, then the entire unpaid principal of this Note and accrued interest thereon shall be immediately due and payable.

8. Payment shall be made in lawful money of the United States to Holder, at 420 South Imperial Avenue, Imperial, CA 92251. The place of payment may be changed from time to time as the Holder may from time to time designate in writing.

9. Maker hereby covenants and agrees that it shall maintain, or cause to be maintained, the Site in a manner consistent with the provisions set forth therefore in the Imperial Municipal Code, and shall keep the entire Site reasonably free from any accumulation of debris or waste materials prior to and after construction.

If, at any time, Maker fails to maintain the Site, and has either failed to commence to cure such condition or to diligently prosecute to completion the condition or the condition is not corrected after expiration of thirty (30) days from the date of written notice from Holder to Maker, Holder may perform the necessary corrective maintenance, and Maker shall pay such costs as are reasonably incurred for such maintenance. The Holder shall have the right to place a lien on the property should Maker not reimburse Holder for such costs within sixty (60) days following Holder's written demand to Maker for reimbursement of such costs. Maker, on behalf of itself its heirs, successors and assigns, hereby grants to Holder and its officers, employees and agents, an irrevocable license to enter upon the Site to perform such maintenance during normal business hours after receipt of written notice from Holder as hereinabove described and Maker's failure to cure or remedy such failure within thirty (30) days of such notice. Any such entry shall be made only after reasonable notice to Maker, and Holder shall indemnify and hold Maker harmless from any claims or liabilities pertaining to any such entry by Holder.

Failure by Maker to maintain the Site in the condition provided in this Section 9 may, in Holder's reasonable discretion, constitute a default under this Note and the related Deed of Trust.

The foregoing covenants shall remain in effect for the Site for a period of fifty-five (55) years from the date of completion of the Housing Project, or until all amounts due Holder hereunder are paid in full.

10. A default by Maker under the DDA not cured within any applicable cure period under the DDA, and a failure to pay any sum due hereunder within ten (10) business days after it is due shall constitute an event of default under this Note.

If written request is made by Maker's limited partner, Holder shall also deliver a copy of default notice to such limited partner. Any partner of Maker shall have the right to cure

any default within the applicable cure periods set forth hereinabove, whether in its own capacity or on behalf of Maker, and Holder shall accept such cure as if tendered by Maker. However, failure by Holder to deliver such notice to Maker's limited partner shall not be a default under this Note or the DDA.

Upon the occurrence of any event of default, or at any time thereafter, at the option of the Holder hereof and without notice, the entire unpaid principal and interest owing on this Note shall become immediately due and payable. This option may be exercised at any time following any such event, and the acceptance of one or more installments thereafter shall not constitute a waiver of Holder's option. Holder's failure to exercise such option shall not constitute a waiver of such option with respect to any subsequent event. Holder's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

11. At all times when Maker is in default hereunder by reason of Maker's failure to pay principal due under this Note or any amounts due under any loan documents securing this Note, the interest rate on the sums as to which Maker is in default (including principal, if Holder has elected to declare it immediately due and payable), shall be the lower of (i) the highest rate then allowed by law or (ii) two percent (2%) over the prime interest rate announced by Wells Fargo Bank, N.A., as of the date of the default.

12. Maker and any endorsers hereof and all others who may become liable for all or any part of this obligation, severally waive presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment of this Note, and expressly consent to any extension of the time of payment hereof or of any installment hereof, to the release of any party liable for this obligation, and any such extension or release may be made without notice to any of said parties and without any way affecting or discharging this liability.

13. Maker agrees to pay immediately upon demand all costs and expenses of Holder including reasonable attorneys' fees, (i) if after default this Note be placed in the hands of an attorney or attorneys for collection, (ii) if after a default hereunder or under the Deed of Trust, the DDA or under any loan document referred to herein Holder finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against Maker, any guarantor or any other party liable therefor or to the protection of its rights under this Note, the Deed of Trust, the DDA or other loan document, or (iii) if Holder seeks to have the Site abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of the Note or prohibiting the enforcement of the Deed of Trust or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court.

14. If Holder shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental agency, affecting the property or the title thereto or the interest of the Holder under the Deed of Trust, including, without limitation, any form of condemnation or eminent domain proceeding, Holder shall be reimbursed by maker immediately upon demand for all costs, charges and attorneys' fees incurred by Holder in any

such case, and the same shall be secured by the Deed of Trust as a further charge and lien upon the Site.

15. Any notices provided for in this Note shall be given by mailing such notice by certified mail, return receipt requested at the address stated in this Note or at such address as either party may designate by written notice.

16. This Note shall be binding upon Maker, its successors and assigns.

17. This Note shall be construed in accordance with and be governed by the laws of the State of California.

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

19. Except for misrepresentation, waste and willful misconduct, the obligation to repay this Note is a nonrecourse obligation of the Borrower.

20. Except for any misrepresentation or willful misconduct by Maker, and except as otherwise provided in the Deed of Trust, this Note is nonrecourse and neither Maker nor any member, officer, partner or employee of Maker shall have any personal liability for repayment of the sums evidenced hereby, and the Holder must resort only to the Housing Project for repayment should the Maker fail to repay the sums evidenced hereby.

MAKER:

EAH INC., a California nonprofit corporation

By:_____
Print Name:_____
Title:_____

ATTACHMENT NO. 10

FORM OF CITY LOAN DEED OF TRUST

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

No fee required for recording pursuant to
Government Code § 27383

Space Above This Line For Recorder's Use

DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

(CITY LOAN)

This Deed of Trust, together with the Addendum to Deed of Trust, attached hereto a Exhibit B and made a part hereof, is made as of _____, by EAH INC., a California nonprofit corporation, whose address is 22 Pelican Way, San Rafael, CA 94901~~2169 E. Francisco Blvd., Suite B, San Rafael, CA 94901~~ ("**Trustor**"), _____, whose address is _____, CA _____ ("**Trustee**"), and the CITY OF IMPERIAL, whose address is 156 South Broadway, Suite 230, Imperial, CA 95380 ("**Beneficiary**").

Trustor irrevocably grants, conveys, transfers and assigns to Trustee in trust, with power of sale and right of entry and possession, all of Trustor's estate, right, title and interest in, to and under the following property (collectively, the "**Property**"): (a) the real property in Imperial County, California, described on Exhibit A attached hereto and incorporated herein by this reference, together with all existing and future easements and rights affording access to it (the "**Land**"), (b) together with all buildings, structures and improvements now existing or hereafter constructed thereon (the "**Improvements**"), (c) together with all articles of personal property now or hereafter attached to, placed upon for an indefinite term, or used in connection with the Land and/or Improvements, together with all goods and other property that are, or at any time become, so related to the Property that an interest in them arises under real estate law, or they are otherwise adjudged to be a "fixture" under applicable law (each a "**Fixture**," collectively "**Fixtures**"), (d) together with all other property and interests of any kind or character which may be reasonably necessary or desirable to promote the present and future beneficial use and enjoyment of such real property and improvements.

1. Secured Obligations. Trustor makes the grant, conveyance, transfer and assignment herein for the purpose of securing the following obligations (the "Secured Obligations"): (a) payment of the sum of $1,300,000.00 with interest thereon according to the terms of a promissory note (the "Note") of even date herewith, executed by Trustor in favor of Beneficiary or order and any extension or renewals thereof; (b) payment of such further sums as the then record owner of the Property may borrow from Beneficiary, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; (c) the obligations of Trustor

under that certain Affordable Housing Covenant executed by Trustor in favor of Beneficiary; and (d) performance by Trustor of the terms of this Deed of Trust.

2. Maintenance and Repair. Trustor shall (a) keep the Property in good condition and repair and not remove or demolish any building; (b) complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed; (c) pay when due all claims for labor performed and materials furnished (or removed them from title by bonding while contesting them); (d) comply with all laws affecting the Property or requiring any alterations or improvements to be made; (e) not commit or permit waste; and (f) cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of the Property may be reasonably necessary.

3. Insurance. Trustor shall maintain the insurance required by Section 401.6 of that certain Amended and Restated Disposition and Development Agreement dated _____ between Trustor and Beneficiary.

4. Defense of Security. Trustor shall appear in and defend any action or proceeding purporting to affect the security or the rights or powers of Beneficiary or Trustee. Trustor shall pay all costs and expenses, including costs of evidence of title and attorneys' fees, in any such action or proceeding in which Trustee or Beneficiary may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

5. Payment of Taxes and Liens. Trustor shall pay (a) at least 10 days before delinquency, all taxes and assessments affecting the Property, including water stock assessments; (b) when due, all encumbrances, charges and liens, with interest, on the Property, which are or appear to be prior or superior to this Deed of Trust; and (c) upon demand all costs, fees and expenses of this Deed of Trust. If Trustor fails to make any payment or to do any act provided for in this Deed of Trust, then Beneficiary or Trustee may, without obligation to do so, and with or without notice to or demand upon Trustor, and without releasing Trustor from any obligation under this Deed of Trust: (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; (b) appear in or commence any action or proceeding purporting to affect the security, or the rights or powers of Beneficiary or Trustee; (c) pay, purchase, contest or settle any encumbrance, charge or lien which in the judgment of either appears to be senior to this Deed of Trust; and (d) in exercising any such powers, pay allowable expenses, including attorneys' fees.

6. Reimbursement of Costs. Trustor shall pay upon demand all sums expended by Beneficiary or Trustee provided for in this Deed of Trust or allowed by law, with interest from date of expenditure at the maximum rate provided in the Note.

7. No Waiver. By accepting payment of any sum after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums or declare a default for failure to pay.

8. Reconveyance. That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said note or notes to

Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals of such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

9. Assignment of Rents. Trustor hereby absolutely and unconditionally assigns to Beneficiary all of the rents, issues, profits, royalties, revenues, income and other benefits (collectively, the "**Rents**") derived from the Property, whether now due, past due or to become due, and hereby gives to and confers upon Beneficiary, either directly or through a receiver, the right, power and authority, but not the obligation, to collect the Rents, and to sue, either in the name of Trustor or Beneficiary, for all such Rents and to apply the same to the indebtedness secured hereby in such order as Beneficiary may determine in its sole discretion. This assignment of Rents is intended to create and shall be construed to create an absolute assignment to Beneficiary of all of Trustor's right, title and interest in the Rents, the foregoing, so long as no default exists by Trustor in the payment of any indebtedness secured hereby, or in any other covenant contained herein, or in said note or notes or in any other document evidencing or securing such indebtedness, Trustor shall have the right to collect all Rents from the Property and to retain, use and enjoy the same. Upon the occurrence of such a default, without the necessity of demand or other notice to Trustor or any other act to enforce Beneficiary's interest pursuant to this assignment, Trustor shall have no interest whatsoever in the Rents that are received by Trustor after a default, and all such Rents shall be received and held by Trustor in constructive trust for Beneficiary and delivered promptly to Beneficiary, or to a court appointed receiver for the Property, without the necessity for further notice to, or demand upon, Trustor. Upon the occurrence of such a default and at any time thereafter during the continuance thereof, Beneficiary may, at its option, send any tenant of the Property a notice to the effect that: (a) a default has occurred; (b) Beneficiary has elected to exercise its rights under this assignment; and (c) such tenant is thereby directed to thereafter make all payments of Rents to or for the benefit of Beneficiary or as Beneficiary shall direct. Any such tenant shall be entitled to rely upon any notice from Beneficiary and shall be protected with respect to any payment of Rents made pursuant to such notice, irrespective of whether a dispute exists between Trustor and Beneficiary with respect to the existence of a default or the rights of Beneficiary hereunder. Any such tenant shall not be required to investigate or determine the validity or accuracy of such notice or the validity or enforceability of this assignment. Trustor hereby agrees to indemnify, defend and hold any such tenant harmless from and against any and all losses, claims, damages or liabilities arising from or related to any payment of Rents by such tenant made in reliance on and pursuant to such notice.

10. Default and Foreclosure. Upon default by Trustor in payment or performance of any Secured Obligation, subject to any applicable cure period, Beneficiary may declare all sums secured immediately due and payable by delivery to Trustee of a declaration of default and demand for sale and of a notice of default and of a notice of sale, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, said note or notes and all documents evidencing expenditures secured by this Deed of Trust. Upon default of any obligation secured by this Deed of Trust and acceleration of all sums due, Beneficiary may instruct Trustee to proceed with a sale of the Property under the power of sale

granted in this Deed of Trust, noticed and held in accordance with California Civil Code Sections 2924, et seq., as such statutes may be amended from time to time. Trustor waives all rights it may have to require marshaling of assets or to require sales of assets in any particular order, including any rights under California Civil Code Sections 2899 and 3455.

11. Substitution of Trustee. Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.

12. Successors and Assigns. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Beneficiary" shall mean the owner and holder, including pledgees, of the secured note or notes, whether or not named as Beneficiary herein.

13. Trustee Acceptance. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

14. Further Assurances. Trustor shall, at its own cost and expense, do, execute, acknowledge, and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers, and assurances as Trustee or Beneficiary shall from time to time require, for better assuring, conveying, assigning, transferring, and confirming unto Trustee the Property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Trustee, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust, or for filing, registering, or recording this Deed of Trust. Trustor shall, on demand, execute and deliver, and hereby authorizes Trustee and Beneficiary, or either of them, to execute in the name of Trustor, to the extent it may lawfully do so, one or more financing statements, chattel mortgages, or comparable security instruments, to evidence more effectively the lien hereof. Immediately upon the execution and delivery of this Deed of Trust, and thereafter from time to time, Trustor shall cause this Deed of Trust, and any security instruments creating a lien or evidencing the lien hereof upon any personal property and each instrument of further assurance, to be filed, registered, or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the title of Trustee to, the Property encumbered hereby.

15. Condemnation and Insurance Proceeds. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation or other taking of all or any portion of the Property, or knowledge of any casualty damage to the Property, or damage in any other manner, Trustor shall immediately notify Beneficiary thereof. Trustor hereby authorizes and

empowers Beneficiary as attorney in fact for Trustor to make proof of loss, to adjust and compromise any claim under the insurance policies covering the Property, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Beneficiary's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this Section shall require Beneficiary to incur any expense or take any action hereunder. Trustor hereby authorizes and empowers Beneficiary, at Beneficiary's option, as attorney in fact for Trustor, to commence, appear in and prosecute, in Beneficiary's or Trustor's name, any action or proceeding relating to any condemnation or other taking of all or any part of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or any part thereof, or for conveyances in lieu of the Property, or any part thereof, shall be paid to Beneficiary. The foregoing powers of attorney are coupled with an interest and are irrevocable. Trustor hereby authorizes Beneficiary to apply such awards, payments, proceeds or damages relating to condemnation of the Property and insurance covering the Property, after the deduction of Beneficiary's expenses incurred in the collection of such amounts, subject to the requirements of applicable law and the provisions hereof, to restoration or repair of the Property or to payment of the sums secured by this Deed of Trust. Beneficiary shall be under no obligation to question the amount of any compensation, awards, proceeds, damages, claims, rights of action, and payments relating to condemnation or other taking of the Property or insured casualty affecting the Property, and may accept the same in the amount in which the same shall be paid. Trustor shall execute such further evidence of assignment of any awards, proceeds damages or claims arising in connection with such condemnation or taking or such insurance as Beneficiary may require. Notwithstanding the above, the Beneficiary shall release all insurance and condemnation proceeds to Trustor to be used to reconstruct the improvements on the Property provided that Beneficiary determines that such restoration, repair or rebuilding is economically feasible. If such insurance proceeds shall be insufficient for such purposes, Trustor shall make up the deficiency. If the Housing Project is subject to a partial condemnation or taking, then the proceeds received therefrom shall be applied to restore the Housing Project taken, provided the Beneficiary determines that such restoration is economically feasible and no default exists under the Loan Documents following the expiration of all applicable cure periods. If the Housing Project is subject to a total condemnation, or if Beneficiary determines that restoration of the Housing Project is not feasible following a partial condemnation, or if a default exists then the proceeds from any condemnation award or claim for damages shall be used first to repay all sums under the Note, with the excess, if any, paid to Trustor.

16. Severability. If any one or more of the provisions contained in this Deed of Trust shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein or therein, but only to the extent of such invalidity.

17. Estoppel Certificate. Trustor shall, within 10 days of a written request from Beneficiary, furnish Beneficiary with a written statement, duly acknowledged, setting forth the

sums secured by this Deed of Trust and any right of set off, counterclaim or other defense which exists against such sums and the obligations of this Deed of Trust.

18. California Uniform Commercial Code Security Agreement; Fixture Filing. Trustor hereby grants Beneficiary a security interest in all personal property of Trustor located on the Property and wherever located and used in any way in connection with or in any way relating to the Property, and whether now owned or hereafter in existence, acquired or created (including equipment, inventory, goods, documents, instruments, general intangibles, chattel paper, accounts, accounts receivable, deposit accounts and contract rights), and all fixtures of Trustor now owned or hereafter in existence, acquired or created on, of or relating to the Property, and all substitutions, replacements, additions, accessions and proceeds (including insurance proceeds) of all of the foregoing (collectively, the "**Personal Property**"). Beneficiary may file this Deed of Trust, or a reproduction hereof, in the real estate records or other appropriate index, as a financing statement for the Personal Property. Any reproduction of this Deed of Trust or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Trustor shall execute and deliver to Beneficiary, upon Beneficiary's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Deed of Trust in such form as Beneficiary may require to perfect a security interest with respect to the Personal Property. Trustor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Beneficiary may reasonably require. Without the prior written consent of Beneficiary, Trustor shall not create or suffer to be created pursuant to the California Uniform Commercial Code any other security interest in the Personal Property. Upon Trustor's breach of any covenant or agreement of Trustor contained in this Deed of Trust, including the covenants to pay when due all sums secured by this Deed of Trust, Beneficiary shall have the remedies of a secured party under the California Uniform Commercial Code and, at Beneficiary's option, may also invoke any remedies provided in this Deed of Trust as to the Personal Property. In exercising any of such remedies, Beneficiary may proceed against the Property and any of the Personal Property separately or together and in any order whatsoever, without in any way affecting the availability of Beneficiary's remedies under the California Uniform Commercial Code or the remedies provided in the Deed of Trust. This Deed of Trust also covers goods which are or which are to become fixtures on the Property and constitutes and is filed as a fixture filing under the California Uniform Commercial Code.

19. Due On Sale or Encumbrance. If all or any part of the Property, or any interest therein, or any interest in Trustor (if Trustor is not a natural person or persons but is a corporation, partnership, trust, limited liability company or other legal entity), is sold, transferred, mortgaged, assigned, pledged, or further encumbered, whether directly or indirectly, whether voluntarily or involuntarily or by operation of law, except as expressly permitted by the DDA, Beneficiary may, at Beneficiary's option, declare all of the sums secured by this Deed of Trust to be immediately due and payable, and Beneficiary may invoke any remedies permitted by this Deed of Trust.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to Trustor at Trustor's address hereinbefore set forth.

