GROUND LEASE

BETWEEN

AND

FOR

3324 CHANATE ROAD
SANTA ROSA, CALIFORNIA

FEBRUARY 4, 2003
GROUND LEASE

This Ground Lease ("Lease") is made as of February 4, 2003 ("Effective Date") between COUNTY OF SONOMA, a political subdivision of the State of California (hereinafter referred to as "County"), and COMMUNITY ACTION PARTNERSHIP OF SONOMA COUNTY, a California non-profit corporation (hereinafter referred to as "Tenant"). County and Tenant are sometimes collectively referred to herein as the "parties" and singularly, as "party."

RECITALS

WHEREAS, County is the owner of certain real property located off County Farm Drive in Santa Rosa, California ("County Farm Road Property"); and

WHEREAS, County and Tenant cooperate in providing shelter and support services to homeless women and children in Sonoma County; and

WHEREAS, County, as licensor, and Tenant, as licensee, entered into that certain Revocable License Agreement dated March 5, 1985 ("Original Agreement") for a portion of said County Farm Road Property whereby Tenant placed certain temporary, portable buildings ("Existing Structures") on said portion for the purposes of providing emergency, temporary housing for homeless persons; and

WHEREAS, County, as licensor, and Tenant, as licensee, entered into that certain License Agreement for Use of County Facilities dated February 4, 2003 ("License Agreement") in order to allow Tenant to construct a new homeless shelter elsewhere on the County Farm Road Property; and

WHEREAS, Tenant has applied and received tentative approval for a State of California EHAP Capital Development Deferred Loan ("Grant") and one of the conditions of said Grant is for the parties to enter into this Lease (instead of the License Agreement); and

WHEREAS, County and Tenant wish to enter into this Lease in order to satisfy said Grant condition and allow Tenant to construct a new homeless shelter (hereinafter "Shelter") on the same premises as defined in the License Agreement; and

WHEREAS, upon execution of this Lease by both parties, the License Agreement shall be deemed automatically terminated; and
WHEREAS, Tenant intends to construct the Shelter in two phases as shown on the conceptual site plan attached hereto as Exhibit A; and

WHEREAS, Tenant has agreed to remove and relocate the Existing Structures as provided below and upon such removal and relocation the Original Agreement shall be deemed automatically terminated.

NOW THEREFORE, in consideration of the promises and covenants set forth below, the parties agree as follows:

**AGREEMENT**

1. **PREMISES**

1.1 **Description of Premises.** By this Lease, County does hereby Lease to Tenant, and Tenant does hereby take and hire from County, that certain land described in Exhibit B (the "Premises") consisting of approximately twenty-one thousand five hundred eighty (21,580) sq. ft. of land together with access thereto from County Farm Drive.

2. **TERM**

2.1 **Commencement of Term.** The term of this Lease shall commence on February 4, 2003 ("Commencement Date"), and shall terminate on January 31, 2023 ("Expiration Date"), unless sooner terminated as provided for in this Lease.

2.2 **Termination for Failure to Construct.** Should Tenant fail to commence construction of the Shelter described in Exhibit C attached hereto and incorporated herein (hereinafter referred to as the "Project"), within two (2) years from the Commencement Date, County may, at County's election exercised by written notice to Tenant, terminate this Lease.

2.3 **Tenant's Duty to Surrender.** Subject to County's exercise of its option rights under Sections 6.11, 6.12 and 6.13 below, at the expiration or earlier termination of the term, Tenant shall surrender to County, in good condition and repair, the possession of the Premises. In the event Tenant fails to surrender the Premises upon such termination or expiration, Tenant shall indemnify and hold County harmless against all loss, liability, cost or expense resulting from or arising out of Tenant's failure to surrender the Premises, including, without limitation, any amounts required to be paid to any licensee, tenant or prospective occupant who was to have occupied the
Premises after said termination or expiration and any related attorneys' fees and brokerage commissions. Notwithstanding the foregoing, no termination of this Lease shall release Tenant from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or date of surrender if it be later.