TRUSTOR:

EAH INC., a California nonprofit corporation

By:_____
Print Name: _____
Title:_____

ACKNOWLEDGMENTS

State of California

County of _____

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

State of California

County of _____

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

[To be inserted]

EXHIBIT B

ADDENDUM TO DEED OF TRUST

This Addendum to the Deed of Trust is part of the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("**Deed of Trust**") dated _____, 20__, to which it is attached between EAH, INC., as Trustor, and the CITY OF IMPERIAL, as Beneficiary. The following provisions are made a part of the Deed of Trust:

1. DDA. Trustor (as the Developer) and Beneficiary (as the City) are parties to that certain Amended and Restated Disposition and Development Agreement, dated as of _____ ("**DDA**"), pursuant to which Beneficiary sold the Property to Beneficiary for purposes of development of a senior residential complex consisting of ~~61~~ 69 units of rental housing (the "**Housing Project**"). Pursuant to the DDA, Beneficiary provided to Trustor a loan ("**City Loan**"), of up to $1,300,000, to pay certain pre-development costs, the purchase price for the Property, and project-related construction and development costs.

2. Affordability Agreement. This Deed of Trust secures the duties and obligations of Trustor under the Affordable Housing Covenant~~,~~ dated _____, 20__ (the "**Affordable Housing Covenant**") entered into between Trustor and Beneficiary pursuant to the DDA. The payment of the promissory note in the original principal amount of $_____ (the "**City Note**") by Trustor shall not extinguish the rights of the Beneficiary under the Affordable Housing Covenant. This Deed of Trust shall secure the Beneficiary against any default under the Affordable Housing Covenant for the term of the Affordable Housing Covenant.

3. No Discrimination. The Trustor covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Trustor itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property.

All deeds, leases or contracts made relative to the Property, the improvements thereon or any part thereof, shall contain or be subject to the nondiscrimination clauses set forth in California Health and Safety Code Section 33436.

5. Insurance Proceeds. Notwithstanding anything to the contrary in the Loan Documents, all insurance proceeds and the proceeds of any award or claim for damages, in connection with a condemnation or taking (collectively, the "Proceeds"), shall be applied to restore or repair of the Property, provided the Trustor reasonably determines that such restoration or repair is economically feasible and there is no default unrelated to the casualty or

condemnation continuing after the expiration of applicable cure periods. If the Trustor determines that such restoration or repair is not economically feasible or if a default is continuing after expiration of all applicable cure periods, the Proceeds may be applied to the sums secured by the Deed of Trust and Assignment of Rents, with the excess, if any, paid to the Trustor.

6. Hazardous Substances.

(a) As used in this Section, the following terms shall have the following meanings:

(i) "Environmental Laws" means all statutes, ordinances, orders, rules, regulations, plans, policies or decrees and the like now or hereafter in effect relating to (A) Hazardous Substance Activity or Hazardous Substances; (B) the generation, use, storage, transportation or disposal of Hazardous Substances, or solid waste; or (C) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health, safety or welfare, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) ("CRELA"); the Hazardous Material Transportation Act (49 U.S.C. Section 180 et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); the Clean Air Act (42 U.S.C. Section 740 et seq.); the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.); the Occupational Safety and health Act (29 U.S.C. Section 651 et seq.); the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.); the Porter-Cologne Water Quality Control Act (California Water Code Section 13020 et seq.); the Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health & Safety Code Section 25249.5 et seq.); the Hazardous Substance Account Act (California Health & Safety Code Section 25300 et seq.); the Hazardous Waste Control Act (California Health & Safety Code Section 25100 et seq.); The California Environmental Quality Act (California Public Resources Code Section 2100 et seq.); and the rules, regulations and ordinances of the City of Imperial or any applicable federal, state and local agencies or bureaus, as amended from time to time.

(ii) "Foreclosure Transfer" means the transfer of title to all or any part of the Property or the Trust Estate at a foreclosure sale under the Deed of Trust, either pursuant to judicial decree or the power of sale contained in the Deed of Trust, or by deed in lieu of such foreclosure.

(iii) "Hazardous Substances" means (A) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "acutely hazardous waste," "radioactive waste," "infectious waste," "biohazardous waste," "toxic substance," "pollutant," "toxic pollutant," "contaminant" as well as any other formulation not mentioned herein intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "EP toxicity" or "TCLP toxicity"; (B) petroleum, natural gas, natural gas liquids, liquified natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) and ash produced by a

resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources; (C) "hazardous substance" as defined in Section 2782.6(d) of the California Civil Code; (D) "waste" as defined in Section 13050(d) of the California Water Code; (E) asbestos in any form; (F) urea formaldehyde foam insulation; (G) polychlorinated biphenyls (PCBs); (H) radon; and (I) any other chemical, material, or substance that, because of its quantity, concentration, or physical or chemical characteristics, exposure to which is limited or regulated for health and safety reasons by any governmental authority, or which poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment.

(iv) "Hazardous Substance Activity" means any actual, proposed, or threatened use, storage, holding, existence, location, release (including, without limitation, any spilling, leaking, leaching, pumping, pouring, emitting, emptying, dumping, disposing into the environment, and the continuing migration into or through soil, surface water, groundwater or any body of water or the air), discharge, deposit, placement, generation, processing, construction, treatment, abatement, removal, disposal, disposition, handling, or transportation of any Hazardous Substance from, under, in, into, or on the Property, including without limitation, the movement or migration of any Hazardous Substances from surrounding property, surface water, groundwater or any body of water, or the air under, in, into or onto the Property and any residual Hazardous Substances contamination in, on, or under the Property.

(v) "Losses" means all charges, losses, liabilities, damages (whether actual, consequential, punitive, or otherwise denominated), costs, fees, demands, claims for personal injury or real or personal property damage), actions, administrative proceedings (including informal proceedings), judgments, causes of action, assessments, fines, penalties, costs, and expenses of any kind or character, foreseeable and unforeseeable, liquidated and contingent, proximate and remote, including, without limitation, the following: (A) the reasonable fees and expenses of outside legal counsel; (B) the reasonable fees and expenses of accountants, third-party consultants, and other independent contractors retained by an Beneficiary; (C) costs, including capital, operating and maintenance costs, incurred in connection with any investigation or monitoring of site conditions or any clean-up, remedial, removal or restoration work required or performed by any federal, state or local governmental agency or political subdivision or performed by any non-governmental entity or person that is required by Environmental Laws or administrative ruling or directive because of the presence, suspected presence, release or suspected release of Hazardous Substances in violation of Environmental Laws in the air, soil, surface water or groundwater at the Property; (D) any and all diminution in value of the Property, loss of use or damage to the Property, or loss of profits or loss of business opportunity; and (E) reasonable costs and expenses of enforcing this Section 7.

(vi) "Environmental Losses" means Losses rising out of or as a result of: (A) the occurrence of any Hazardous Substance Activity; (B) any violation of any applicable Environmental laws relating to the Property or to the ownership, use, occupancy or operation thereof; (C) any investigation, inquiry, order, hearing, action, or other proceeding by or before any governmental agency in connection with any Hazardous Substance Activity; or (D) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not,

brought or asserted against any Indemnitee which directly or indirectly relates to, arises from or is based on any of the matters described in clauses (A), (B), or (C), or any allegation of any such matters.

(b) Trustor represents and warrants to Beneficiary that Trustor has conducted as appropriate inquiry and investigation, and, to the best of Trustor's knowledge and except as previously expressly disclosed in writing by Trustor to Beneficiary, based on such inquiry and investigation, no portion of the Property is being used or has ever been used at any previous time, for the disposal, storage, treatment, processing or other handling of Hazardous Substances, nor have any Hazardous Substances migrated onto or from the Property. Neither the Property nor Trustor is in violation of or subject to any existing, pending or threatened investigation by any governmental authority under any Environmental Law. Trustor's prior and intended use of the Property will not result in the disposal or release of any Hazardous Substances on, under, about or to the Property or the migration of any Hazardous Substances from the Property. The foregoing representations and warranties shall be continuing and shall be true and correct for the period from the date hereof to the release of this Deed of Trust (whether by payment of the indebtedness secured hereby or foreclosure or action in lieu thereof), and these representations and warranties shall survive such release.

(c) Trustor represents and warrants to Beneficiary that Trustor has complied with all recommendations by any engineers retained by Trustor and all requirements of any applicable department of environmental resources, environmental protection agency or similar governmental agency, and there are no recommendations by said engineers or requirements ordered by said agency or any other governmental body for environmental investigation or cleanup with respect to the Property.

(d) On and after the date hereof, Trustor shall not (a) allow any Hazardous Substances to be installed, used, introduced, stored, treated, disposed of, generated, manufactured, discharged, dumped, transported or brought in, upon or over the Property in violation of applicable law; (b) allow any soil or ground water contamination or pollution with any Hazardous Substances on the Property in violation of applicable law; (c) allow any Hazardous Substances to migrate from the Property in violation of applicable law; (d) allow any Hazardous Substances to migrate onto the Property from any adjacent properties in violation of applicable law; or (e) allow or cause the Property to be in violation of, or to trigger a duly initiated and prosecuted investigation of the Property by any governmental authority under applicable limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules or timetables contained in any local, state and/or federal laws, regulations, codes, ordinances, plans, administrative or judicial orders, decrees, judgments, notices or demand letters issued, entered, promulgated or approved thereunder relating to the environment, land use, water and air quality and Hazardous Substances ("Environmental Requirements").

(e) If the presence of any Hazardous Substances on the Property caused or permitted by Trustor results in any contamination of the Property, Trustor shall promptly take all actions, at its sole expense, as are necessary to return the Property to the condition existing prior to the introduction of any such Hazardous Substances to the Property; provided that Beneficiary's approval of such actions shall first be obtained, which approval shall not be

unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Property.

(f) At any time after the occurrence and during the continuance of any default under this Section (subject to any applicable notice and cure provisions in DDA), Beneficiary shall have the following rights and remedies, in addition to any other rights and remedies Beneficiary has under this Deed of Trust:

(i) As provided in California Code of Civil Procedure Section 564, Beneficiary or its employees, acting by themselves or through a court appointed receiver may do any of the following: (i) enter upon, possess, manage, operate, dispose of, and contract to dispose of the Property or any part thereof; (ii) take custody of all accounts; (iii) negotiate with governmental authorities with respect to the Property's environmental compliance and remedial measures; (iv) take any action necessary to enforce compliance with environmental provisions, including spending Rent Payments to abate any environmental problem; (v) make, terminate, enforce or modify leases of part or all of the Property; (vi) contract for goods and services, hire agents, employees, and counsel, make repairs, alterations, and improvements to the Property necessary in Beneficiary's judgment to protect or enhance the security hereof; and/or (vii) take any and all other actions which may be necessary or desirable to comply with Trustor's obligations hereunder and under the Loan Documents. All sums realized by the receiver or Beneficiary under this subparagraph, less all costs and expenses incurred by either of them under this subparagraph, including attorneys' fees, and less such sums as Beneficiary or the receiver deems appropriate as a reserve to meet future expenses under this subparagraph, shall be applied on any indebtedness secured hereby in such order as Beneficiary shall determine. Neither application of said sums to said indebtedness, nor any other action taken by Beneficiary or the receiver under this subparagraph shall cure or waive any default or notice of default hereunder, or nullify the effect of any such notice of default. Beneficiary, or any employee or agent of Beneficiary, or a receiver appointed by a court, may take any action or proceeding hereunder without regard to the adequacy of the security for the indebtedness secured hereunder, the existence of a declaration that the indebtedness secured hereby has been declared immediately due and payable, or the filing of a notice of default.

(ii) With or without notice, and without releasing Trustor from any obligation hereunder, to cure any default of Trustor or in connection with any such default, Beneficiary or its agents, acting by themselves or through a court-appointed receiver, may enter upon the Property or any part thereof and perform such acts and things as Beneficiary deems necessary or desirable to inspect, investigate, assess, and protect the security hereof, including of any of Beneficiary's other rights: (i) to obtain a court order to enforce Beneficiary's right to enter and inspect the Property under California Civil Code Section 2929.5 (in respect of which the decision of Beneficiary as to whether there exists a release or threatened release of hazardous substance, as defined therein, onto the Property shall be deemed reasonable and conclusive as between the parties hereto); and (ii) to have a receiver appointed under California Code of Civil Procedure Section 564 to enforce Beneficiary's right to enter and inspect the Property for hazardous substances as defined therein. All costs and expenses incurred by Beneficiary with respect to the audits, tests, inspections, and examinations which Beneficiary or its agents or employees may conduct, including the fees of engineers, laboratories, contractors, consultants,

and attorneys, shall be paid by Trustor. All costs and expenses incurred by Trustee and Beneficiary pursuant to this subparagraph (including court costs, consultant fees and attorney fees, whether incurred in litigation or not and whether before or after judgment) shall bear interest at the Note Rate, from the date they are incurred until said sums have been paid.

(iii) Beneficiary may seek a judgment that Trustor has breached its covenants, representations and/or warranties with respect to the environmental matters set forth above in this Section, by commencing and maintaining an action or actions in any court of competent jurisdiction for breach of contract pursuant to California Code of Civil Procedure Section 736, whether commenced prior to foreclosure of the Property or after foreclosure of the Property, and to seek the recovery of any and all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out-of-pocket costs or expenses actually incurred by Beneficiary or advanced by Beneficiary (collectively, the "Environmental Costs") relating to the cleanup, remediation or other response action required by applicable law or which Beneficiary believes necessary to protect the Property, it being conclusively presumed between Beneficiary and Trustor that all such Environmental Costs incurred or advanced by Beneficiary relating to the cleanup, remediation, or other response action respecting the Property were made by Beneficiary in good faith. All Environmental Costs incurred by Beneficiary under this subparagraph (including court costs, consultant fees and attorney fees, whether incurred in litigation or not and whether before or after judgment) shall bear interest at the Note Rate, from the date of expenditure until said sums have been paid. Beneficiary shall be entitled to bid, at any sale of the Property held hereunder, the amount of said costs, expenses and interest in addition to the amount of the other obligations hereby secured as a credit bid, the equivalent of cash.

(iv) As provided in California Code of Civil Procedure Section 726.5, Beneficiary may waive its lien against the Property or any portion thereof, to the extent such property is found to be environmentally impaired as defined therein, and to exercise any and all rights and remedies of an unsecured creditor against Trustor and all of Trustor's assets and property for the recovery of any deficiency and Environmental Costs, including seeking an attachment order under California Code of Civil Procedure Section 483.010. Beneficiary and Trustor each represents and warrants for itself that it has no actual knowledge of any release of any Hazardous Substance (as defined in Section 726.5) on, to or under the Property. As between Beneficiary and Trustor, for purposes of California Code of Civil Procedure Section 726.5, Trustor shall have the burden of proving that Trustor or any related party (or any affiliate or agent of Trustor or any related party) did not cause or contribute to, and was not in any way negligent in permitting, any release or threatened release of the Hazardous Substance.

(v) Trustor acknowledges and agrees that notwithstanding any term or provision contained herein or in any promissory note or other loan documents, the Environmental Costs and all judgments and awards entered against Trustor pursuant to Section 6(f)(iv) above shall be exceptions to any nonrecourse or exculpatory provision of the loan documents, and Trustor shall be fully and personally liable for the Environmental Costs and such judgments and awards and such liability shall not be limited to the original principal amount of the obligations secured by this Deed of Trust, and Trustor's obligations shall survive the

foreclosure, deed in lieu of foreclosure, release, reconveyance, or any other transfer of the Property or this Deed of Trust.

(g) Trustor hereby agrees to indemnify, defend and hold harmless Beneficiary from and against any and all Environmental Losses.

TRUSTOR:

EAH INC., a California nonprofit corporation

By:_____
Print Name: _____
Title: _____

ATTACHMENT NO. 11

FORM OF ASSIGNMENT OF ARCHITECTURAL AGREEMENTS AND PLANS AND SPECIFICATIONS

FOR VALUE RECEIVED, the undersigned, EAH Inc., a California nonprofit corporation ("**EAH**"), assigns to City of Imperial ("**City**"), all of its right, title and interest in and to:

1. All architectural, design, engineering and development agreements, and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively, "Architectural Agreements"), and

2. All plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively, "**Plans and Specifications**"),

heretofore or hereafter entered into or prepared by any architect, engineer or other person or entity (collectively, "**Architect**"), for or on behalf of EAH in connection with the construction of the Improvements on the Real Property described on Exhibit "A" attached hereto. The Plans and Specifications, as of the date hereof, are those which EAH has heretofore, or will hereafter deliver to City. The Architectural Agreements include, but are not limited to, the architectural agreement or contract between EAH and _____, dated _____.

This ASSIGNMENT OF ARCHITECTURAL AGREEMENTS AND PLANS AND SPECIFICATIONS ("**Assignment**") constitutes a present, absolute and unconditional assignment to City, but City will not exercise its rights hereunder so long as the Amended and Restated Disposition and Development Agreement between City and EAH remains in effect and EAH is not in default thereunder.

EAH acknowledges that by accepting this Assignment, City does not assume any of EAH's obligations under the Architectural Agreements with respect to the Plans and Specifications.

EAH represents and warrants to City that: (a) all Architectural Agreements entered into by EAH are in full force and effect and are enforceable in accordance with their terms and no default, or event which would constitute a default after notice or the passage of time, or both, exists with respect to said Architectural Agreements; (b) all copies of the Architectural Agreements and Plans and Specifications delivered to City are complete and correct; and (c) EAH has not assigned any of its rights under the Architectural Agreements or with respect to the Plans and Specifications other than to [insert Construction Lender and, if applicable, the Subordinate Lender(s)].

This Assignment shall be governed by the laws of the State of California, except to the extent that federal laws preempt the laws of the State of California, and EAH consents to the jurisdiction of any federal or state court within the State of California having proper venue for the filing and maintenance of any action arising hereunder and 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 EAH and City.

The attached Architect's/Engineer's Consent and Exhibit "A" are incorporated by reference.

Executed by EAH on _____, ~~200~~201__.

EAH, INC., a California nonprofit public benefit corporation

By:_____
Print Name: _____
Title: _____

ARCHITECT'S/ENGINEER'S CONSENT

The undersigned architect and/or engineer (collectively referred to as "**Architect**") hereby consents to the foregoing Assignment to which this Architect's/Engineer's Consent ("**Consent**") is a part, and one subsequent assignment of Architectural Agreements and Plans and Specifications by the City to a future developer of the contemplated development site, and acknowledges that there presently exists no unpaid claims due to the Architect arising out of the preparation and delivery of the Plans and Specifications to EAH and/or the performance of the Architect's obligations under the Architectural Agreements described in the Assignment.