2.4 **Holding Over.** If Tenant shall continue to occupy or possess the Premises after the expiration or earlier termination of this Lease without the consent of County, then, unless County and Tenant have otherwise agreed in writing, Tenant shall be a Tenant on a month-to-month basis. All the terms, provisions and conditions of this Lease shall apply to this month-to-month tenancy except those terms, provisions and conditions pertaining to the term, and except that Tenant shall pay County a monthly rent of Two Thousand Dollars ($2,000). This month-to-month tenancy may be terminated by County or Tenant upon thirty (30) days' prior notice to the nonterminating party. In the event Tenant fails to surrender the Premises upon such termination or expiration, the Tenant shall indemnify and hold County harmless against all loss, liability, cost or expense resulting from or arising out of Tenant's failure to surrender the Premises, including, without limitation, any amounts required to be paid to any Tenant or prospective Tenant who was to have occupied the Premises after said termination or expiration and any related attorneys' fees and brokerage commissions. Notwithstanding the foregoing, no termination of this Lease shall release Tenant from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or date of surrender if it be later.

2.5 **Termination of License Agreement.** Upon the Commencement Date of this Lease, the License Agreement is hereby deemed terminated by the parties.

3. **CONSIDERATION**

3.1 **Rent.** The Premises are being made available to Tenant pursuant to Government Code section 26227 to support a social program deemed desirable by the Board of Supervisors, particularly, construction and operation of an emergency homeless shelter. Accordingly, no monetary rental shall be charged to Tenant by County for use of the Premises, so long as Tenant complies with the conditions pertaining to use of the Premises as set forth herein. In the event Tenant does not comply with the conditions pertaining to the use of the Premises as set forth herein, or if any Transfer (as defined in Section 9.1.1 below) of this Lease takes place except as set forth in the following sentence, County shall have the right to charge market rent for the Premises. County hereby consents to the following Transfers: (a) Tenant may pledge its leasehold interest as collateral for a State of California Department of Housing and Community Development ("State") loan, the proceeds of which must be used to construct the improvements required by Article 6 hereof; and (b) any Transfer
which is contemplated by that certain Lease Rider and Estoppel Agreement among Tenant, County and State which is executed in connection with said loan.

3.2 **Obligation to Pay Taxes and Assessments.** Tenant is fully responsible for and agrees to pay, all real and personal property taxes (including any tax levied on a possessor interest, as defined in California Revenue and Taxation Code Section 107 or successor statute, if applicable), general and special assessments, and other charges of every description, levied on or assessed against the Premises, personal property located on or in the land or improvements, the Leasehold estate, or any subleasehold estate, to the full extent of installments falling due during the term. Tenant shall make all such payments directly to the assessing authority, at least ten (10) days before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for their nonpayment. If, however, the law expressly permits the payment of any, or all, of the above items, in installments (whether or not interest accrues on the unpaid balance), Tenant may, at Tenant's election, utilize the permitted installment method, but shall pay each installment, with any interest, before delinquency. Tenant expressly recognizes and understands that this Lease may create a possessor interest subject to property taxation and that Tenant may be subject to payment of property taxes levied on such interest.

4. **USES, PURPOSES**

4.1 **Permitted Uses.** Tenant shall use and permit the use of the Premises only for the following purposes:

4.1.1 **Pre-Construction Period.** From the Commencement Date until the "Project Approval Date", as defined in Section 6.3.1, (the "Pre-Construction Period"), Tenant may have access to the Premises to investigate soil conditions or survey the Premises for the purpose of preparing construction plans and specifications. Tenant may also conduct the following promotional activities on the Premises, provided, however, that Tenant first obtains the County's prior written approval which shall not be unreasonably withheld or delayed: (i) erecting signage to indicate status of fundraising; (ii) installation of minor landscaping to call attention to the Project; and (iii) holding of fundraisers, such as picnics. During the Pre-Construction Period, County retains all rights to the Premises, including the right to allow public use of the Premises, except that County may not take any action or permit any activity which is inconsistent with the rights granted to Tenant herein or which may cause Project construction costs to increase. Tenant shall give County five (5) days notice prior to exercising any right granted under this Section 4.1.1, shall secure the area, and shall thereafter return the area to its original condition.