Architect agrees that, by virtue of the foregoing Assignment, City has succeeded to all of EAH's right, title and interest in, to and under the Architectural Agreements and the Plans and Specifications and, therefore, City and its successors and assigns may, at their 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 Architectural Agreements for the benefit and account of City and its successors and assigns in the same manner as if performed for the benefit or account of EAH in the absence of the Assignment, provided City pays for such services rendered after the plans and specifications are completed and after the assignment takes effect, in accordance with the express terms of the Architectural Agreements.

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

Executed on _____, 200__.

"Architect"

_____,
a _____

By:_____
Name:_____
Its:_____

Architect's Address:

_____
_____
_____
_____
Phone No.: (_____)_____
Fax No.: (_____)_____

EXHIBIT "A"

PROPERTY DESCRIPTION

Exhibit "A" to Assignment of Architectural Agreements and Plans and Specifications dated as of _____, between, EAH and City.

All that property situated in the City of Imperial,
County of Imperial, described as follows:

ATTACHMENT NO. 12

FORM OF ASSIGNMENT OF CONSTRUCTION AGREEMENTS

This ASSIGNMENT OF CONSTRUCTION AGREEMENTS ("**Assignment**") is provided for value received by the undersigned _____, a California limited partnership ("**Assignor**"), as of _____ ("**Effective Date**") who hereby assigns to the City of Imperial ("**City**"), its rights under all existing and future agreements and contracts, as amended, between Assignor and any other person or entity (collectively, "**Construction Agreements**") relating to the construction of the Improvements on the real property described on Exhibit A attached hereto and incorporated herein by this reference (the "**Property**"). Capitalized terms not otherwise defined herein shall have the meanings set forth in that certain Amended and Restated Disposition and Development Agreement, dated as of _____ (the "**DDA**"), by and between EAH Inc., a California nonprofit corporation, the Assignor's predecessor-in-interest, and City.

NOW THEREFORE, the following is agreed:

Section 1 This Assignment constitutes a present and absolute assignment to City as of the Effective Date, subject and subordinate in all respects to any assignment of all or any of the Construction Agreements to Assignor's Construction Lender (which, upon request of Assignor, shall be evidenced by such further documentation as may be reasonably requested by Construction Lender); provided, however, City confers on Assignor the right to enforce the terms of the Construction Agreements so long as the DDA remains in effect and no Event of Default or event which would constitute an Event of Default after notice or the passage of time, or both, has occurred and is continuing under the DDA for the Property, of even date herewith. Upon the occurrence of an Event of Default or event which would constitute an Event of Default after notice or the passage of time, or both, under any of the DDA, City may, in its sole discretion, give notice to the General Contractor of its intent to enforce the rights of Assignor under the Construction Agreements and may initiate or participate in any legal proceedings respecting the enforcement of said rights. Assignor acknowledges that by accepting this Assignment, City does not assume any of Assignor's obligations under the Construction Agreements.

Section 2 Pursuant to the DDA, City has agreed to convey the Property to Assignor for the purposes specified in therein. The Improvements are further depicted in the plans and specifications required therein ("**Plans and Specifications**").

Section 3 General Contractor and Assignor have entered into the Construction Contract for the construction and development of the Improvements on the Property.

Section 4 Assignor represents and warrants to City, as of the Effective Date, that (a) all Construction Agreements entered into by Assignor are in full force and effect and are enforceable in accordance with their terms and no default, or event which would constitute a default after notice or the passage of time, or both, exists with respect to said Construction Agreements, (b) all copies of the Construction Agreements delivered to City are complete and correct and (c) except for the assignment of the Construction Agreements to the Construction Lender [and the Subordinate Lender(s)] (and its purchaser, successors and assigns), Assignor has

not assigned any of its rights under the Construction Agreements. Assignor shall deliver to City a true, complete and correct copy of all Construction Agreements entered into after the date hereof, promptly upon execution thereof.

Section 5 Assignor agrees (a) to pay and perform all obligations of Assignor under the Construction Agreements, (b) to enforce the payment and performance of all obligations of any other person or entity under the Construction Agreements, (c) not to modify the existing Construction Agreements nor to enter into any future Construction Agreements without City's prior written approval except as otherwise may be permitted in the DDA, and (d)except as provided in Section 4(c) above, not to further assign, for security or any other purposes, its rights under the Construction Agreements without City's prior written consent.

Section 6 This Assignment secures performance by Assignor of all obligations of Assignor under the DDA. This Assignment is supplemented by those provisions of the DDA and such provisions are incorporated herein by reference.

Section 7 The attached Contractor's Consent to Assignment of Construction Agreements and Exhibit A are attached hereto and fully incorporated by this reference.

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the Effective Date appearing on the first page hereof.

ASSIGNOR

EAH Inc., a California nonprofit corporation

By:_____
Print Name: _____
Title: _____

CONTRACTOR'S CONSENT

TO ASSIGNMENT OF CONSTRUCTION AGREEMENTS

The undersigned as a duly authorized officer of_____ (the "**General Contractor**") hereby consents to the foregoing Assignment of Construction Agreements ("**Assignment**"), of which this Contractor's Consent ("**Consent**") is a part, and one further assignment by City of the Construction Agreements to a future developer of the contemplated development site.

1. The General Contractor agrees that if, at any time, City, pursuant to its rights under the DDA, elects to undertake or cause the completion of construction of the Improvements on any portion of the Property, and gives the General Contractor written notice of such election; THEN, so long as the General Contractor has received, receives or continues to receive the compensation called for under the Construction Agreements, the General Contractor shall continue to perform its obligations under the Construction Agreements in accordance with the terms thereof.

2. General Contractor represents that Assignor is not in default under the Construction Agreements. The General Contractor further agrees that, in the event of a breach by Assignor of the Construction Agreements, so long as Assignor's interest in the Construction Agreements is assigned to City, the General Contractor will give written notice to City at the address shown below of such breach. City shall have 30 days from the receipt of such written notice of default to remedy or cure such default provided, if such default is of a nature that it cannot be cured within 30 days, City shall have 30 days within which to commence the cure and shall thereafter have such reasonable period of time to complete such cure as is necessary. Nothing herein shall require City to cure said default or to undertake completion of construction of the Improvements.

3. The General Contractor further agrees that, except with the prior written approval of City, the General Contractor shall not perform any construction work on the Property pursuant to any change in the Plans and Specifications as defined in the Construction Agreements where such change: (a) would constitute a material change in the building material or equipment specifications, the architectural or structural design, value, architecture or quality of any of the Improvements as defined in the Construction Agreements; or (b) would result in an increase in any item of construction cost in excess of $25,000 for any single change or in excess of $100,000 for all such changes in such items of construction cost; or (c) would affect the structural integrity, quality of building material or equipment or overall efficiency of operating systems or utility systems of the improvements. City may periodically inspect and copy, at reasonable times, the books, records and accounting data of the General Contractor relating to the construction of the Improvements.

4. The General Contractor shall hold in trust all money disbursed to or otherwise received by the General Contractor from or on account of Assignor in connection with the construction of the Improvements and shall use such money solely for the payment of costs incurred in the construction of the Improvements, including the General Contractor's fees, and for no other purpose, until all bills, claims and demands for such costs have been paid in full.

5. The General Contractor warrants and represents that it/he has no knowledge of any prior assignment(s) of any interest in the Construction Agreements. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment.

Executed by the General Contractor on ___, 200_.

_____

By: _____

Its: _____

Contractor's Address:

_____

_____

EXHIBIT A TO ASSIGNMENT OF CONSTRUCTION CONTRACTS

LEGAL DESCRIPTION OF PROPERTY

Exhibit A to Assignment of Construction Agreements dated as of _____, between _____, a California nonprofit corporation, as Assignor, and City.

All that certain real property located in the County of IMPERIAL, State of California, described as follows:

All that property situated in the City of Imperial,
County of Imperial, described as follows:

Attachment No. 13

Form Master Lease

(attached)

LEASE

BETWEEN

[_____] AND

[_____]

LEASE

THIS LEASE is made as of the _____ day of _____, 20__, by and between Long _____ L.P., a California limited partnership, hereafter called "Landlord," and [_____], hereinafter called "Tenant."

ARTICLE I

BASIC LEASE PROVISIONS

Each reference in this Lease to the "Basic Lease Provisions" shall mean and refer to the following collective terms, the application of which shall be governed by the provisions in the remaining Articles of this Lease.

1. Premises: The Premises are more particularly described in Section 2.1.

2. Project Description: The residential building commonly known as _____.

3. Use of Premises: [_____].

4. Estimated Commencement Date: [_____]

5. Lease Term: [_____] months commencing from the Commencement Date, plus such additional days as may be required to cause this Lease to terminate on the final day of the calendar month.

6. Basic Rent: [_____] per month, based on [_____] Dollars ($____) per rentable square foot of the Premises per month.

7. Guarantor(s): [_____].

8. Floor Area of Premises: Approximately [_____] rentable square feet of commercial space and certain common areas appurtenant thereto, as more fully described and depicted on Schedule A-1 attached hereto and incorporated herein by this reference (together with any existing or future improvements located thereon)

9. Security Deposit: [_____]

10. Additional Insureds: Landlord, Landlord's lender and such other parties as may from time to time be designated by Landlord.

11. Address for Payments and Notices:

LANDLORD	TENANT
[_____]	[_____]

with a copy of notices to:

Bocarsly Emden Cowan Esmail & Arndt LLP
633 W. Fifth Street, 70th Floor
Los Angeles, CA 90071
Attn: Nicole Deddens

12. Tenant's Liability Insurance Requirement: [$1,000,000.00 each occurrence $2,000,000.00 annual aggregate]

13. Vehicle Parking Spaces: [_____]

ARTICLE II

PREMISES

Section 2.1 Leased Premises. Landlord leases to Tenant and Tenant leases from Landlord a portion of the building (the "Building") depicted in Exhibit A (the "Premises"). The Premises will contain [_____] square feet of commercial space, related parking facilities and certain common areas appurtenant thereto, as more fully described on Schedule A-1 attached hereto and incorporated herein by this reference (together with any existing or future improvements located thereon) set forth in Item 8 of the Basic Lease Provisions. The Premises is a portion of the project shown in Exhibit F (the "Project"). After Landlord substantially completes construction of the Building ("Landlord's Work"), Landlord shall notify Tenant in writing of the actual rentable square footage of the Premises. The rentable square footage set forth in such notice shall be binding on the parties and if the rentable square footage differs from the amount set forth in Item 8 of the Basic Lease Provisions, the appropriate adjustments shall be made to Basic Rent and the Security Deposit.

Section 2.2 Acceptance of Premises. Tenant acknowledges that neither Landlord nor any representative of Landlord has made any representation or warranty with respect to the Premises or the Building or the suitability or fitness of either for any purpose, including without limitation any representations or warranties regarding zoning or other land use matters, and that neither Landlord nor any representative of Landlord has made any representations or warranties regarding (i) what other tenants or uses may be permitted or intended in the Building and the Project, or (ii) any exclusivity of use by Tenant with respect to its permitted use of the Premises as set forth in Item 3 of the Basic Lease Provisions. Tenant further acknowledges that neither Landlord nor any representative of Landlord has agreed to undertake any alterations or additions or construct any improvements to the Premises except as expressly provided in this Lease. The taking of possession or use of the Premises by Tenant for any purpose other than construction shall conclusively establish that the Premises and the Building were in satisfactory condition and in conformity with the provisions of this Lease in all respects, except for those matters which Tenant shall have brought to Landlord's attention on a written punch list. The list shall be limited to any items required to be accomplished by Landlord under the Work Letter attached as Exhibit E, and shall be delivered to Landlord within thirty (30) days after the term ("Term") of this Lease commences as provided in Article III below. If no items are required of Landlord under the Work Letter, by taking possession of the Premises Tenant accepts the improvements in

their existing condition, and waives any right or claim against Landlord arising out of the condition of the Premises. Nothing contained in this Section shall affect the commencement of the Term or the obligation of Tenant to pay rent. Landlord shall diligently complete all punch list items of which it is notified as provided above.

Section 2.3 Building Name and Address. Tenant shall not utilize any name selected by Landlord from time to time for the Building and/or the Project as any part of Tenant's corporate or trade name. Landlord shall have the right to change the name, address, number or designation of the Building or Project without liability to Tenant.

ARTICLE III

TERM

Section 3.1 General. The Term shall be for the period shown in Item 5 of the Basic Lease Provisions. Subject to the provisions of Section 3.2 below, the Term shall commence ("Commencement Date") on the earlier of (a) the date which is [_____] (____) days after the date Landlord substantially completes Landlord's Work, if work is required to be performed by Landlord pursuant to the terms of the Work Letter, and delivers possession of the Premises to Tenant, (b) [_____] (____) days after the date Landlord delivers possession of the Premises to Tenant if no such work is required to be performed by Landlord or (c) the date upon which Tenant opens for business at the Premises. Within ten (10) days after the Commencement Date, the parties shall memorialize on a form provided by Landlord the actual Commencement Date and the expiration date ("Expiration Date") of this Lease. Tenant's failure to execute that form shall not affect the validity of Landlord's determination of those dates.

Section 3.2 Delay in Possession. If Landlord, for any reason whatsoever, cannot deliver possession of the Premises to Tenant on or before the Estimated Commencement Date, this Lease shall not be void or voidable nor shall Landlord be liable to Tenant for any resulting loss or damage. However, Tenant shall not be liable for any rent until the Commencement Date occurs, except that if Landlord's failure to so deliver possession on the Estimated Commencement Date is attributable to any action or inaction by Tenant (including without limitation any Tenant Delay described in the Work Letter, if any, attached to this Lease), then the Commencement Date shall not be advanced to the date on which possession of the Premises is tendered to Tenant, and Landlord shall be entitled to full performance by Tenant (including the payment of rent) from the date Landlord would have been able to deliver the Premises to Tenant but for Tenant's delay(s).

ARTICLE IV

RENT AND OPERATING EXPENSES

Section 4.1 Basic Rent. From and after the Commencement Date, Tenant shall pay to Landlord without deduction or offset, Basic Rent for the Premises in the total amount shown (including subsequent adjustments, if any) in Item 6 of the Basic Lease Provisions. Any rental adjustment shown in Item 6 shall be deemed to occur on the specified monthly anniversary of the Commencement Date, whether or not that date occurs at the end of a calendar month. The rent shall be due and payable in advance commencing on the Commencement Date (as prorated for

any partial month) and continuing thereafter on the first day of each successive calendar month of the Term. No demand, notice or invoice shall be required for the payment of Basic Rent. An installment of rent in the amount of one (1) full month's Basic Rent at the initial rate specified in Item 6 of the Basic Lease Provisions shall be delivered to Landlord concurrently with Tenant's execution of this Lease and shall be applied against the Basic Rent first due hereunder.

Section 4.2 Operating Expenses.

(a) From and after the Commencement Date, Tenant shall pay to Landlord, as additional rent, "Building Costs" and "Property Taxes," as those terms are defined below, incurred by Landlord in the operation of the Building and Project. For convenience of reference, Property Taxes and Building Costs shall be referred to collectively as "Operating Expenses".

(b) Commencing prior to the start of the first full "Expense Recovery Period" (as defined below) of the Lease, and prior to the start of each full or partial Expense Recovery Period thereafter, Landlord shall give Tenant a written estimate of the amount of Operating Expenses for the Expense Recovery Period. Tenant shall pay the estimated amounts to Landlord in equal monthly installments, in advance, with Basic Rent. If Landlord has not furnished its written estimate for any Expense Recovery Period by the time set forth above, Tenant shall continue to pay cost reimbursements at the rates established for the prior Expense Recovery Period, if any; provided that when the new estimate is delivered to Tenant, Tenant shall, at the next monthly payment date, pay any accrued cost reimbursements based upon the new estimate. For purposes hereof, "Expense Recovery Period" shall mean every twelve month period during the Term (or portion thereof for the first and last lease years) commencing January 1 and ending December 31.

(c) Within one hundred twenty (120) days after the end of each Expense Recovery Period, Landlord shall furnish to Tenant a statement showing in reasonable detail the actual or prorated Operating Expenses incurred by Landlord during the period, and the parties shall within thirty (30) days thereafter make any payment or allowance necessary to adjust Tenant's estimated payments, if any, to Tenant's actual owed amounts as shown by the annual statement. Any delay or failure by Landlord in delivering any statement hereunder shall not constitute a waiver of Landlord's right to require Tenant to pay Operating Expenses pursuant hereto. Any amount due Tenant shall be credited against installments next coming due under this Section 4.2, and any deficiency shall be paid by Tenant together with the next installment. If Tenant has not made estimated payments during the Expense Recovery Period, any amount owing by Tenant pursuant to subsection (a) above shall be paid to Landlord in accordance with Article XVI. Should Tenant fail to object in writing to Landlord's determination of actual Operating Expenses within sixty (60) days following delivery of Landlord's expense statement, Landlord's determination of actual Operating Expenses for the applicable Expense Recovery Period shall be conclusive and binding on the parties and any future claims to the contrary shall be barred.

(d) Even though the Lease has terminated and the Tenant has vacated the Premises, when the final determination is made of Operating Expenses for the Expense Recovery Period in which the Lease terminates, Tenant shall upon notice pay the entire increase due over

the estimated expenses paid. Conversely, any overpayment made in the event expenses decrease shall be rebated by Landlord to Tenant.

(e) If, at any time during any Expense Recovery Period, any one or more of the Operating Expenses are increased to a rate(s) or amount(s) in excess of the rate(s) or amount(s) used in calculating the estimated expenses for the year, then the estimate of Operating Expenses shall be increased for the month in which such rate(s) or amount(s) becomes effective and for all succeeding months by an amount equal to the increase. Landlord shall give Tenant written notice of the amount or estimated amount of the increase, the month in which the increase will become effective, and the month for which the payments are due. Tenant shall pay the increase to Landlord as a part of Tenant's monthly payments of estimated expenses as provided in paragraph (b) above.