4.1.2 **Construction Period.** From the Project Approval Date until acceptance of the Project by County's governing body in accordance with Section 6.14 below, Tenant may use the Premises for construction of the Shelter described in Exhibit
C, and for construction-related activities only. Tenant may also maintain existing signage and landscaping installed pursuant to Section 4.1.1.

4.1.3 Post-Construction Period. After acceptance of the Project by County, Tenant shall have exclusive use of the Premises for the limited purposes of operating an emergency homeless shelter in conformance with: (a) the Program Plan attached hereto as Exhibit E; (b) all State of California Department of Housing and Community Development rules, regulations and guidelines; and (c) professional standards for first class homeless shelters in the Sonoma County area. No other use shall be permitted.

4.2 Operational Requirements of Tenant. Tenant agrees throughout the term to abide by the following conditions and requirements:

4.2.1 Cancellation of Insurance; Increase in Insurance Rates. Tenant shall not do, bring, or keep anything in or about the Premises that will cause a cancellation of any insurance covering the Tenant's activities hereunder. If the rate of any insurance carried by County is increased as a result of Tenant's use, Tenant shall pay to County within ten (10) days before the date County is obligated to pay a premium on the insurance or within ten (10) days after County delivers to Tenant a certified statement from County's insurance carrier stating that the rate increase was caused by an activity of Tenant at the Premises as permitted in the Lease, whichever date is later, a sum equal to the difference between the original premium and the increased premium. Tenant shall have the right to dispute a rate increase with the County's insurance carrier before being required to pay any such increase.

4.2.2 Hazardous Materials.

(a) Tenant shall not cause or permit any Hazardous Materials (as hereinafter defined) to be brought upon, kept or used in or about the Premises by Tenant, its agents, employees, contractors or invitees, without the prior written consent of County, which County shall not unreasonably withhold as long as Tenant demonstrates to County's satisfaction that such Hazardous Materials: (i) are necessary or useful to Tenant's business and will be used, kept and stored in a manner that complies with all laws, statutes, ordinances, rules, regulations, orders, requirements, and policies of any and all governmental agencies and authorities and any fire insurance underwriters applicable to any such Hazardous Materials ("Hazardous Materials Laws") and (ii) do not otherwise, due to the quantity, nature or use of such Hazardous Materials, substantially increase the risk of fire or other casualty to the Premises.

(b) To the extent any Hazardous Materials are used, kept, or are present in or on the Premises after the Commencement Date, Tenant shall
ensure that all such Hazardous Materials, and all uses thereof, are in full compliance with all Hazardous Materials Laws.

(c) If Tenant breaches the obligations stated in subparagraphs (a) or (b) of this Section 4.2.2 or if the presence of Hazardous Materials on the Premises after the Commencement Date results in contamination of the Premises, or if Hazardous Materials are otherwise discharged or released from the Premises after the Commencement Date, then Tenant shall indemnify, defend (with counsel approved by County) and hold County harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities and losses (including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the term of this Lease as a result of such breach, contamination, discharge, or release. This indemnification of County by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Materials present in, on or under the Premises. Upon the termination of this Lease, Tenant shall surrender the Premises to County free of any and all Hazardous Materials and in compliance with all Hazardous Materials Laws. This indemnification shall survive the termination or expiration of this Lease.

(d) For the purpose of this Section 4.2.2, the term "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §6901 et seq.), Section 25117 of the California Health & Safety Code, Section 25316 of the California Health & Safety Code, and in the regulations adopted and publications promulgated pursuant to them, or any other federal, state, or local environmental laws, ordinances, rules, or regulations concerning the environment, industrial hygiene or public health or safety now in effect or enacted after this date.

4.2.3 Billboards and Signs. Tenant agrees not to construct, install or maintain, nor to allow upon the Premises any billboards, signs, banners or like displays which may be placed in or upon any building or structure in such manner as to be visible from the outside thereof, without the prior written consent of County, which shall not be unreasonably withheld, and any and all required permits.

4.2.4 Waste; Nuisance. Tenant shall not use the Premises in any manner that will constitute waste, nuisance or unreasonable annoyance to owners or occupants of adjacent properties.
4.2.5 Compliance with Laws. Tenant shall comply with all Laws and Orders concerning the Premises or Tenant's use of the Premises. For purposes of this Lease, the term “Laws and Orders” includes all federal, state, county, city or government agency laws, statutes, ordinances, standards, rules, regulations, requirements, or orders now in force or hereafter enacted, promulgated, or issued. The term also includes government measures regulating or enforcing public access, occupational, health, or safety standards for employers, employees, landlords or tenants.

4.2.6 Cancellation of Insurance. Tenant shall not do, bring, or keep anything in or about the Premises that will cause a cancellation of any insurance covering the Premises. If the rate of any insurance carried by County is increased as a result of Tenant's use, Tenant shall pay to County within ten (10) days before the date County is obligated to pay a premium on the insurance or within ten (10) days after County delivers to Tenant a certified statement from County's insurance carrier stating that the rate increase was caused by an activity of Tenant on the Premises as permitted in the Lease, whichever date is later, a sum equal to the difference between the original premium and the increased premium.

4.3 Reservations to County.

4.3.1 County's Right to Grant Easements. County shall have the right to install, lay, construct, maintain, repair and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, connections; water, oil and gas pipelines; and telephone and telegraph power lines and such other appliances and appurtenances necessary or convenient to use in connection therewith, over in, upon, through, across and along the Premises or any part, thereof, as will not substantially interfere with Tenant's operations hereunder and to enter thereupon for any and all such purposes, County also reserves the right to grant easements, rights-of-way and permits in, over, and upon, along or across any and all portions of said Premises as County may elect. County will cause the surface of the Premises to be restored to its original condition upon the completion of any construction done pursuant to this Section. County agrees that any right set forth in this Section 4.3.1 shall not be exercised unless a prior written notice of ten (10) days is given to Tenant. However, if such right must be exercised by reason of emergency, County will give such notice in writing as is possible under the existing circumstances.

4.3.2 Other Rights. All oil, gas, geothermal and mineral rights are expressly reserved from this Lease, provided that neither County nor County's agents, assignees, licensees, or tenants under any oil, gas, geothermal or mineral lease may enter on the Premises, or otherwise substantially interfere with Tenant's use, under any asserted right inferred from this Section.
5. PROJECT AND PROGRAM

5.1 Project Plan. Tenant shall plan, organize, manage, fund, and construct the Project in accordance with Tenant's Project Plan, attached hereto and incorporated herein as Exhibit D, and the terms and conditions of this Lease. Tenant may modify its Project Plan only with County's prior written approval.

5.2 Program Plan. Tenant shall operate its program in accordance with the Program Plan, attached hereto as Exhibit E and incorporated herein, and the terms and conditions of this Lease. Tenant may modify its Program Plan only with County's prior written approval.

5.3 Project Manager. Tenant shall select a qualified Project Manager who shall be authorized by Tenant to represent it in all matters relating to design and construction of the Project.

5.3.1 Qualifications and Approval of Project Manager. The Project Manager shall be a professional, experienced and trained in construction management, shall be responsible for supervising the entire Project from beginning to end and shall act as a liaison between Tenant and County for all Project purposes. Tenant shall notify County in writing of the name of the Project Manager within thirty (30) days of the Effective Date. Tenant's notice of Project Manager shall include the Project Manager's resume, professional references, litigation history and list of previous projects managed. County shall, in its sole discretion, approve the selection of the Project Manager to determine that said individual has sufficient training, education and experience to supervise the Project. With the prior written approval of County, Tenant may change its Project Manager.