(f) The term "Building Costs" shall include Tenant's Project Share (as defined below) of the expenses of operation, maintenance, repair and replacement of the Building and the Project, to the extent such expenses are not billed to and paid directly by Tenant, and shall include the following charges by way of illustration but not limitation: water and sewer charges; insurance premiums or reasonable premium equivalents should Landlord elect to self insure any risk that Landlord is authorized to insure hereunder; license, permit, and inspection fees; heat; light; power; air conditioning; supplies; materials; equipment; tools; the cost of any environmental, insurance, tax or other consultant utilized by Landlord in connection with the Premises, Building and/or Project; establishment of reasonable reserves for replacements and/or repair of Common Area improvements (if applicable), equipment and supplies; costs incurred in connection with compliance of any laws or changes in laws applicable to the Premises, Building or the Project; the cost of any capital investments (other than tenant improvements for specific tenants) to the extent of the amortized amount thereof over the useful life of such capital investments calculated at a market cost of funds, all as determined by Landlord, for each such year of useful life during the Term; costs associated with the procurement and maintenance of a network cable service agreement for any network cable telecommunications lines within the Project, and any other installation, maintenance, repair and replacement costs associated with such lines; labor; reasonably allocated wages and salaries, fringe benefits, and payroll taxes for administrative and other personnel directly applicable to the Premises, Building and/or Project, including both Landlord's personnel and outside personnel; any expense incurred pursuant to Sections 6.1, 6.2, 6.4, 7.2, and 10.2; and an overhead/management fee for the professional operation of the Building and Project. It is understood that Building Costs shall include competitive charges for direct services provided by any affiliate or division of Landlord. "Tenant's Project Share" shall be defined as a fraction, the numerator of which shall be the leased square footage of the Premises and the denominator of which shall be the leased square footage of the Project. Notwithstanding anything to the contrary contained herein, if any occupant(s) of the Market Rate Units receive a disproportionate benefit from the expenditure of any Operating Expense, then Landlord shall have the right, in its sole discretion, to apportion such Operating Expense to the occupant(s) benefitting from such expenditure.

(g) The term "Property Taxes" as used herein shall include Tenant's Project Share of the following: (i) all real estate taxes or personal property taxes, as such property taxes may be reassessed from time to time; (ii) other taxes, charges and assessments which are levied with respect to this Lease, the Premises, the Building and/or the Project, and any improvements,

fixtures and equipment and other property of Landlord located in the Premises, the Building and/or the Project, except that general net income and franchise taxes imposed against Landlord shall be excluded; (iii) all assessments and fees for public improvements, services, and facilities and impacts thereon, including without limitation arising out of any Community Facilities Districts, "Mello Roos" districts, similar assessment districts, and any traffic impact mitigation assessments or fees; (iv) any tax, surcharge or assessment which shall be levied in addition to or in lieu of real estate or personal property taxes, other than taxes covered by Article VIII; and (v) costs and expenses incurred in contesting the amount or validity of any Property Taxes by appropriate proceedings.

Section 4.3 Security Deposit. Concurrently with Tenant's delivery of this Lease, Tenant shall deposit with Landlord the sum, if any, stated in Item 9 of the Basic Lease Provisions, to be held by Landlord as security for the full and faithful performance of Tenant's obligations under this Lease (the "Security Deposit"). If the Basic Rent shall, from time to time, increase during the Term, Tenant shall thereupon deposit with Landlord an additional Security Deposit so that the amount of Security Deposit held by Landlord shall at all times bear the same proportion to current Basic Rent as the original Security Deposit bears to the original Basic Rent. Subject to the last sentence of this Section, the Security Deposit shall be understood and agreed to be the property of Landlord upon Landlord's receipt thereof, and may be utilized by Landlord in its discretion towards the payment of all prepaid expenses by Landlord for which Tenant would be required to reimburse Landlord under this Lease, including without limitation brokerage commissions, tenant improvement and Landlord Work costs. Upon any default by Tenant, including specifically Tenant's failure to pay rent or to abide by its obligations under Sections 7.1 and 15.3 below, at Landlord's option, the Security Deposit shall be applied, without waiver of any rights Landlord may have under this Lease or at law or in equity as a result of the default, as a setoff for full or partial compensation for that default. If any portion of the Security Deposit is applied after a default by Tenant, Tenant shall within five (5) days after written demand by Landlord deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount. Landlord shall not be required to keep this Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. If Tenant fully performs its obligations under this Lease, the Security Deposit or any balance thereof shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest in this Lease) within thirty (30) days after the expiration of the Term, provided that Landlord may retain the Security Deposit to the extent and until such time as all amounts due from Tenant in accordance with this Lease have been determined and paid in full.

Section 4.4 Payment of Tenant's Monetary Obligations. Landlord and Tenant agree that Basic Rent, Operating Expenses and all other sums of whatever kind and nature payable hereunder to or on behalf of Landlord shall be paid without notice or demand, and without set off, counterclaim, abatement, deferment, suspension, deduction or defense.

ARTICLE V

USES

Section 5.1 Use. Tenant shall use the Premises only for the purposes stated in Item 3 of the Basic Lease Provisions, all in accordance with applicable laws and restrictions and

pursuant to approvals to be obtained by Tenant from all relevant and required governmental agencies and authorities. The parties agree that any contrary use shall be deemed to cause material and irreparable harm to Landlord and shall entitle Landlord to injunctive relief in addition to any other available remedy. Tenant, at its expense, shall procure, maintain and make available for Landlord's inspection throughout the Term, all governmental approvals, licenses and permits required for the proper and lawful conduct of Tenant's permitted use of the Premises. Tenant shall comply at its expense with all present and future laws, ordinances, restrictions, regulations, orders, rules and requirements of all governmental authorities that pertain to Tenant or its use of the Premises, including without limitation all federal and state occupational health and safety requirements, whether or not Tenant's compliance will necessitate expenditures or interfere with its use and enjoyment of the Premises. Tenant shall comply at its expense with all present and future covenants, conditions, easements or restrictions now or hereafter affecting or encumbering the Building and/or Project, and any amendments or modifications thereto, including without limitation the payment by Tenant of any periodic or special dues or assessments charged against the Premises or Tenant which may be allocated to the Premises or Tenant in accordance with the provisions thereof.

Section 5.2 Hazardous Materials.

(a) For purposes of this Lease, the term "Hazardous Materials" includes (i) any "hazardous materials" as defined in Section 25501(n) of the California Health and Safety Code, (ii) any other substance or matter which results in liability to any person or entity from exposure to such substance or matter under any statutory or common law theory, and (iii) any substance or matter which is in excess of permitted levels set forth in any federal, California or local law or regulation pertaining to any hazardous or toxic substance, material or waste.

(b) Tenant shall not cause or permit any Hazardous Materials to be brought upon, stored, used, generated, released or disposed of on, under, from or about the Premises (including without limitation the soil and groundwater thereunder) without the prior written consent of Landlord. Notwithstanding the foregoing, Tenant shall have the right, without obtaining prior written consent of Landlord, to utilize within the Premises standard office products that may contain Hazardous Materials (such as photocopy toner, "White Out", and the like), provided however, that (i) Tenant shall maintain such products in their original retail packaging, shall follow all instructions on such packaging with respect to the storage, use and disposal of such products, and shall otherwise comply with all applicable laws with respect to such products, and (ii) all of the other terms and provisions of this Section 5.3 shall apply with respect to Tenant's storage, use and disposal of all such products. Landlord may, in its sole discretion, place such conditions as Landlord deems appropriate with respect to any such Hazardous Materials, and may further require that Tenant demonstrate that any such Hazardous Materials are necessary or useful to Tenant's business and will be generated, stored, used and disposed of in a manner that complies with all applicable laws and regulations pertaining thereto and with good business practices. Tenant understands that Landlord may utilize an environmental consultant to assist in determining conditions of approval in connection with the storage, generation, release, disposal or use of Hazardous Materials by Tenant on or about the Premises, and/or to conduct periodic inspections of the storage, generation, use, release and/or disposal of such Hazardous Materials by Tenant on and from the Premises, and Tenant agrees that any costs incurred by Landlord in connection therewith shall be reimbursed by Tenant to

Landlord as additional rent hereunder upon demand.

(c) Prior to the execution of this Lease, Tenant shall complete, execute and deliver to Landlord an Environmental Questionnaire and Disclosure Statement (the "Environmental Questionnaire") in the form of Exhibit B attached hereto. The completed Environmental Questionnaire shall be deemed incorporated into this Lease for all purposes, and Landlord shall be entitled to rely fully on the information contained therein. On each anniversary of the Commencement Date until the expiration or sooner termination of this Lease, Tenant shall disclose to Landlord in writing the names and amounts of all Hazardous Materials which were stored, generated, used, released and/or disposed of on, under or about the Premises for the twelve month period prior thereto, and which Tenant desires to store, generate, use, release and/or dispose of on, under or about the Premises for the succeeding twelve month period. In addition, to the extent Tenant is permitted to utilize Hazardous Materials upon the Premises, Tenant shall promptly provide Landlord with complete and legible copies of all the following environmental documents relating thereto: reports filed pursuant to any self reporting requirements; permit applications, permits, monitoring reports, workplace exposure and community exposure warnings or notices and all other reports, disclosures, plans or documents (even those which may be characterized as confidential) relating to water discharges, air pollution, waste generation or disposal, and underground storage tanks for Hazardous Materials; orders, reports, notices, listings and correspondence (even those which may be considered confidential) of or concerning the release, investigation of, compliance, cleanup, remedial and corrective actions, and abatement of Hazardous Materials; and all complaints, pleadings and other legal documents filed by or against Tenant related to Tenant's use, handling, storage, release and/or disposal of Hazardous Materials.

(d) Landlord and its agents shall have the right, but not the obligation, to inspect, sample and/or monitor the Premises and/or the soil or groundwater thereunder at any time to determine whether Tenant is complying with the terms of this Section 5.3, and in connection therewith Tenant shall provide Landlord with full access to all relevant facilities, records and personnel. If Tenant is not in compliance with any of the provisions of this Section 5.3, or in the event of a release of any Hazardous Material on, under or about the Premises caused or permitted by Tenant, its agents, employees, contractors, licensees or invitees, Landlord and its agents shall have the right, but not the obligation, without limitation upon any of Landlord's other rights and remedies under this Lease, to immediately enter upon the Premises without notice and to discharge Tenant's obligations under this Section 5.3 at Tenant's expense, including without limitation the taking of emergency or long term remedial action. Landlord and its agents shall endeavor to minimize interference with Tenant's business in connection therewith, but shall not be liable for any such interference. In addition, Landlord, at Tenant's expense, shall have the right, but not the obligation, to join and participate in any legal proceedings or actions initiated in connection with any claims arising out of the storage, generation, use, release and/or disposal by Tenant or its agents, employees, contractors, licensees or invitees of Hazardous Materials on, under, from or about the Premises.

(e) If the presence of any Hazardous Materials on, under, from or about the Premises or the Project caused or permitted by Tenant or its agents, employees, contractors, licensees or invitees results in (i) injury to any person, (ii) injury to or any contamination of the Premises or the Project, or (iii) injury to or contamination of any real or personal property

wherever situated, Tenant, at its expense, shall promptly take all actions necessary to return the Premises and the Project and any other affected real or personal property owned by Landlord to the condition existing prior to the introduction of such Hazardous Materials and to remedy or repair any such injury or contamination, including without limitation, any cleanup, remediation, removal, disposal, neutralization or other treatment of any such Hazardous Materials. Notwithstanding the foregoing, Tenant shall not, without Landlord's prior written consent, take any remedial action in response to the presence of any Hazardous Materials on, under or about the Premises or the Project or any other affected real or personal property owned by Landlord or enter into any similar agreement, consent, decree or other compromise with any governmental agency with respect to any Hazardous Materials claims; provided however, Landlord's prior written consent shall not be necessary in the event that the presence of Hazardous Materials on, under or about the Premises or the Project or any other affected real or personal property owned by Landlord (i) imposes an immediate threat to the health, safety or welfare of any individual or (ii) is of such a nature that an immediate remedial response is necessary and it is not possible to obtain Landlord's consent before taking such action. To the fullest extent permitted by law, Tenant shall indemnify, hold harmless, protect and defend (with attorneys acceptable to Landlord) Landlord and any successors to all or any portion of Landlord's interest in the Premises and the Project and any other real or personal property owned by Landlord from and against any and all liabilities, losses, damages, diminution in value, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including without limitation attorneys' fees, court costs and other professional expenses), whether foreseeable or unforeseeable, arising directly or indirectly out of the use, generation, storage, treatment, release, on or off site disposal or transportation of Hazardous Materials on, into, from, under or about the Premises, the Building and the Project and any other real or personal property owned by Landlord caused or permitted by Tenant, its agents, employees, contractors, licensees or invitees, specifically including without limitation the cost of any required or necessary repair, restoration, cleanup or detoxification of the Premises, the Building and the Project and any other real or personal property owned by Landlord, and the preparation of any closure or other required plans, whether or not such action is required or necessary during the Term or after the expiration of this Lease. If Landlord at any time discovers that Tenant or its agents, employees, contractors, licensees or invitees may have caused or permitted the release of a Hazardous Material on, under, from or about the Premises or the Project or any other real or personal property owned by Landlord, Tenant shall, at Landlord's request, immediately prepare and submit to Landlord a comprehensive plan, subject to Landlord's approval, specifying the actions to be taken by Tenant to return the Premises or the Project or any other real or personal property owned by Landlord to the condition existing prior to the introduction of such Hazardous Materials. Upon Landlord's approval of such cleanup plan, Tenant shall, at its expense, and without limitation of any rights and remedies of Landlord under this Lease or at law or in equity, immediately implement such plan and proceed to cleanup such Hazardous Materials in accordance with all applicable laws and as required by such plan and this Lease. The provisions of this subsection (e) shall expressly survive the expiration or sooner termination of this Lease.

ARTICLE VI

EASEMENTS; COMMON AREAS; SERVICES

Section 6.1 Utilities and Services. Tenant shall be responsible for and shall pay

promptly, directly to the appropriate supplier, all charges for water, gas, electricity, sewer, heat, light, power, telephone, refuse pickup, janitorial service, interior landscape maintenance and all other utilities, materials and services furnished directly to Tenant or the Premises or used by Tenant in, on or about the Premises during the Term, together with any taxes thereon. Landlord shall not be liable for damages or otherwise for any failure or interruption of any utility or other service furnished to the Premises, and no such failure or interruption shall be deemed an eviction or entitle Tenant to terminate this Lease or withhold or abate any rent due hereunder. Landlord shall at all reasonable times have free access to all electrical and mechanical installations of Landlord.

Section 6.2 Operation and Maintenance of Common Areas. During the Term, Landlord shall operate all Common Areas within the Project. The term "Common Areas" shall mean all areas which are not held for exclusive use by persons entitled to occupy space, and all other appurtenant areas and improvements provided by Landlord for the common use of Landlord and tenants and their respective employees and invitees, including without limitation parking areas and structures, driveways, sidewalks, landscaped and planted areas, hallways and interior stairwells not located within the premises of any tenant, common electrical rooms and roof access entries, common entrances and lobbies, elevators, and restrooms not located within the premises of any tenant.

Section 6.3 Use of Common Areas. The occupancy by Tenant of the Premises shall include the use of the Common Areas in common with Landlord and with all others for whose convenience and use the Common Areas may be provided by Landlord, subject, however, to compliance with all rules and regulations as are prescribed from time to time by Landlord. Landlord shall operate and maintain the Common Areas in the manner Landlord may determine to be appropriate. All costs incurred by Landlord for the maintenance and operation of the Common Areas shall be included in Building Costs unless any particular cost incurred can be charged to a specific tenant of the Project. Landlord shall at all times during the Term have exclusive control of the Common Areas, and may restrain any use or occupancy, except as authorized by Landlord's rules and regulations. Tenant shall keep the Common Areas clear of any obstruction or unauthorized use related to Tenant's operations. Nothing in this Lease shall be deemed to impose liability upon Landlord for any damage to or loss of the property of, or for any injury to, Tenant, its invitees or employees. Landlord may temporarily close any portion of the Common Areas for repairs, remodeling and/or alterations, to prevent a public dedication or the accrual of prescriptive rights, or for any other reason deemed sufficient by Landlord, without liability to Landlord.

Section 6.4 Parking. Tenant's subtenants and invitees shall be entitled to the use of the vehicle parking spaces in the Common Areas on a first-come, first-serve basis, which spaces shall be unreserved and unassigned, on those portions of the Common Areas designated by Landlord for parking. In addition, Tenant shall be entitled to the number of vehicle parking spaces set forth in Item 13 of the Basic Lease Provisions for use by Tenant's employees, which spaces shall be unreserved and unassigned, on those portions of the Common Areas designated by Landlord for employee parking. Tenant shall not use more parking spaces than such number. All parking spaces shall be used only for parking by vehicles no larger than full size passenger automobiles or pickup trucks. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's employees, suppliers, shippers, customers or invitees to be

loaded, unloaded or parked in areas other than those designated by Landlord for such activities. If Tenant permits or allows any of the prohibited activities described above, then Landlord shall have the right, without notice, in addition to such other rights and remedies that Landlord may have, to remove or tow away the vehicle involved and charge the costs to Tenant. Parking within the Common Areas shall be limited to striped parking stalls, and no parking shall be permitted in any driveways, access ways or in any area which would prohibit or impede the free flow of traffic within the Common Areas. There shall be no overnight parking of any vehicles of any kind unless otherwise authorized by Landlord, and vehicles which have been abandoned or parked in violation of the terms hereof may be towed away at the owner's expense. Nothing contained in this Lease shall be deemed to create liability upon Landlord for any damage to motor vehicles of visitors or employees, for any loss of property from within those motor vehicles, or for any injury to Tenant, its visitors or employees, unless ultimately determined to be caused by the sole active negligence or willful misconduct of Landlord, its agents, servants and employees. Landlord shall have the right to establish, and from time to time amend, and to enforce against all users all reasonable rules and regulations (including the designation of areas for employee parking) that Landlord may deem necessary and advisable for the proper and efficient operation and maintenance of parking within the Common Areas. Landlord shall have the right to construct, maintain and operate lighting facilities within the parking areas; to change the area, level, location and arrangement of the parking areas and improvements therein; to restrict parking by tenants, their officers, agents and employees to employee parking areas; to enforce parking charges (by operation of meters or otherwise); and to do and perform such other acts in and to the parking areas and improvements therein as, in the use of good business judgment, Landlord shall determine to be advisable. Any person using the parking area shall observe all directional signs and arrows and any posted speed limits. In no event shall Tenant interfere with the use and enjoyment of the parking area by other tenants of the Project or their employees or invitees. Parking areas shall be used only for parking vehicles. Washing, waxing, cleaning or servicing of vehicles, or the storage of vehicles for 24 hour periods, is prohibited unless otherwise authorized by Landlord. Tenant shall be liable for any damage to the parking areas caused by Tenant or Tenant's subtenants or invitees, including without limitation damage from excess oil leakage. Tenant shall have no right to install or place any fixtures, equipment or personal property in the parking areas.