5.3.2 Project Manager Responsibilities. Tenant's Project Manager shall represent Tenant on all aspects of the Project including but not limited to the following: design, budget and schedule; managing the design, selecting the architect, defining the scope of design services, administering the design contract and checking the work; applying for and ensuring compliance with all necessary permits; preparing the general conditions and administrative provisions of the construction contract, and developing the bidding instructions if the Project goes to bid; managing the contractor selection; managing the construction, including field inspections to confirm compliance with construction documents, coordination of other contractors, verification of pay requests.

5.4 Fundraising Records. The parties recognize that Tenant intends to construct the Project with funds raised from donations, grants, the Grant defined in the Recitals Section of this Lease, fundraising events and other methods which may be available to Tenant, as set forth in Exhibit F, attached hereto and incorporated by this
reference. Tenant shall keep full, complete and proper books, records and accounts and other pertinent data showing all funds raised. Funds raised shall be deposited in a federally insured financial institution in an interest-bearing account. All books of account, records, cash receipts, and other pertinent data shall be kept for three (3) years after the termination of this Lease.

5.5 Examination of Records. County shall have the right, at any reasonable time and from time to time after giving fifteen (15) days prior written notice, to do or cause to be done any or all of the following: to audit the records; to make abstracts from the records; and to make copies of any or all of the records. Tenant shall make all records specified in the notice available at the time specified in the notice, if reasonable, and at the place where the records are to be kept. County acknowledges that the names, identities, and all other information contained in Tenant's records regarding donors contributing funds to the Tenant may constitute private and confidential information; County shall not make public or otherwise disclose said information about a donor or donors without the prior written consent of Tenant and the donor(s) in question, except as required by law.

5.6 Budget and Revenues. The estimated operation and maintenance budget of the Project's first year of operation and the source of future revenues to cover operating and maintenance expense are set forth in Exhibit G, attached hereto and incorporated by this reference.

5.7 Yearly Report. Tenant shall provide County with a written report each year, on or before the anniversary of the Effective Date, which shows the total amount of funds raised as of that date, describes the sources of such funds and further identifies any expenses. The annual report shall also describe the fundraising activities proposed for the next year.

5.8 Existing Structures. No later than one-hundred twenty (120) days after the date upon which the County Board of Supervisors approves any project plan, site plan, master plan or other planning document which would require removal of the Existing Structures in order to implement such plan, Tenant shall remove and relocate the Existing Structures and upon such removal and relocation, the Original Agreement shall automatically be deemed terminated. The Existing Structures must be relocated off County-owned property. County and Tenant shall immediately sign a termination agreement with respect to the Original Agreement, however failure by the parties to execute such a termination agreement shall not be a condition precedent to the effectiveness of the termination.

5.9 Existing or Prior Loans. Within one (1) year of the Effective Date, Tenant shall provide County with written evidence acceptable to County that Tenant has fully repaid any loan Tenant may have obtained in connection with the original rehabilitation of the Existing Structures.
6. IMPROVEMENTS

6.1 Tenant's Duty to Construct Shelter. Within two (2) years after the Effective Date (unless an earlier date is specified) Tenant shall comply with the Conditions of Major Construction below and shall commence the construction of improvements consisting of the Shelter, described more fully in Exhibit C attached hereto.

6.2 Alteration of Improvements. Except as otherwise expressly provided in this Lease, Tenant shall not, without County's prior written consent, enlarge, remove, demolish, replace, or substantially alter any substantial improvement, now or hereafter, in place on the Premises, if the change would, in the sole opinion of County, materially diminish its value.

6.3 Conditions of Major Construction. Before commencement of construction of the Shelter or any other major work of construction, alteration, or repair (as "major" is defined in Section 8.5 of this Lease), on the Premises, and before any building materials have been delivered to the Premises by Tenant, or under Tenant's authority, Tenant shall comply with all of the following conditions, or procure County's written waiver of the condition, or conditions, specified in the waiver:

6.3.1 Resolution of Financial Responsibility. Within one (1) year of the Effective Date, provide County with sufficient information from which County's governing body may by resolution determine that Tenant has raised funds in an amount sufficient to complete the Project, to purchase adequate insurance and bonds for said Project as required herein, and to operate and maintain the Project during its first year. In the event County's governing body adopts said resolution, the adoption date shall be known as the "Project Approval Date". County's governing body reserves the right to determine, in its sole discretion, the amount of funds needed to complete the Project, purchase bonds and insurance and fund operation and maintenance activities, and to withhold adoption of the resolution should Tenant fail to raise this amount or to comply with any other material provision of this Lease. County agrees that it shall not withhold adoption of the resolution without just cause and that approval shall not be arbitrarily withheld.

6.3.2 Retention of Architect. Select a licensed architect approved by County. Tenant shall furnish County with a true copy of Tenant's contract with Tenant's architect by which Tenant has retained the architect to design the Project and oversee construction of the Project to ensure it is completed in compliance with the approved plans and specifications. Tenant's contract with architect shall require architect to indemnify and insure County using the indemnity and insurance provisions commonly used by County in professional services contracts which are in effect on the date of the architect's contract. Copies of insurance and indemnity provisions required
by County on the date of execution of this Lease are attached for information only as Exhibit H attached hereto and incorporated herein.

6.3.3 County's Approval of General Contractor. Furnish County with a true copy of Tenant's proposed contract with the general contractor retained to construct the Project and with evidence of the general contractor's financial condition for County's approval. The contract shall require the general contractor to indemnify and insure County, using provisions commonly used by County in construction contracts, which are in effect on the date of the construction contract. Copies of indemnity and insurance requirements used on the date of execution of this Lease are attached hereto as Exhibit I and incorporated herein. The contract shall give County the right, but not the obligation, to assume Tenant's obligations and rights under that contract, if Tenant should default. Tenant's contract with the general contractor and all Tenant's work under this Lease shall comply with all laws and regulations relating to construction of improvements upon public property, to the extent such laws and regulations are applicable to improvements constructed pursuant to this Lease, including but not limited to requirements related to payment of prevailing wages (if any). County may disapprove the contract by notice given within fifteen (15) days following delivery of the copy of the contract. The notice shall specify the grounds for disapproval. County shall not unreasonably disapprove the contract.

6.3.4 County Review and Approval. Prior to commencement of construction, County shall review and approve the Project for completeness. The review shall include, but not be limited to assuring that: the Project will be completed without expense or liability of the County; the Shelter will be consistent with surrounding land uses as a whole; the Shelter will include adequate access, on-site paved parking and exterior lighting; the Shelter will not become a liability, nuisance or hazard for the County throughout the term of this Lease; and, if the Shelter reverts to the ownership of the County, it will be in good repair and will be economical to operate and maintain. The specific areas of review shall include, but not be limited to the following: Project Plan, Program Plan; Project Manager qualifications, experience and prior performance; adequacy of funding; first year budget; architect and engineer qualifications, experience and prior performance, and ability to complete the Project; overall Project design; Project materials and details; construction documents; bonds, insurance, Project schedule, permits, entitlements and other approvals, and other areas. If County does not approve the Project in writing after the review described in this Section, then Tenant shall not deliver any materials to or commence any construction on the Premises.