(a) Changes and Additions by Landlord. Landlord reserves the right to make alterations or additions to the Project, or to the attendant fixtures, equipment and Common Areas. Landlord may at any time relocate or remove any of the various buildings (other than the Building), parking areas, and other Common Areas, and may add buildings and areas to the Project from time to time. No change shall entitle Tenant to any abatement of rent or other claim against Landlord, provided that the change does not deprive Tenant of reasonable access.

Section 6.5 Easements.

(a) Landlord hereby grants to Tenant an irrevocable and non-exclusive easement over Common Areas located outside the Premises, for ingress to and egress from the Premises, together with the non-exclusive right to use and enjoy all facilities and amenities located therein (subject to the right of other lessees and sublessees to use and enjoy such facilities and amenities) for the benefit of Tenant, Tenant's sublessees, guests, invitees, agents, employees, contractors and consultants, as applicable. The foregoing grant shall expire upon

expiration of the Term (the "Low Income Easement"). The rights of any such party to use the Low Income Easement shall be subject to any reasonable rules or regulations adopted from time to time by or on behalf of Landlord. Landlord hereby covenants and agrees to repair, maintain and operate the Building exclusive of the Premises in a good, clean and safe condition, commensurate with the repair, maintenance and operation of the Premises by Tenant.

(b) Tenant hereby grants to Landlord an irrevocable and non-exclusive easement over the Common Areas located on the Premises, for ingress to and egress from the portions of the Building excluding the Premises, together with the non-exclusive right to use and enjoy all facilities and amenities located therein (subject to the right of other lessees and sublessees to use and enjoy such facilities and amenities) for the benefit of Landlord, Landlord's sublessees, guests, invitees, agents, employees, contractors and consultants, as applicable. The foregoing grant shall expire upon expiration of the Term (the "Market Rate Easement"). The foregoing grant shall expire upon the expiration of the Term. The rights of any such party to use the Market Rate Parcel Easement shall be subject to any reasonable rules or regulations adopted from time to time by or on behalf of Tenant.

(c) Tenant reserves the right at any time and from time to time, in the exercise of its reasonable discretion, to deny or otherwise exclude use of the Premises, as applicable, by any person (a) who is not a direct or indirect lessee, sublessee, guest or invitee of Tenant (or, with respect to Tenant, an agent, employee, contractor or consultant of Tenant), or (b) whom Tenant (or their respective agents) reasonably believes are failing to adhere to the rules or regulations adopted in accordance herewith.

ARTICLE VII

MAINTAINING THE PREMISES

Section 7.1 Tenant's Maintenance and Repair. Tenant at its sole expense shall comply with all applicable laws and governmental regulations governing the Premises and make all structural and non-structural repairs, whether or not the need for such repairs occurs as a result of Tenant's use, necessary to keep the Premises in the condition as existed on the Commencement Date (or on any later date that the improvements may have been installed), including without limitation the electrical and mechanical systems, any air conditioning, ventilating or heating equipment which serves the Premises, all interior and exterior walls, glass, windows, doors, door closures, hardware, fixtures, electrical, plumbing, fire extinguisher equipment, fire hydrants, other equipment, foundations, ceilings, roofs, floors, and skylights. Any damage or deterioration of the Premises shall not be deemed ordinary wear and tear if the same could have been prevented by good maintenance practices by Tenant. As part of its maintenance obligations hereunder, Tenant shall, at Landlord's request, provide Landlord with copies of all maintenance schedules, reports and notices prepared by, for or on behalf of Tenant. Tenant shall obtain preventive maintenance contracts from a licensed heating and air conditioning contractor to provide for regular inspection and maintenance of the heating, ventilating and air conditioning systems servicing the Premises, all subject to Landlord's approval. All repairs shall be at least equal in quality to the original work, shall be made only by a licensed contractor approved in writing in advance by Landlord and shall be made only at the time or times approved by Landlord. Any contractor utilized by Tenant shall be subject to Landlord's standard

requirements for contractors, as modified from time to time. Landlord shall have the right at all times to inspect Tenant's maintenance of all equipment (including without limitation air conditioning, ventilating and heating equipment), and may impose reasonable restrictions and requirements with respect to repairs, as provided in Section 7.3, and the provisions of Section 7.4 shall apply to all repairs. Alternatively, Landlord may elect to make any repair or maintenance required hereunder on behalf of Tenant and at Tenant's expense, and Tenant shall promptly reimburse Landlord for all costs incurred upon submission of an invoice.

Section 7.2 Landlord's Maintenance and Repair. Subject to Section 7.1 and Article XI, Landlord shall provide service, maintenance and repair with respect to the Common Areas, except that Tenant at its expense shall make all repairs which Landlord deems reasonably necessary as a result of the act or negligence of Tenant, its agents, employees, invitees, subtenants or contractors. Landlord shall have the right to employ or designate any reputable person or firm, including any employee or agent of Landlord or any of Landlord's affiliates or divisions, to perform any service, repair or maintenance function. Landlord need not make any other improvements or repairs except as specifically required under this Lease, and nothing contained in this Section shall limit Landlord's right to reimbursement from Tenant for maintenance, repair costs and replacement costs as provided elsewhere in this Lease. Tenant understands that it shall not make repairs at Landlord's expense or by rental offset. Tenant further understands that Landlord shall not be required to make any repairs to the Common Area unless and until Tenant has notified Landlord in writing of the need for such repair and Landlord shall have a reasonable period of time thereafter to commence and complete said repair, if warranted. All costs of any maintenance and repairs on the part of Landlord provided hereunder shall be considered part of Building Costs.

Section 7.3 Alterations. Tenant shall make no alterations, additions or improvements to the Premises without the prior written consent of Landlord, which consent may be given or withheld in Landlord's sole discretion. **[Notwithstanding the foregoing, Landlord shall not unreasonably withhold its consent to any alterations, additions or improvements to the Premises which cost less than One Dollar ($1.00) per square foot of the improved portions of the Premises and do not (i) affect the exterior of the Building or outside areas (or be visible from adjoining sites), or (ii) affect or penetrate any of the structural portions of the Building, including but not limited to the roof, or (iii) require any change to the basic floor plan of the Premises, any change to any structural or mechanical systems of the Premises, or any governmental permit as a prerequisite to the construction thereof, or (iv) interfere in any manner with the proper functioning of or Landlord's access to any mechanical, electrical, plumbing or HVAC systems, facilities or equipment located in or serving the Building, or (v) diminish the value of the Premises.]** Landlord may impose, as a condition to its consent, any requirements that Landlord in its discretion may deem reasonable or desirable, including but not limited to a requirement that all work be covered by a lien and completion bond satisfactory to Landlord and requirements as to the manner, time and contractor for performance of the work. Tenant shall obtain all required permits for the work and shall perform the work in compliance with all applicable laws, regulations and ordinances, all covenants, conditions and restrictions affecting the Project, and the Rules and Regulations (hereafter defined). Tenant understands and agrees that Landlord shall be entitled to a supervision fee in the amount of five percent (5%) of the cost of the work. If any governmental entity requires, as a condition to any proposed alterations, additions or improvements to the Premises by Tenant, that

improvements be made to the Common Areas, and if Landlord consents to such improvements to the Common Areas, then Tenant shall, at Tenant's sole expense, make such required improvements to the Common Areas in such manner, utilizing such materials, and with such contractors (including, if required by Landlord, Landlord's contractors) as Landlord may require in its sole discretion. Under no circumstances shall Tenant make any improvement which incorporates any Hazardous Materials, including without limitation asbestos-containing construction materials into the Premises. Any request for Landlord's consent shall be made in writing and shall contain architectural plans describing the work in detail reasonably satisfactory to Landlord. Unless Landlord otherwise agrees in writing, all alterations, additions or improvements affixed to the Premises (excluding moveable trade fixtures and furniture) shall become the property of Landlord and shall be surrendered with the Premises at the end of the Term, except that the Landlord may, by notice to Tenant, require Tenant to remove by the Expiration Date, or sooner termination of this Lease, all or any alterations, decorations, fixtures, additions, improvements and the like installed either by Tenant or by Landlord at Tenant's request and to repair any damage to the Premises arising from that removal. Except as otherwise provided in this Lease or in any Exhibit to this Lease, should Landlord make any alteration or improvement to the Premises for Tenant, Landlord shall be entitled to prompt reimbursement from Tenant for all costs incurred.

Section 7.4 Mechanic's Liens. Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by or for Tenant. Upon request by Landlord, Tenant shall promptly cause any such lien to be released by posting a bond in accordance with California Civil Code Section 3143 or any successor statute. In the event that Tenant shall not, within ten (10) days following the imposition of any lien, cause the lien to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other available remedies, the right to cause the lien to be released by any means it deems proper, including payment of or defense against the claim giving rise to the lien. All expenses so incurred by Landlord, including Landlord's attorneys' fees, and any consequential or other damages incurred by Landlord arising out of such lien, shall be reimbursed by Tenant promptly following Landlord's demand, together with interest from the date of payment by Landlord at the maximum rate permitted by law until paid. Tenant shall give Landlord no less than twenty (20) days' prior notice in writing before commencing construction of any kind on the Premises so that Landlord may post and maintain notices of nonresponsibility on the Premises.

Section 7.5 Entry and Inspection. Landlord shall at all reasonable times, upon written or oral notice (except in emergencies, when no notice shall be required) have the right to enter the Premises to inspect them, to supply services in accordance with this Lease, to protect the interests of Landlord in the Premises, and to submit the Premises to prospective or actual purchasers or encumbrance holders (or, during the last twelve (12) months of the Term or when an uncured Tenant default exists, to prospective tenants), all without being deemed to have caused an eviction of Tenant and without abatement of rent except as provided elsewhere in this Lease. Landlord shall have the right, if desired, to retain a key which unlocks all of the doors in the Premises, excluding Tenant's vaults and safes, and Landlord shall have the right to use any and all means which Landlord may deem proper to open the doors in an emergency in order to obtain entry to the Premises, and any entry to the Premises obtained by Landlord shall not under any circumstances be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or any eviction of Tenant from the Premises.

ARTICLE VIII

TAXES AND ASSESSMENTS ON TENANT'S PROPERTY

Tenant shall be liable for and shall pay, at least ten (10) days before delinquency, all taxes and assessments levied against all personal property of Tenant located in the Premises, against all improvements to the Premises made by Landlord or Tenant, and against any alterations, additions or like improvements made to the Premises by or on behalf of Tenant. When possible Tenant shall cause its personal property, improvements and alterations to be assessed and billed separately from the real property of which the Premises form a part. If any taxes on Tenant's personal property, improvements and/or alterations are levied against Landlord or Landlord's property and if Landlord pays the same, or if the assessed value of Landlord's property is increased by the inclusion of a value placed upon the personal property, improvements and/or alterations of Tenant and if Landlord pays the taxes based upon the increased assessment, Tenant shall pay to Landlord the taxes so levied against Landlord or the proportion of the taxes resulting from the increase in the assessment. In calculating what portion of any tax bill which is assessed against Landlord separately, or Landlord and Tenant jointly, is attributable to improvements, alterations and personal property, Landlord's reasonable determination shall be conclusive.

ARTICLE IX

TRANSFER

Section 9.1 Transfer by Tenant. As long as no Event of Default shall have occurred and be continuing, the Tenant may sublet all or any portion of the Premises to any Person without the consent of the Landlord, unless such sublease would require the approval of the Lender under any financing for the Project (the "Financing"), in which case the Tenant may only enter into such sublease after obtaining the prior written consent of such Lender. Tenant may only enter into such sublease after obtaining any required consent of the Lender under any Financing and after obtaining the prior written consent of the Landlord, which, the Landlord's consent shall not unreasonably be withheld. No sublease or Transfer shall adversely affect or reduce any obligation of the Tenant or right of the Landlord hereunder, and all obligations of the Tenant hereunder shall continue in full force and effect.

Section 9.2 Conditions to Transfer by Tenant.

(a) Any Transfer or sublease by the Tenant of any of its interest in the Premises pursuant to Section 9.1 shall be subject to the satisfaction of the following conditions as of the effective date of such Transfer or sublease:

(i) no such Transfer or sublease shall violate any provision of any instruments evidencing and/or documents governing any Financing (collectively, the "Operative Documents"), or any provision of, or create a relationship which would be in violation of, any Applicable Laws if such violation would result in a material adverse effect on the Premises or Landlord's rights or remedies hereunder;

(ii) in the case of a Transfer, the transferee shall enter into and deliver

to the Landlord an Assumption Agreement;

(iii) in the case of a sublease, such sublease shall be expressly subordinate to and subject to the provisions of this Lease, and to any mortgage under or in respect of any Financing and otherwise include such estoppel, attornment and mortgagee protective provisions as Landlord reasonably may request;

(iv) the Tenant shall have paid all of the reasonable costs and expenses of the Landlord in connection with any Transfer or sublease;

(v) the Tenant shall have complied with any and all state or municipal environmental transfer or disclosure requirements;

(vi) in the case of any Transfer or sublease, the Tenant shall have provided to the Landlord any other documents reasonably requested (including any waiver of suretyship rights and defenses by the Tenant); and

(vii) in the case of a sublease (other than of a material portion of the Premises), the Tenant shall maintain a record of all such subleases and furnish to the Landlord such record, which shall include the address for each such sublessee, upon reasonable request.

(b) The Tenant shall, as soon as practicable after the execution of any Transfer documents, assignment or sublease, deliver to the Landlord a conformed copy thereof.

(c) If Tenant's interest in this Lease is Transferred with respect to the Premises (whether pursuant to a proceeding under any bankruptcy or insolvency laws or otherwise), and this Lease is thereafter disaffirmed or rejected with respect to any or all of the Premises in any proceeding under such laws, or is terminated with respect to any or all of the Premises by reason of any such proceeding, then the original Tenant herein named, upon request of the Landlord given within 120 days after such disaffirmance, rejection or termination, shall (i) pay to the Landlord all Rent then due and payable with respect to the Premises to Landlord under this Lease to and including the date of such disaffirmance, rejection or termination, and (ii) enter into a new lease with the Landlord of the Premises with respect to which there was a Transfer for a term commencing on the effective date of such disaffirmance, rejection or termination and ending on the date that would have been the date on which this Lease would have expired with respect to the Premises if this Lease had not been so disaffirmed, rejected or terminated, at the same Basic Rent and Additional Rent and upon the then executory terms and conditions contained in this Lease, except that (1) the rights of the Tenant under the new lease shall be subject to any possessory rights of the last transferee of this Lease and any rights of persons claiming by, through or under such transferee, (2) such new lease shall require all existing Lease Events of Default to be cured by the Tenant with reasonable diligence, and (3) such new lease shall require the Tenant to pay all Basic Rent and Additional Rent which, had this Lease not been so disaffirmed, rejected or terminated, would have become. due after the effective date of such disaffirmance, rejection or termination. If the original Tenant herein named shall fail or refuse to enter into the new lease within 10 days after the Landlord's request to do so, then in addition to all other rights and remedies by reason of such default under this Lease, at law or in equity, the Landlord shall have the same rights and remedies against the original Tenant herein named as the

Landlord would have had if the original Tenant herein named had entered into such new lease and such new lease had thereafter been terminated at the beginning of its term by reason of the default of the Tenant thereunder. The provisions of this paragraph shall survive any disaffirmance, rejection or termination of this Lease.

Section 9.3 Transfer by the Landlord. Except as may otherwise expressly be set forth in this Lease, the Landlord may not Transfer all or any of its right, title and interest in or to the Premises or this Lease. The provisions of the preceding sentence shall not in any manner be deemed to prohibit any Permitted Liens or the exercise of any rights in connection therewith. Notwithstanding the foregoing, the Landlord shall have the right to assign all or any part of its right, title and interest in and to the Premises and this Lease to any Affiliate of the Landlord once the Landlord has obtained the prior written approval of the Tenant.

Section 9.4 Conditions to Transfer. Any Transfer by the Landlord of any of its right, title and interest in the Premises and this Lease pursuant to Section 17.1 shall be subject to the satisfaction of the following conditions on or prior to the effective date of such Transfer and any purported Transfer not so satisfying said conditions shall be null and void and of no further force and effect:

(a) no such Transfer shall violate any provision of any Applicable Laws;

(b) the transferee shall enter into and deliver to the Tenant an assumption agreement, in form and substance reasonably acceptable to Landlord and Tenant (the "Assumption Agreement"); and

(c) no such Transfer shall be in violation of, or create a default under, terms of the Operative Documents.

Section 9.5 Effect of Transfer. From and after any Transfer effected in accordance with this Article XVII, the Landlord shall be released (to the extent of the interest transferred) from its obligations hereunder with respect to the Premises from and after the date of such transfer. Notwithstanding any Transfer of any interest in the Premises as provided in this Article XVII and to the extent not transferred to the transferee of the Premises, the Landlord shall be entitled to the payment of Rent due and payable prior to its transfer of the Premises and any rights or benefits under this Lease, including, without limitation, rights to indemnification under this Lease, to the extent the rights or benefits shall have accrued prior to the Transfer of the Premises.

Section 9.6 Right of Landlord to Mortgage Premises. With respect to the Premises, the Landlord shall have the right to pledge, encumber, hypothecate and mortgage the Premises in connection with the Financing. Tenant shall cooperate with any and all efforts by Landlord to obtain the Financing, including without limitation, agreeing to enter into and execute any commercially reasonable subordination, attornment and nondisturbance agreement.

ARTICLE X

INSURANCE AND INDEMNITY

Section 10.1 Tenant's Insurance. Tenant, at its sole cost and expense, shall provide and maintain in effect the insurance described in Exhibit C. Evidence of that insurance must be delivered to Landlord prior to the Commencement Date.

Section 10.2 Landlord's Insurance. Landlord may, at its election, provide any or all of the following types of insurance, with or without deductible and in amounts and coverages as may be determined by Landlord in its discretion: "all risk" property insurance, subject to standard exclusions, covering the Building and/or Project, and such other risks as Landlord or its mortgagees may from time to time deem appropriate, including leasehold improvements made by Landlord, and commercial general liability coverages. Landlord shall not be required to carry insurance of any kind on Tenant's property, including leasehold improvements, trade fixtures, furnishings, equipment, plate glass, signs and all other items of personal property, and shall not be obligated to repair or replace that property should damage occur. All proceeds of insurance maintained by Landlord upon the Building and/or the Project shall be the property of Landlord, whether or not Landlord is obligated to or elects to make any repairs. At Landlord's option, Landlord may self insure all or any portion of the risks for which Landlord elects to provide insurance hereunder.