6.3.5 Plans and Specifications. Tenant shall deliver to County for County's approval two sets each of schematic design drawings and design development drawings prepared by the approved architect or engineer licensed to practice as such in California. Tenant shall also provide two copies each of construction documents and specifications at fifty percent (50%) and ninety percent (90%) of completion.
Schematic drawings and design development drawings shall include but not be limited to preliminary grading and drainage plans, soil tests, utilities, floor plans, building elevations, building sections, material specifications and details, sewer service connections, locations of ingress and egress to and from public thoroughfares, driveways, parking areas, street lighting, designs and locations for outdoor signs, storage areas and landscaping, all sufficient to enable potential contractors and subcontractors to make reasonably accurate cost estimates and to enable County to make an informed judgment about the design and quality of construction and about any effect on reversion. All improvements shall be constructed within exterior property lines of the Premises; provided that required work beyond the Premises on utilities, access and conditional use requirements do not violate this provision. With the plans, Tenant shall deliver to County the certificate of the person or persons who prepared the plans and specifications, certifying that Tenant has fully paid for them or waiving payment and waiving any right to a lien for preparing them. County shall not unreasonably disapprove preliminary plans and specifications. Approval or disapproval shall be communicated in the manner provided for notices, and disapproval shall be accompanied by specification of the grounds for disapproval. Tenant shall not deliver working drawings to any governmental body for a building permit, or design review, until ninety percent (90%) construction documents are approved in accordance with this Section. Disapproval shall extend the time for commencing and completing construction by a number of days deemed reasonable by County, considering all circumstances. Notwithstanding the foregoing, should Tenant fail to submit fifty percent (50%) completion construction documents, which are approved by County, within one (1) year from the Commencement Date, this Lease shall, at the County's option, be of no further force and effect.

6.3.6 Lender's Approval. If Tenant intends to finance all or a portion of the Project or obtain any grant to help fund the Project, Tenant shall deliver to County the written acknowledgment of the lender or grantor, as the case may be, that it has reviewed the plans and specifications and will honor the financing commitment for the construction loan based upon that review.

6.3.7 Final Plans, Specifications, Schedule of Construction. Tenant shall prepare final construction documents and specifications substantially conforming to the ninety percent (90%) construction documents previously approved by County, submit them to the appropriate governmental agencies for approval, obtain all necessary permits, and deliver to County one complete set as approved by the governmental agencies, together with a schedule for construction of the improvements. The final construction documents and specifications submitted to County shall clearly indicate all changes made from the construction documents and specifications previously approved by County. Changes from the construction documents shall be considered to be within the scope of the preliminary plans, if they are not substantial or if they are made to comply with suggestions, requests, or requirements of a governmental agency or official, in connection with the application for a permit or
approval, and if they do not depart substantially in size, utility, or value, from the construction documents. County's governing body must approve final plans and specifications.

6.3.8 Notice of Intent to Construct. Tenant shall notify County of Tenant's intention to commence a work of improvement, at least thirty (30) days before commencement of any such work or delivery of any materials. The notice shall specify the precise location and nature of the intended improvements in accordance with final construction documents and specifications. County shall have the right to post, and maintain, on the Premises, any notices of non-responsibility provided for under applicable law, and to inspect the Premises in relation to the construction, at all reasonable times. Tenant shall keep the Premises safe and shall take all reasonable measures to prevent harm, or injury, to persons entering on, or near, the construction site. Tenant shall place a 6-foot chain-link fence around the construction site to prevent the public from entering the site, unless Tenant obtains County's prior written consent to use alternative security measures. All gates shall be locked at the end of each workday.

6.3.9 Bonds. Tenant's Contractor shall furnish Tenant and County a performance bond and a labor and material bond promptly after Tenant has complied with all the foregoing conditions of major construction. Each of the bonds shall be that of a responsible surety company, licensed to do business in California, in amounts not less than one hundred percent (100%) of the contract price of completion of the improvements and shall remain in effect until the entire cost of the work shall have been paid in full and the work accepted as complete by County's governing body. The bonds shall provide protection to Tenant and, if commercially available, to County, and all, subcontractors, mechanics, laborers and material men which is, in the sole discretion of County, substantially equivalent to protection provided by bonds ordinarily required by County for public works contracts which are in effect on the date Tenant notifies County of its intent to construct, pursuant to Section 6.3.8. Copies of bond language required by County at the time of execution of this Lease are attached, for information only, as Exhibit J and incorporated herein.