Section 10.3 Tenant's Indemnity. To the fullest extent permitted by law, Tenant shall defend, indemnify, protect, save and hold harmless Landlord, its agents, and any and all affiliates of Landlord, including, without limitation, any corporations or other entities controlling, controlled by or under common control with Landlord, from and against any and all claims, liabilities, costs or expenses arising either before or after the Commencement Date from Tenant's use or occupancy of the Premises, the Building or the Common Areas, or from the conduct of its business, or from any activity work, or thing done, permitted or suffered by Tenant or its agents, employees, invitees or licensees in or about the Premises, the Building or the Common Areas, or from any default in the performance of any obligation on Tenant's part to be performed under this Lease, or from any act or negligence of Tenant or its agents, employees, visitors, patrons, guests, invitees or licensees. Landlord may, at its option, require Tenant to assume Landlord's defense in any action covered by this Section through counsel satisfactory to Landlord. The provisions of this Section shall expressly survive the expiration or sooner termination of this Lease.

Section 10.4 Landlord's Nonliability. Landlord shall not be liable to Tenant, its employees, agents and invitees, and Tenant hereby waives all claims against Landlord for loss of or damage to any property, or any injury to any person, or loss or interruption of business or income, or any other loss, cost, damage, injury or liability whatsoever (including without limitation any consequential damages and lost profit or opportunity costs) resulting from, but not limited to, Acts of God, acts of civil disobedience or insurrection, acts or omissions of other tenants within the Project or their agents, employees, contractors, guests or invitees, fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak or flow from or into any part of the Building or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, electrical works or other fixtures in the Building, whether the damage or injury results from conditions arising in the Premises or in other portions of the Project. It is understood that any such condition may require the temporary evacuation or closure of all or a portion of the Building. Except as provided in Sections 11.1 and 12.1 below, there shall be no abatement of rent and no liability of Landlord by

reason of any injury to or interference with Tenant's business (including without limitation consequential damages and lost profit or opportunity costs) arising from the making of any repairs, alterations or improvements to any portion of the Building, including repairs to the Premises, nor shall any related activity by Landlord constitute an actual or constructive eviction; provided, however, that in making repairs, alterations or improvements, Landlord shall interfere as little as reasonably practicable with the conduct of Tenant's business in the Premises. Neither Landlord nor its agents shall be liable for interference with light or other similar intangible interests. Tenant shall immediately notify Landlord in case of fire or accident in the Premises, the Building or the Project and of defects in any improvements or equipment.

Section 10.5 Waiver of Subrogation. Landlord and Tenant each hereby waives all rights of recovery against the other and the other's agents on account of loss and damage occasioned to the property of such waiving party to the extent only that such loss or damage is required to be insured against under any "all risk" property insurance policies required by this Article X; provided however, that (i) the foregoing waiver shall not apply to the extent of Tenant's obligations to pay deductibles under any such policies and this Lease, and (ii) if any loss is due to the act, omission or negligence or willful misconduct of Tenant or its agents, employees, contractors, guests or invitees, Tenant's liability insurance shall be primary and shall cover all losses and damages prior to any other insurance hereunder. By this waiver it is the intent of the parties that neither Landlord nor Tenant shall be liable to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage insured against under any "all risk" property insurance policies required by this Article, even though such loss or damage might be occasioned by the negligence or such party, its agents, employees, contractors, guests or invitees. The provisions of this Section shall not limit the indemnification provisions elsewhere contained in this Lease.

ARTICLE XI

DAMAGE OR DESTRUCTION

Section 11.1 Restoration.

(a) If the Premises is damaged, Landlord shall repair that damage as soon as reasonably possible, at its expense, unless: (i) Landlord reasonably determines that the cost of repair is not covered by Landlord's fire and extended coverage insurance plus such additional amounts unless Tenant elects, at its option, to contribute, excluding however the deductible (for which Tenant shall be responsible for Tenant's proportionate share); (ii) Landlord reasonably determines that the Premises cannot, with reasonable diligence, be fully repaired by Landlord (or cannot be safely repaired because of the presence of hazardous factors, including without limitation, Hazardous Materials, earthquake faults, and other similar dangers) within two hundred seventy (270) days after the date of the damage; (iii) an event of default by Tenant has occurred and is continuing at the time of such damage; or (iv) the damage occurs during the final twelve (12) months of the Term. Should Landlord elect not to repair the damage for one of the preceding reasons, Landlord shall so notify Tenant in writing within sixty (60) days after the damage occurs and this Lease shall terminate as of the date of that notice.

(b) Unless Landlord elects to terminate this Lease in accordance with

subsection (a) above, this Lease shall continue in effect for the remainder of the Term; provided that so long as Tenant is not in default under this Lease, if the damage is so extensive that Landlord reasonably determines that the Premises cannot, with reasonable diligence, be repaired by Landlord (or cannot be safely repaired because of the presence of hazardous factors, earthquake faults, and other similar dangers) so as to allow Tenant's substantial use and enjoyment of the Premises within two hundred seventy (270) days after the date of damage, then Tenant may elect to terminate this Lease by written notice to Landlord within the sixty (60) day period stated in subsection (a).

(c) Commencing on the date of any damage to the Premises, and ending on the sooner of the date the damage is repaired or the date this Lease is terminated, the rental to be paid under this Lease shall be abated in the same proportion that the floor area of the Premises that is rendered unusable by the damage from time to time bears to the total floor area of the Premises, but only to the extent that any business interruption insurance proceeds are received by Landlord therefor from Tenant's insurance described in Exhibit C.

(d) Notwithstanding the provisions of subsections (a), (b) and (c) of this Section, and subject to the provisions of Section 10.5 above, the cost of any repairs shall be borne by Tenant, and Tenant shall not be entitled to rental abatement or termination rights, if the damage is due to the fault or neglect of Tenant or its employees, subtenants, invitees or representatives. In addition, the provisions of this Section shall not be deemed to require Landlord to repair any improvements or fixtures that Tenant is obligated to repair or insure pursuant to any other provision of this Lease.

(e) Tenant shall fully cooperate with Landlord in removing Tenant's personal property and any debris from the Premises to facilitate all inspections of the Premises and the making of any repairs. Notwithstanding anything to the contrary contained in this Lease, if Landlord in good faith believes there is a risk of injury to persons or damage to property from entry into the Building or Premises following any damage or destruction thereto, Landlord may restrict entry into the Building or the Premises by Tenant, its employees, agents and contractors in a non-discriminatory manner, without being deemed to have violated Tenant's rights of quiet enjoyment to, or made an unlawful detainer of, or evicted Tenant from, the Premises. Upon request, Landlord shall consult with Tenant to determine if there are safe methods of entry into the Building or the Premises solely in order to allow Tenant to retrieve files, data in computers, and necessary inventory, subject however to all indemnities and waivers of liability from Tenant to Landlord contained in this Lease and any additional indemnities and waivers of liability which Landlord may require.

Section 11.2 Lease Governs. Tenant agrees that the provisions of this Lease, including without limitation Section 11.1, shall govern any damage or destruction and shall accordingly supersede any contrary statute or rule of law.

ARTICLE XII

EMINENT DOMAIN

Section 12.1 Total or Partial Taking. If all or a material portion of the Premises is

taken by any lawful authority by exercise of the right of eminent domain, or sold to prevent a taking, either Tenant or Landlord may terminate this Lease effective as of the date possession is required to be surrendered to the authority. In the event title to a portion of the Premises is taken or sold in lieu of taking, and if Landlord elects to restore the Premises in such a way as to alter the Premises materially, either party may terminate this Lease, by written notice to the other party, effective on the date of vesting of title. In the event neither party has elected to terminate this Lease as provided above, then Landlord shall promptly, after receipt of a sufficient condemnation award, proceed to restore the Premises to substantially their condition prior to the taking, and a proportionate allowance shall be made to Tenant for the rent corresponding to the time during which, and to the part of the Premises of which, Tenant is deprived on account of the taking and restoration. In the event of a taking, Landlord shall be entitled to the entire amount of the condemnation award without deduction for any estate or interest of Tenant; provided that nothing in this Section shall be deemed to give Landlord any interest in, or prevent Tenant from seeking any award against the taking authority for, the taking of personal property and fixtures belonging to Tenant or for relocation or business interruption expenses recoverable from the taking authority.

Section 12.2 Temporary Taking. No temporary taking of the Premises shall terminate this Lease or give Tenant any right to abatement of rent, and any award specifically attributable to a temporary taking of the Premises shall belong entirely to Tenant. A temporary taking shall be deemed to be a taking of the use or occupancy of the Premises for a period of not to exceed one hundred eighty (180) days.

Section 12.3 Taking of Parking Area. In the event there shall be a taking of the parking area such that Landlord can no longer provide sufficient parking to comply with this Lease, Landlord may substitute reasonably equivalent parking in a location reasonably close to the Building; provided that if Landlord fails to make that substitution within one hundred eighty (180) days following the taking and if the taking materially impairs Tenant's use and enjoyment of the Premises, Tenant may, at its option, terminate this Lease by written notice to Landlord. If this Lease is not so terminated by Tenant, there shall be no abatement of rent and this lease shall continue in effect.

ARTICLE XIII

SUBORDINATION; ESTOPPEL CERTIFICATE; FINANCIALS

Section 13.1 Subordination. At the option of Landlord, this Lease shall be either superior or subordinate to all ground or underlying leases, mortgages and deeds of trust, if any, which may hereafter affect the Premises, and to all renewals, modifications, consolidations, replacements and extensions thereof; provided, that so long as Tenant is not in default under this Lease, this Lease shall not be terminated or Tenant's quiet enjoyment of the Premises disturbed in the event of termination of any such ground or underlying lease, or the foreclosure of any such mortgage or deed of trust, to which Tenant has subordinated this Lease pursuant to this Section. In the event of a termination or foreclosure, Tenant shall become a tenant of and attorn to the successor in interest to Landlord upon the same terms and conditions as are contained in this Lease, and shall execute any instrument reasonably required by Landlord's successor for that purpose. Tenant shall also, upon written request of Landlord, execute and deliver all instruments

as may be required from time to time to subordinate the rights of Tenant under this Lease to any ground or underlying lease or to the lien of any mortgage or deed of trust (provided that such instruments include the nondisturbance and attornment provisions set forth above), or, if requested by Landlord, to subordinate, in whole or in part, any ground or underlying lease or the lien of any mortgage or deed of trust to this Lease.

Section 13.2 Estoppel Certificate.

(a) Tenant shall, at any time upon not less than ten (10) days prior written notice from Landlord, execute, acknowledge and deliver to Landlord, in any form that Landlord may reasonably require, a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of the modification and certifying that this Lease, as modified, is in full force and effect) and the dates to which the rental, additional rent and other charges have been paid in advance, if any, and (ii) acknowledging that, to Tenant's knowledge, there are no uncured defaults on the part of Landlord, or specifying each default if any are claimed, and (iii) setting forth all further information that Landlord may reasonably require. Tenant's statement may be relied upon by any prospective purchaser or encumbrancer of the Premises.

(b) Notwithstanding any other rights and remedies of Landlord, Tenant's failure to deliver any estoppel statement within the provided time shall be conclusive upon Tenant that (i) this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) there are no uncured defaults in Landlord's performance, and (iii) not more than one month's rental has been paid in advance.

Section 13.3 Financials.

(a) Tenant shall deliver to Landlord, prior to the execution of this Lease and thereafter at any time upon Landlord's request, Tenant's current tax returns and financial statements, certified true, accurate and complete by the chief financial officer of Tenant, including a balance sheet and profit and loss statement for the most recent prior year (collectively, the "Statements"), which Statements shall accurately and completely reflect the financial condition of Tenant. Landlord agrees that it will keep the Statements confidential, except that Landlord shall have the right to deliver the same to any proposed purchaser or encumbrancer of the Premises.

(b) Tenant acknowledges that Landlord is relying on the Statements in its determination to enter into this Lease, and Tenant represents to Landlord, which representation shall be deemed made on the date of this Lease and again on the Commencement Date, that no material change in the financial condition of Tenant, as reflected in the Statements, has occurred since the date Tenant delivered the Statements to Landlord. The Statements are represented and warranted by Tenant to be correct and to accurately and fully reflect Tenant's true financial condition as of the date of submission by any Statements to Landlord.

ARTICLE XIV

DEFAULTS AND REMEDIES

Section 14.1 Tenant's Defaults. In addition to any other event of default set forth in this Lease, the occurrence of any one or more of the following events shall constitute a default by Tenant:

(a) The failure by Tenant to make any payment of rent or additional rent required to be made by Tenant, as and when due, where the failure continues for a period of three (3) days after written notice from Landlord to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 and 1161(a) as amended. For purposes of these default and remedies provisions, the term "additional rent" shall be deemed to include all amounts of any type whatsoever other than Basic Rent to be paid by Tenant pursuant to the terms of this Lease.

(b) Assignment, sublease, encumbrance or other transfer of the Lease by Tenant, either voluntarily or by operation of law, whether by judgment, execution, transfer by intestacy or testacy, or other means, without the prior written consent of Landlord.

(c) The discovery by Landlord that any financial statement provided by Tenant, or by any affiliate, successor or guarantor of Tenant, was materially false.

(d) The failure of Tenant to timely and fully provide any subordination agreement, estoppel certificate or financial statements in accordance with the requirements of Article XIII.

(e) The failure or inability by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, other than as specified in any other subsection of this Section, where the failure continues for a period of thirty (30) days after written notice from Landlord to Tenant or such shorter period as is specified in any other provision of this Lease; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 and 1161(a) as amended. However, if the nature of the failure is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences the cure within thirty (30) days, and thereafter diligently pursues the cure to completion.

(f) (i) The making by Tenant of any general assignment for the benefit of creditors; (ii) the filing by or against Tenant of a petition to have Tenant adjudged a Chapter 7 debtor under the Bankruptcy Code or to have debts discharged or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within thirty (30) days); (iii) the appointment of a trustee or receiver to take possession of all or substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, if possession is not restored to Tenant within thirty (30) days; (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where the seizure is not discharged within thirty (30) days; or (v) Tenant's convening of a meeting of its creditors for the purpose of effecting a moratorium upon or composition of its debts. Landlord shall not be deemed to have knowledge of any event described in this subsection unless notification in writing is received by Landlord, nor shall there be any presumption attributable to Landlord of Tenant's insolvency. In

the event that any provision of this subsection is contrary to applicable law, the provision shall be of no force or effect.

Section 14.2 Landlord's Remedies.

(a) In the event of any default by Tenant, or in the event of the abandonment of the Premises by Tenant, then in addition to any other remedies available to Landlord, Landlord may exercise the following remedies:

(i) Landlord may terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. Such termination shall not affect any accrued obligations of Tenant under this Lease. Upon termination, Landlord shall have the right to reenter the Premises and remove all persons and property. Landlord shall also be entitled to recover from Tenant:

(1) The worth at the time of award of the unpaid rent and additional rent which had been earned at the time of termination;

(2) The worth at the time of award of the amount by which the unpaid rent and additional rent which would have been earned after termination until the time of award exceeds the amount of such loss that Tenant proves could have been reasonably avoided;

(3) The worth at the time of award of the amount by which the unpaid rent and additional rent for the balance of the Term after the time of award exceeds the amount of such loss that Tenant proves could be reasonably avoided;

(4) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result from Tenant's default, including, but not limited to, the cost of recovering possession of the Premises, refurbishment of the Premises, marketing costs, commissions and other expenses of reletting, including necessary repair, the unamortized portion of any tenant improvements, brokerage commissions and Landlord's Work funded by Landlord in connection with this Lease, reasonable attorneys' fees, and any other reasonable costs; and

(5) At Landlord's election, all other amounts in addition to or in lieu of the foregoing as may be permitted by law. The term "rent" as used in this Lease shall be deemed to mean the Basic Rent, and all other sums required to be paid by Tenant to Landlord pursuant to the terms of this Lease. Any sum, other than Basic Rent, shall be computed on the basis of the average monthly amount accruing during the twenty four (24) month period immediately prior to default, except that if it becomes necessary to compute such rental before the twenty four (24) month period has occurred, then the computation shall be on the basis of the average monthly amount during the shorter period. As used in subparagraphs (1) and (2) above, the "worth at the time of award" shall be computed by allowing interest at the rate of ten percent (10%) per annum. As used in subparagraph (3) above, the "worth at the time of award" shall be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(ii) Landlord may elect not to terminate Tenant's right to possession of the Premises, in which event Landlord may continue to enforce all of its rights and remedies under this Lease, including the right to collect all rent as it becomes due. Efforts by the Landlord to maintain, preserve or relet the Premises, or the appointment of a receiver to protect the Landlord's interests under this Lease, shall not constitute a termination of the Tenant's right to possession of the Premises. In the event that Landlord elects to avail itself of the remedy provided by this subsection (ii), Landlord shall not unreasonably withhold its consent to an assignment or subletting of the Premises subject to the reasonable standards for Landlord's consent as are contained in this Lease.

(b) Landlord shall be under no obligation to observe or perform any covenant of this Lease on its part to be observed or performed which accrues after the date of any default by Tenant unless and until the default is cured by Tenant, it being understood and agreed that the performance by Landlord of its obligations under this Lease are expressly conditioned upon Tenant's full and timely performance of its obligations under this Lease. The various rights and remedies reserved to Landlord in this Lease or otherwise shall be cumulative and, except as otherwise provided by California law, Landlord may pursue any or all of its rights and remedies at the same time.

(c) No delay or omission of Landlord to exercise any right or remedy shall be construed as a waiver of the right or remedy or of any default by Tenant. The acceptance by Landlord of rent shall not be a (i) waiver of any preceding breach or default by Tenant of any provision of this Lease, other than the failure of Tenant to pay the particular rent accepted, regardless of Landlord's knowledge of the preceding breach or default at the time of acceptance of rent, or (ii) a waiver of Landlord's right to exercise any remedy available to Landlord by virtue of the breach or default. The acceptance of any payment from a debtor in possession, a trustee, a receiver or any other person acting on behalf of Tenant or Tenants estate shall not waive or cure a default under Section 14.1. No payment by Tenant or receipt by Landlord of a lesser amount than the rent required by this Lease shall be deemed to be other than a partial payment on account of the earliest due stipulated rent, nor shall any endorsement or statement on any check or letter be deemed an accord and satisfaction and Landlord shall accept the check or payment without prejudice to Landlord's right to recover the balance of the rent or pursue any other remedy available to it. No act or thing done by Landlord or Landlord's agents during the Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender shall be valid unless in writing and signed by Landlord. No employee of Landlord or of Landlord's agents shall have any power to accept the keys to the Premises prior to the termination of this Lease, and the delivery of the keys to any employee shall not operate as a termination of the Lease or a surrender of the Premises.

Section 14.3 Late Payments.

(a) Any rent due under this Lease that is not received by Landlord when due shall bear interest at the maximum rate permitted by law from the date due until fully paid. The payment of interest shall not cure any default by Tenant under this Lease. It is the intent of this provision that Landlord shall be compensated by such payment of interest for loss resulting from rental delinquency including costs to Landlord of servicing the delinquent amount. In addition, Tenant acknowledges that the late payment by Tenant to Landlord of rent will cause Landlord to

incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult and impracticable to ascertain. Those costs may include, but are not limited to, administrative, processing and accounting charges, and late charges which may be imposed on Landlord by the terms of any ground lease, mortgage or trust deed covering the Premises. Accordingly, if any rent due from Tenant shall not be received by Landlord or Landlord's designee within five (5) days after the date due, then Tenant shall pay to Landlord, in addition to the interest provided above, a late charge in a sum equal to the greater of six percent (6%) of the amount overdue or Two Hundred Fifty Dollars ($250.00) for each delinquent payment. Acceptance of a late charge by Landlord shall not constitute a waiver of Tenant's default with respect to the overdue amount, nor shall it prevent Landlord from exercising any of its other rights and remedies.

(b) Following each second consecutive installment of rent that is paid within five (5) days following notice of nonpayment from Landlord, Landlord shall have the option (i) to require that beginning with the first payment of rent next due, rent shall no longer be paid in monthly installments but shall be payable quarterly three (3) months in advance and/or (ii) to require that Tenant increase the amount, if any, of the Security Deposit by one hundred percent (100%). Should Tenant deliver to Landlord, at any time during the Term, two (2) or more insufficient checks, the Landlord may require that all monies then and thereafter due from Tenant be paid to Landlord by cashier's check.

Section 14.4 Right of Landlord to Perform. All covenants and agreements to be performed by Tenant under, this Lease shall be performed at Tenant's sole cost and expense and without any abatement of rent or right of set off. If Tenant fails to pay any sum of money, other than rent, or fails to perform any other act on its part to be performed under this Lease, and the failure continues beyond any applicable grace period set forth in Section 14.1, then in addition to any other available remedies, Landlord may, at its election make the payment or perform the other act on Tenant's part. Landlord's election to make the payment or perform the act on Tenant's part shall not give rise to any responsibility of Landlord to continue making the same or similar payments or performing the same or similar acts. Tenant shall, promptly upon demand by Landlord, reimburse Landlord for all sums paid by Landlord and all necessary incidental costs, together with interest at the maximum rate permitted by law from the date of the payment by Landlord. Landlord shall have the same rights and remedies if Tenant fails to pay those amounts as Landlord would have in the event of a default by Tenant in the payment of rent.

Section 14.5 Default by Landlord. The Landlord shall be deemed to be in default under this Lease if the Landlord shall fail in the due performance of any of its obligations under this Lease and such failure shall continue for thirty (30) days after the Tenant shall have given written notice thereof to the Landlord or the Landlord otherwise obtains Actual Knowledge thereof, (or, in a case of a default which is curable but cannot be cured with the payment of money and which cannot with due diligence be wholly cured within such thirty (30) day period, if the Landlord shall fail to commence to cure the same within said thirty (30) day period, or, having promptly so commenced to cure the same shall fail thereafter to prosecute the curing thereof in good faith and with due diligence, it being intended that the time within which to cure such a default shall be extended for such period as may be necessary to complete the curing of the same in good faith and with due diligence). If the Landlord is in default of any of its obligations hereunder, then the Tenant will have the right to exercise all remedies provided at law or in equity, including, without limitation, specific performance, but excluding the right to

terminate this Lease. In addition, Tenant may enter any portion of the Premises to remedy such default at Landlord's expense and make such payment or perform such act for the account of the Landlord and the Tenant shall not thereby be deemed to have waived any default or released the Landlord from any of its obligations hereunder. All amounts so paid by the Tenant and all incidental costs and expenses (including reasonable attorneys' fees, costs and expenses) incurred in connection with such payment or performance shall be paid by the Landlord to the Tenant within ten (10) days of demand.

Section 14.6 Expenses and Legal Fees. All sums reasonably incurred by Landlord in connection with any event of default by Tenant under this Lease or holding over of possession by Tenant after the expiration or earlier termination of this Lease, including without limitation all costs, expenses and actual accountants, appraisers, attorneys and other professional fees, and any collection agency or other collection charges, shall be due and payable by Tenant to Landlord on demand, and shall bear interest at the rate of ten percent (10%) per annum. Should either Landlord or Tenant bring any action in connection with this Lease, the prevailing party shall be entitled to recover as a part of the action its reasonable attorneys' fees, and all other costs. The prevailing party for the purpose of this paragraph shall be determined by the trier of the facts.

Section 14.7 WAIVER OF JURY TRIAL. LANDLORD AND TENANT EACH ACKNOWLEDGES THAT IT IS AWARE OF AND HAS HAD THE ADVICE OF COUNSEL OF ITS CHOICE WITH RESPECT TO ITS RIGHTS TO TRIAL BY JURY, AND EACH PARTY DOES HEREBY EXPRESSLY AND KNOWINGLY WAIVE AND RELEASE ALL SUCH RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY HERETO AGAINST THE OTHER (AND/OR AGAINST ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR SUBSIDIARY OR AFFILIATED ENTITIES) ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM OF INJURY OR DAMAGE.

Section 14.8 Satisfaction of Judgment. The obligations of Landlord do not constitute the personal obligations of the individual partners, members, trustees, directors, officers or shareholders of Landlord or its constituent partners. Should Tenant recover a money judgment against Landlord, the sole recourse of Tenant shall be against Landlord's interest in the Premises, and no attachment, execution, writ or other process shall be sought or obtained, and no judicial proceeding shall be initiated by or on behalf of Tenant against Landlord personally or Landlord's assets except with respect to Landlord's interest in the Premises.

Section 14.9 Limitation of Actions Against Landlord. Any claim, demand or right of any kind by Tenant which is based upon or arises in connection with this Lease shall be barred unless Tenant commences an action thereon within six (6) months after the date that the act, omission, event or default upon which the claim, demand or right arises, has occurred.

ARTICLE XV

END OF TERM

Section 15.1 Holding Over. This Lease shall terminate without further notice upon the

expiration of the Term, and any holding over by Tenant after the expiration shall not constitute a renewal or extension of this Lease, or give Tenant any rights under this Lease, except when in writing signed by both parties. If Tenant holds over for any period after the expiration (or earlier termination) of the Term without the prior written consent of Landlord, such possession shall constitute a tenancy at sufferance only; such holding over with the prior written consent of Landlord shall constitute a month to month tenancy commencing on the first (1st) day following the termination of this Lease. In either of such events, possession shall be subject to all of the terms of this Lease, except that the monthly Basic Rent shall be the greater of (a) two hundred percent (200%) of the Basic Rent for the month immediately preceding the date of termination or (b) the then currently scheduled Basic Rent for comparable space in the Project. If Tenant fails to surrender the Premises upon the expiration of this Lease despite demand to do so by Landlord, Tenant shall indemnify and hold Landlord harmless from all loss, cost, expense or liability, including without limitation, reasonable attorneys' fees and any claims made by any succeeding tenant relating to such failure to surrender. Acceptance by Landlord of rent after the termination shall not constitute a consent to a holdover or result in a renewal of this Lease. The foregoing provisions of this Section are in addition to and do not affect Landlord's right of reentry or any other rights of Landlord under this Lease or at law.

Section 15.2 Merger on Termination. The voluntary or other surrender of this Lease by Tenant, or a mutual termination of this Lease, shall terminate any or all existing subleases unless Landlord, at its option, elects in writing to treat the surrender or termination as an assignment to it of any or all subleases affecting the Premises.

Section 15.3 Surrender of Premises; Removal of Property. Upon the Expiration Date or upon any earlier termination of this Lease, Tenant shall quit and surrender possession of the Premises to Landlord in as good order, condition and repair as when received or as hereafter may be improved by Landlord or Tenant, reasonable wear and tear and repairs which are Landlord's obligation excepted, and shall, without expense to Landlord, remove or cause to be removed from the Premises all signs installed by or on behalf of Tenant, personal property, and debris, except for any items which are designated in writing by Landlord to remain. Tenant shall repair all damage to the Premises resulting from the removal, which repair shall include the patching and filling of holes and repair of structural damage, provided that Landlord may instead elect to repair any structural damage at Tenant's expense. If Tenant shall fail to comply with the provisions of this Section, Landlord may affect the removal and/or make any repairs, and the cost to Landlord shall be additional rent payable by Tenant upon demand. If Tenant fails to remove Tenant's personal property from the Premises upon the expiration of the Term, Landlord may remove, store, dispose of and/or retain such personal property, at Landlord's option, in accordance with then applicable laws, all at the expense of Tenant. If requested by Landlord, Tenant shall execute, acknowledge and deliver to Landlord an instrument in writing releasing and quitclaiming to Landlord all right, title and interest of Tenant in the Premises.

ARTICLE XVI

PAYMENTS AND NOTICES

All sums payable by Tenant to Landlord shall be paid, without deduction or offset, in lawful money of the United States to Landlord at its address set forth in Item 12 of the Basic

Lease Provisions, or at any other place as Landlord may designated in writing. Unless this Lease expressly provides otherwise, as for example in the payment of rent pursuant to Section 4.1, all payments shall be due and payable within five (5) days after demand. All payments requiring proration shall be prorated on the basis of a thirty (30) day month and a three hundred sixty (360) day year. Any notice, election, demand, consent, approval or other communication to be given or other document to be delivered by either party to the other may be delivered in person or by courier or overnight delivery service to the other party, or may be deposited in the United States mail, duly registered or certified, postage prepaid, return receipt requested, and addressed to the other party at the address set forth in Item 12 of the Basic Lease Provisions, or if to Tenant, at that address or, from and after the Commencement Date, at the Premises (whether or not Tenant has departed from, abandoned or vacated the Premises), or may be delivered by telegram, telex or telecopy, provided that receipt thereof is telephonically confirmed. Either party may, by written notice to the other, served in the manner provided in this Article, designate a different address. If any notice or other document is sent by mail, it shall be deemed served or delivered twenty-four (24) hour after mailing. If more than one person or entity is named as Tenant under this Lease, service of any notice upon any one of them shall be deemed as service upon all of them.

ARTICLE XVII

RULES AND REGULATIONS

Tenant agrees to observe faithfully and comply strictly with the Rules and Regulations, attached as Exhibit D, and any reasonable and nondiscriminatory amendments, modifications and/or additions as may be adopted and published by written notice to tenants by Landlord for the safety, care, security, good order, or cleanliness of the Premises, and Project and Common Areas (if applicable). Landlord shall not be liable to Tenant for any violation of the Rules and Regulations or the breach of any covenant or condition in any lease by any other tenant or such tenant's agents, employees, contractors, quests or invitees. One or more waivers by Landlord of any breach of the Rules and Regulations by Tenant or by any other tenant(s) shall not be a waiver of any subsequent breach of that rule or any other. Tenant's failure to keep and observe the Rules and Regulations shall constitute a default under this Lease. In the case of any conflict between the Rules and Regulations and this Lease, this Lease shall be controlling.

ARTICLE XVIII

BROKER'S COMMISSION

The parties recognize as the broker(s) who negotiated this Lease the firm(s), if any, whose name(s) is (are) stated in Item 10 of the Basic Lease Provisions, and agree that Landlord shall be responsible for the payment of brokerage commissions to those broker(s) unless otherwise provided in this Lease. Tenant warrants that it has had no dealings with any other real estate broker or agent in connection with the negotiation of this Lease, and Tenant agrees to indemnify and hold Landlord harmless from any cost, expense or liability (including reasonable attorneys' fees) for any compensation, commissions or charges claimed by any other real estate broker or agent employed or claiming to represent or to have been employed by Tenant in connection with the negotiation of this Lease. The foregoing agreement shall survive the

termination of this Lease. If Tenant fails to take possession of the Premises or if this Lease otherwise terminates prior to the Expiration Date as the result of failure of performance by Tenant, Landlord shall be entitled to recover from Tenant the unamortized portion of any brokerage commission funded by Landlord in addition to any other damages to which Landlord may be entitled.

ARTICLE XIX

TRANSFER OF LANDLORD'S INTEREST

In the event of any transfer of Landlord's interest in the Premises, the transferor shall be automatically relieved of all obligations on the part of Landlord accruing under this Lease from and after the date of the transfer, provided that any funds held by the transferor in which Tenant has an interest shall be turned over, subject to that interest, to the transferee and Tenant is notified of the transfer as required by law. No holder of a mortgage and/or deed of trust to which this Lease is or may be subordinate, and no landlord under a so called sale leaseback, shall be responsible in connection with the Security Deposit, unless the mortgagee or holder of the deed of trust or the landlord actually receives the Security Deposit. It is intended that the covenants and obligations contained in this Lease on the part of Landlord shall, subject to the foregoing, be binding on Landlord, its successors and assigns, only during and in respect to their respective successive periods of ownership.

ARTICLE XX

INTERPRETATION

Section 20.1 Gender and Number. Whenever the context of this Lease requires, the words "Landlord" and "Tenant" shall include the plural as well as the singular, and words used in neuter, masculine or feminine genders shall include the others.

Section 20.2 Headings. The captions and headings of the articles and sections of this Lease are for convenience only, are not a part of this Lease and shall have no effect upon its construction or interpretation.

Section 20.3 Joint and Several Liability. If more than one person or entity is named as Tenant, the obligations imposed upon each shall be joint and several and the act of or notice from, or notice or refund to, or the signature of, any one or more of them shall be binding on all of them with respect to the tenancy of this Lease, including, but not limited to, any renewal, extension, termination or modification of this Lease.

Section 20.4 Successors. Subject to Articles IX and XIX, all rights and liabilities given to or imposed upon Landlord and Tenant shall extend to and bind their respective heirs, executors, administrators, successors and assigns. Nothing contained in this Section is intended, or shall be construed, to grant to any person other than Landlord and Tenant and their successors and assigns any rights or remedies under this Lease.

Section 20.5 Time of Essence. Time is of the essence with respect to the performance of every provision of this Lease.

Section 20.6 Controlling Law. This Lease shall be governed by and interpreted in accordance with the laws of the State of California.

Section 20.7 Severability. If any term or provision of this Lease, the deletion of which would not adversely affect the receipt of any material benefit by either party or the deletion of which is consented to by the party adversely affected, shall be held invalid or unenforceable to any extent, the remainder of this Lease shall not be affected and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 20.8 Waiver and Cumulative Remedies. One or more waivers by Landlord or Tenant of any breach of any term, covenant or condition contained in this Lease shall not be a waiver of any subsequent breach of the same or any other term, covenant or condition. Consent to any act by one of the parties shall not be deemed to render unnecessary the obtaining of that party's consent to any subsequent act. No breach by Tenant of this Lease shall be deemed to have been waived by Landlord unless the waiver is in a writing signed by Landlord. The rights and remedies of Landlord under this Lease shall be cumulative and in addition to any and all other rights and remedies which Landlord may have.

Section 20.9 Inability to Perform. In the event that Landlord shall be delayed or hindered in or prevented from the performance of any work or in performing any act required under this Lease by reason of any cause beyond the reasonable control of Landlord, then the performance of the work or the doing of the act shall be excused for the period of the delay and the time for performance shall be extended for a period equivalent to the period of the delay.

Section 20.10 Entire Agreement. This Lease and its exhibits and other attachments cover in full each and every agreement of every kind between the parties concerning the Premises, the Building, and the Project, and all preliminary negotiations, oral agreements, understandings and/or practices, except those contained in this Lease, are superseded and of no further effect. Tenant waives its rights to rely on any representations or promises made by Landlord or others which are not contained in this Lease. No verbal agreement or implied covenant shall be held to modify the provisions of this Lease, any statute, law, or custom to the contrary notwithstanding.

Section 20.11 Quiet Enjoyment. Upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, and subject to the other provisions of this Lease, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term without hindrance or interruption by Landlord or any other person claiming by or through Landlord.

Section 20.12 Survival. All covenants of Landlord or Tenant which reasonably would be intended to survive the expiration or sooner termination of this Lease, including without limitation any warranty or indemnity hereunder, shall so survive and continue to be binding upon and inure to the benefit of the respective parties and their successors and assigns.

ARTICLE XXI

EXECUTION AND RECORDING

Section 21.1 Counterparts. This Lease may be executed in one or more counterparts, each of which shall constitute an original and all or which shall be one and the same agreement.

Section 21.2 Corporate and Partnership Authority. If Tenant is a corporation or partnership, each individual executing this Lease on behalf of the corporation or partnership represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of the corporation or partnership, and that this Lease is binding upon the corporation or partnership in accordance with its terms. Tenant shall, at Landlord's request, deliver a certified copy of its board of directors' resolution or partnership agreement or certificate authorizing or evidencing the execution of this Lease.

Section 21.3 Execution of Lease; No Option or Offer. The submission of this Lease to Tenant shall be for examination purposes only, and shall not constitute an offer to or option for Tenant to lease the Premises. Execution of this Lease by Tenant and its return to Landlord shall not be binding upon Landlord, notwithstanding any time interval, until Landlord has in fact executed and delivered this Lease to Tenant, it being intended that this Lease shall only become effective upon execution by Landlord and delivery of a fully executed counterpart to Tenant.

Section 21.4 Recording. Tenant shall not record this Lease without the prior written consent of Landlord. Tenant, upon the request of Landlord, shall execute and acknowledge a "short form" memorandum of this Lease for recording purposes. Tenant shall pay all costs and expenses in connection with the recording of said memorandum.

Section 21.5 Amendments. No amendment or termination of this Lease shall be effective unless in writing signed by authorized signatories of Tenant and Landlord, or by their respective successors in interest. No actions, policies, oral or informal arrangements, business dealings or other course of conduct by or between the parties shall be deemed to modify this Lease in any respect.

Section 21.6 Executed Copy. Any fully executed photocopy or similar reproduction of this Lease shall be deemed an original for all purposes.

Section 21.7 Attachments. All exhibits, amendments, riders and addenda attached to this Lease are hereby incorporated into and made a part of this Lease.

ARTICLE XXII

MISCELLANEOUS

Section 22.1 Nondisclosure of Lease Terms. Tenant acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord. Disclosure of the terms could adversely affect the ability of Landlord to negotiate other leases and impair Landlord's relationship with other tenants. Accordingly, Tenant agrees that it, and its partners, members, officers, directors, employees and attorneys, shall not voluntarily disclose the terms and conditions of this Lease to any other tenant or apparent prospective tenant of the Project, either directly or indirectly, without the prior written consent of Landlord, provided, however, that Tenant may disclose the terms to prospective subtenants or assignees under this Lease.

Section 22.2 Guaranty. As a condition to the execution of this Lease by Landlord, the obligations, covenants and performance of the Tenant as herein provided shall be guaranteed in writing by the Guarantor(s) listed in Item 7 of the Basic Lease Provisions, if any, on a form of guaranty provided by Landlord.

Section 22.3 Changes Requested by Lender. If, in connection with the Financing, the lender shall request reasonable modifications in this Lease as a condition to the financing, Tenant will not unreasonably withhold or delay its consent, provided that the modifications do not materially increase the obligations of Tenant or materially and adversely affect the leasehold interest created by this Lease.

Section 22.4 Mortgagee Protection. No act or failure to act on the part of Landlord which would otherwise entitle Tenant to be relieved of its obligations hereunder or to terminate this Lease shall result in such a release or termination unless (a) Tenant has given notice by registered or certified mail to any beneficiary of a deed of trust or mortgage covering the Premises whose address has been furnished to Tenant and (b) such beneficiary is afforded a reasonable opportunity to cure the default by Landlord (which in no event shall be less than sixty (60) days), including, if necessary to effect the cure, time to obtain possession of the Premises by power of sale or judicial foreclosure provided that such foreclosure remedy is diligently pursued. Tenant agrees that each beneficiary of a deed of trust or mortgage covering the Premises is an express third party beneficiary hereof, Tenant shall have no right or claim for the collection of any deposit from such beneficiary or from any purchaser at a foreclosure sale unless such beneficiary or purchaser shall have actually received and not refunded the deposit, and Tenant shall comply with any written directions by any beneficiary to pay rent due hereunder directly to such beneficiary without determining whether an event of default exists under such beneficiary's deed of trust.

Section 22.5 Covenants and Conditions. All of the provisions of this Lease shall be construed to be conditions as well as covenants as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

Section 22.6 Security Measures. Tenant hereby acknowledges that Landlord shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the Premises or the Project. Tenant assumes all responsibility for the protection of Tenant, its agents, invitees and property from acts of third parties. Nothing herein contained shall prevent Landlord, at its sole option, from providing security protection for the Projcct or any part thereof, in which event the cost thereof shall be included within the definition of Building Costs.

LANDLORD:	TENANT:
[_____].	[_____]
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT A

PREMISES

(attached)

SCHEDULE A-1

COMMON AREAS

(attached)

EXHIBIT B

ENVIRONMENTAL QUESTIONNAIRE AND DISCLOSURE STATEMENT

The purpose of this form is to obtain information regarding the use of hazardous substances at the Project. Prospective tenants and contractors should answer the questions in light of their proposed operations on the premises. Existing tenants and contractors should answer the questions as they relate to ongoing operations on the premises and should update any information previously submitted.

If additional space is needed to answer the questions, you may attach separate sheets of paper to this form. When completed, the form should be sent to Landlord.

Your cooperation in this matter is appreciated.

1. GENERAL INFORMATION

Name of Responding Company: _____

Check all that apply: Tenant ( ) Contractor ( ) Prospective ( ) Existing ( )

Mailing Address: _____

Contact Person & Title: _____

Telephone Number: _____

Address of Leased Premises: _____

Length of Lease or Contract Term: _____

Describe the proposed operations to take place on the property, including principal products manufactured or services to be conducted. Existing tenants and contractors should describe any proposed changes to ongoing operations.

2. STORAGE OF HAZARDOUS MATERIALS

2.1 Will any hazardous materials be used or stored on site?

Wastes	Yes ( )	No ( )
Chemical Products	Yes ( )	No ( )
Biological Hazards/	Yes ( )	No ( )
Infectious Wastes	Yes ( )	No ( )
Radioactive Materials	Yes ( )	No ( )

2.2 List any hazardous materials to be used or stored, the quantities that will be on site at any given time, and the location and method of storage (e.g., bottles in storage closet on the premises).

Waste/Products	Location and Method of Storage	Quantity

2.3 Is any underground storage of hazardous substances proposed or currently conducted on the premises? Yes ( ) No ( )

If yes, describe the materials to be stored, and the size and construction of the tank. Attach copies of any permits obtained for the underground storage of such substances.

3. SPILLS

3.1 During the past year, have any spills occurred on the premises? Yes ( ) No ( )

If so, please describe the spill and attach the results of any testing conducted to determine the extent of such spills.

3.2 Were any agencies notified in connection with such spills? Yes ( ) No ( )

If so, attach copies of any spill reports or other correspondence with regulatory agencies.

3.3 Were any clean up actions undertaken in connection with the spills? Yes ( ) No ( )

If so, briefly describe the actions taken. Attach copies of any clearance letters obtained from any regulatory agencies involved and the results of any final soil or groundwater sampling done upon completion of the clean-up work.

4. WASTE MANAGEMENT

4.1 List the waste, if any, generated or to be generated at the premises, whether it is as hazardous waste, biological or radioactive hazard, its hazard class and the quantity generated on a monthly basis.

Waste	Hazard Class	Quantity/Month

4.2 Describe the method(s) of disposal for each waste. Indicate where and how often disposal will take place. _____

4.3 Is any treatment or processing of hazardous, infectious or radioactive wastes currently conducted or proposed to be conducted at the premises?

Yes ( ) No ( )

If yes, please describe any existing or proposed treatment methods. _____

4.4 Attach copies of any hazardous waste permits or licenses issued to your company

with respect to its operations on the premises.

5. WASTEWATER TREATMENT/DISCHARGE

5.1 Do you discharge industrial wastewater to:

___ storm drain? ___ sewer?
___ surface water? ___ no industrial discharge

5.2 Is your industrial wastewater treated before discharge? Yes ( ) No ( )

If yes, describe the type of treatment conducted.

5.3 Attach copies of any wastewater discharge permits issued to your company with respect to its operations on the premises.

6. AIR DISCHARGES

6.1 Do you have any air filtration systems or stacks that discharge into the air?

Yes ( ) No ( )

6.2 Do you operate any equipment that require air emissions permits?

Yes ( ) No ( )

6.3 Attach copies of any air discharge permits pertaining to these operations.

7. HAZARDOUS MATERIALS DISCLOSURES

7.1 Does your company handle an aggregate of at least 500 pounds, 55 gallons or 200 cubic feet of hazardous material at any given time? If so, state law requires that you prepare a hazardous materials management plan. Yes ( ) No ( )

7.2 Has your company prepared a hazardous materials management plan ("business plan") pursuant to the requirements of the fire department of the state and county in which the Building is situated? Yes ( ) No ( )

If so, attach a copy of the business plan.

7.3 Are any of the chemicals used in your operations regulated under Proposition 65? Yes ( ) No ( )

If so, describe the actions taken, or proposed actions to be taken, to comply with Proposition 65 requirements.

7.4 Is your company subject to OSHA Hazard Communication Standard Requirements? Yes ( ) No ( )

If so, describe the procedures followed to comply with these requirements.

8. ENFORCEMENT ACTIONS, COMPLAINTS

8.1 Has your company ever been subject to any agency enforcement actions, administrative orders, or consent decrees? Yes ( ) No ( )

If so, describe the actions and any continuing compliance obligations imposed as a result of these actions.

8.2 Has your company ever received requests for information, notice or demand letters, or any other inquiries regarding its operations? Yes ( ) No ( )

8.3 Have there ever been, or are there now pending, any lawsuits against your company regarding any environmental or health and safety concerns? Yes ( ) No ( )

8.4 Has an environmental audit ever been conducted at your company's current facility? Yes ( ) No ( )

If so, discuss the results of the audit.

8.5 Have there been any problems or complaints from neighbors at your company's current facility? Yes ( ) No ( )

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT C

TENANT'S INSURANCE

The following standards for Tenant's insurance shall be in effect at the Premises. Landlord reserves the right to adopt reasonable modifications and additions to those standards, including, but not limited to, the right to increase the minimum limits of such insurance, from time to time, to amounts which may be reasonable and customary for similar facilities of like size and operation. Tenant agrees to obtain and present evidence to Landlord that it has fully complied with the insurance requirements, including but not limited to, the depositing with Landlord of copies of all policies required hereunder, together with appropriate evidence of payment of the premiums therefor; and at least thirty (30) days prior to expiration of any such policy, copies of renewal policies shall be so deposited.

1. Tenant shall, at its sole cost and expense, commencing on the date Tenant is given access to the Premises for any purpose and during the entire Term, procure, pay for and keep in full force and effect: (i) commercial general liability insurance with respect to the Premises and the operations of or on behalf of Tenant in, on or about the Premises, including but not limited to personal injury, owned and nonowned automobile, blanket contractual, independent contractors, broad form property damage (with an exception to any pollution exclusion with respect to damage arising out of heat, smoke or fumes from a hostile fire), fire and water legal liability, products liability (if a product is sold from the Premises), liquor law liability (if alcoholic beverages are sold, served or consumed within the Premises), and severability of interest, which policy(ies) shall be written on an "occurrence" basis and for not less than the amount set forth in Item 13 of the Basic Lease Provisions, with a combined single limit (with a $50,000 minimum limit on fire legal liability) per occurrence for bodily injury, death, and property damage liability, or the current limit of liability carried by Tenant, whichever is greater, and subject to such increases in amounts as Landlord may determine from time to time; (ii) workers' compensation insurance coverage as required by law, together with employers' liability insurance; (iii) with respect to improvements, alterations, and the like required or permitted to be made by Tenant under this Lease, builder's all risk insurance, in an amount equal to the replacement cost of the work; (iv) insurance against fire, vandalism, malicious mischief and such other additional perils as may be included in a standard "all risk" form in general use in the county in which the Premises are situated, insuring Tenant's leasehold improvements, trade fixtures, furnishings, equipment and items of personal property of Tenant located in the Premises, in an amount equal to not less than ninety percent (90%) of their actual replacement cost (with replacement cost endorsement); and (v) business interruption insurance in amounts satisfactory to cover one (1) year of loss. In no event shall the limits of any policy be considered as limiting the liability of Tenant under this Lease.

2. In the event Landlord consents to Tenant's use, generation or storage of Hazardous Materials on, under or about the Premises pursuant to Section 5.3 of this Lease, Landlord shall have the continuing right to require Tenant, at Tenant's sole cost and expense (provided the same is available for purchase upon commercially reasonable terms), to purchase insurance specified and approved by Landlord, with coverage not less than Five Million Dollars ($5,000,000.00), insuring (i) any Hazardous Materials shall be removed from the Premises, (ii) the Premises shall be restored to a clean, healthy, safe and sanitary condition, and (iii) any

liability of Tenant, Landlord and Landlord's officers, member, manager, directors, shareholders, agents, employees and representatives, arising from such Hazardous Materials.

3. All policies of insurance required to be carried by Tenant pursuant to this Exhibit C containing a deductible exceeding Ten Thousand Dollars ($10,000.00) per occurrence must be approved in writing by Landlord prior to the issuance of such policy. Tenant shall be solely responsible for the payment of all deductibles.

4. All policies of insurance required to be carried by Tenant pursuant to this Exhibit C shall be written by responsible insurance companies authorized to do business in the State of California and with a Best's rating of not less than "A" subject to final acceptance and approval by Landlord. Any insurance required of Tenant may be furnished by Tenant under any blanket policy carried by it or under a separate policy, so long as (i) the Premises are specifically covered (by rider, endorsement or otherwise), (ii) the limits of the policy are applicable on a "per location" basis to the Premises and provide for restoration of the aggregate limits, and (iii) the policy otherwise complies with the provisions of this Exhibit C. A true and exact copy of each paid up policy evidencing the insurance (appropriately authenticated by the insurer) or a certificate of insurance, certifying that the policy has been issued, provides the coverage required by this Exhibit C and contains the required provisions, shall be delivered to Landlord prior to the date Tenant is given the right of possession of the Premises. Proper evidence of the renewal of any insurance coverage shall also be delivered to Landlord not less than thirty (30) days prior to the expiration of the coverage. Landlord may at any time, and from time to time, inspect and/or copy any and all insurance policies required by this Lease.

5. Each policy evidencing insurance required to be carried by Tenant pursuant to this Exhibit C shall contain the following provisions and/or clauses satisfactory to Landlord: (i) a provision that the policy and the coverage provided shall be primary and that any coverage carried by Landlord shall be noncontributory with respect to any policies carried by Tenant except as to workers' compensation insurance; (ii) a provision including Landlord, the Additional Insureds identified in Item 11 of the Basic Lease Provisions, and any other parties in interest designated by Landlord as an additional insured, except as to workers' compensation insurance; (iii) a waiver by the insurer of any right to subrogation against Landlord, its agents, employees, contractors and representatives which arises or might arise by reason of any payment under the policy or by reason of any act or omission of Landlord, its agents, employees, contractors or representatives; and (iv) a provision that the insurer will not cancel or change the coverage provided by the policy without first giving Landlord thirty (30) days prior written notice.

6. In the event that Tenant fails to procure, maintain and/or pay for, at the times and for the durations specified in this Exhibit C any insurance required by this Exhibit C, or fails to carry insurance required by any governmental authority, Landlord may at its election procure that insurance and pay the premiums, in which event Tenant shall repay Landlord all sums paid by Landlord, together with interest at the maximum rate permitted by law and any related costs or expenses incurred by Landlord, within ten (10) days following Landlord's written demand to Tenant.

EXHIBIT D

RULES AND REGULATIONS

This Exhibit sets forth the rules and regulations governing Tenant's use of the Premises leased to Tenant pursuant to the terms, covenants and conditions of the Lease to which this Exhibit is attached and therein made part thereof. In the event of any conflict or inconsistency between this Exhibit and the Lease, the Lease shall control.

1. Tenant shall not place anything or allow anything to be placed near the glass of any window, door, partition or wall which may appear unsightly from outside the Premises.

2. The walls, walkways, sidewalks, entrance passages, courts and vestibules shall not be obstructed or used for any purpose other than ingress and egress of pedestrian travel to and from the Premises, and shall not be used for loitering or gathering, or to display, store or place any merchandise, equipment or devices, or for any other purpose. The walkways, entrance passageways, courts, vestibules and roof are not for the use of the general public and Landlord shall in all cases retain the right to control and prevent access thereto by all persons whose presence in the judgment of the Landlord shall be prejudicial to the safety, character, reputation and interests of the Building and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom Tenant normally deals in the ordinary course of Tenant's business unless such persons are engaged in illegal activities. No tenant or employee or invitee of any tenant shall be permitted upon the roof of the Building.

3. No awnings or other projection shall be attached to the outside walls of the Building. No security bars or gates, curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Premises without the prior written consent of Landlord. Neither the interior nor exterior of any windows shall be coated or otherwise sunscreened without the express written consent of Landlord.

4. Tenant shall not mark, nail, paint, drill into, or in any way deface any part of the Premises or the Building. Tenant shall not lay linoleum, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved by Landlord in writing. The expense of repairing any damage resulting from a violation of this rule or removal of any floor covering shall be borne by Tenant.

5. The toilet rooms, urinals, wash bowls and other plumbing apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the tenant who, or whose employees or invitees, caused it.

6. Landlord shall direct electricians as to the manner and location of any future telephone wiring. No boring or cutting for wires will be allowed without the prior consent of Landlord. The locations of the telephones, call boxes and other office equipment affixed to the Premises shall be subject to the prior written approval of Landlord.

7. The Premises shall not be used for manufacturing or for the storage of merchandise except as such storage may be incidental to the permitted use of the Premises. No exterior storage shall be allowed at any time without the prior written approval of Landlord. The Premises shall not be used for cooking or washing clothes without the prior written consent of Landlord, or for lodging or sleeping or for any immoral or illegal purposes.

8. Tenant shall not make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with occupants of this or neighboring buildings or premises or those having business with them, whether by the use of any musical instrument, radio, phonograph, noise, or otherwise. Tenant shall not use, keep or permit to be used, or kept, any foul or obnoxious gas or substance in the Premises or permit or suffer the Premises to be used or occupied in any manner offensive or objectionable to Landlord or other occupants of this or neighboring buildings or premises by reason of any odors, fumes or gases.

9. No animals shall be permitted at any time within the Premises.

10. Tenant shall not use the name of the Building or the Project in connection with or in promoting or advertising the business of Tenant, except as Tenant's address, without the written consent of Landlord. Landlord shall have the right to prohibit any advertising by any Tenant which, in Landlord's reasonable opinion, tends to impair the reputation of the Project or its desirability for its intended uses, and upon written notice from Landlord any Tenant shall refrain from or discontinue such advertising.

11. Canvassing, soliciting, peddling, parading, picketing, demonstrating or otherwise engaging in any conduct that unreasonably impairs the value or use of the Premises or the Project are prohibited and each Tenant shall cooperate to prevent the same.

12. No equipment of any type shall be placed on the Premises which in Landlord's opinion exceeds the load limits of the floor or otherwise threatens the soundness of the structure or improvements of the Building.

13. No air conditioning unit or other similar apparatus shall be installed or used by any Tenant without the prior written consent of Landlord.

14. No aerial antenna shall be erected on the roof or exterior walls of the Premises, or on the grounds, without in each instance, the prior written consent of Landlord. Any aerial or antenna so installed without such written consent shall be subject to removal by Landlord at any time without prior notice at the expense of the Tenant, and Tenant shall upon Landlord's demand pay a removal fee to Landlord of not less than $500.00.

15. The entire Premises, including vestibules, entrances, doors, fixtures, windows and plate glass, shall at all times be maintained in a safe, neat and clean condition by Tenant. All trash, refuse and waste materials shall be regularly removed from the Premises by Tenant and placed in the containers at the locations designated by Landlord for refuse collection. All cardboard boxes must be "broken down" prior to being placed in the trash container. All styrofoam chips must be bagged or otherwise contained prior to placement in the trash container,

so as not to constitute a nuisance. Pallets may not be disposed of in the trash container or enclosures. The burning of trash, refuse or waste materials is prohibited.

16. Tenant shall use at Tenant's cost such pest extermination contractor as Landlord may direct and at such intervals as Landlord may require.

17. All keys for the Premises shall be provided to Tenant by Landlord and Tenant shall return to Landlord any of such keys so provided upon the termination of the Lease. Tenant shall not change locks or install other locks on doors of the Premises, without the prior written consent of Landlord. In the event of loss of any keys furnished by Landlord for Tenant, Tenant shall pay to Landlord the costs thereof.

18. No person shall enter or remain within the Project while intoxicated or under the influence of liquor or drugs. Landlord shall have the right to exclude or expel from the Project any person who, in the absolute discretion of Landlord, is under the influence of liquor or drugs.

Landlord reserves the right to amend or supplement the foregoing Rules and Regulations and to adopt and promulgate additional rules and regulations applicable to the Premises. Notice of such rules and regulations and amendments and supplements thereto, if any, shall be given to the Tenant.

EXHIBIT E

WORK LETTER

(attached)

EXHIBIT F

DEPICTION OF PROJECT

(attached)