6.3.10 Compliance with Regulations. Tenant shall procure and deliver to County, at Tenant's expense, evidence of compliance with all then applicable codes, ordinances, regulations, and requirements for permits and approvals, including, without limitation, environmental approval, any required zoning or planning approval of the County of Sonoma, design review, grading permit, building permit, use permit and any other permits or approvals from governmental agencies or bodies having jurisdiction.

6.3.11 Insurance for Construction Activities. Tenant shall obtain insurance acceptable to County from a company or companies acceptable to County. The required documentation of insurance shall be furnished to County prior to

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commencement of any construction or grading work or other physical work preparatory to construction upon the Premises. Tenant shall not commence work nor shall it allow its employees or subcontractors or anyone to commence work until all insurance required by this Section 6.3.11 has been obtained, submitted and approved. Tenant (or, as specified below, the general contractor) shall take out and maintain at all times while such work is in progress the following policies of insurance:

(a) **Builder’s Risk.** "Builder’s risk" in an All Risk form with Broad Form property damage endorsement in an amount equal to the replacement value of the construction work. County shall be named as an additional insured. All builder’s risk policies shall be endorsed with the following specific language:

i. "The County of Sonoma, its officers and employees, is named as an additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Lease."

ii. "This policy shall not be canceled or materially changed without first giving the County of Sonoma thirty (30) days' written notice by certified mail."

(b) **Workers’ Compensation.** Workers’ Compensation Insurance with statutory limits as required by the Labor Code of the State of California. Tenant shall require the general contractor and all subcontractors similarly to provide Workers’ Compensation Insurance for all of their employees. All policies shall be endorsed with the following specific language: "This policy shall not be canceled or materially changed without first giving thirty (30) days' notice to County by certified mail."

(c) **General Liability.** Commercial general liability insurance carried by the general contractor and covering personal injury and property damage for all activities of the general contractor and its subcontractors arising out of or in connection with the construction work, the construction contract or this Lease, using an occurrence policy form, with policy limits of not less than One Million Dollars ($1,000,000) per occurrence and not less than Two Million Dollars ($2,000,000) in annual aggregate limits. Such insurance shall include but not be limited to: Premises and operations liability, independent contractor liability, products and completed operations liability, contractual liability and personal injury liability. County and Tenant shall be named as additional insureds. All general liability policies shall be endorsed with the following specific language:

i. "The County of Sonoma, its officers and employees, is named as an additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Lease."
ii. "The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability."

iii. "The insurance provided herein is primary coverage to the County of Sonoma with respect to any policy of insurance or self-insurance programs maintained by the County. No insurance held or owned by the County shall be called upon to contribute to a loss."

iv. "The insurer waives the right of subrogation against the County of Sonoma and against its agents and representatives."

v. "This policy shall not be canceled or materially changed without first giving the County of Sonoma thirty (30) days' written notice by certified mail."

(d) **Automobile Liability.** Automobile Liability Insurance covering bodily injury and property damage in an amount not less than One Million Dollars ($1,000,000), combined single limit for each occurrence. Said insurance shall include coverage for owned, hired and non-owned vehicles. All policies shall be endorsed with the following specific language: "This policy shall not be canceled or materially changed without first giving thirty (30) days' notice to County by certified mail."

(e) **Professional Liability.** Professional liability insurance for all activities of Tenant's architect and/or engineer arising out of or in connection with the construction work, the construction contract or this Lease, on an occurrence basis, in an amount not less than One Million Dollars ($1,000,000) combined single limit for each occurrence. In the event Tenant's architect and/or engineer cannot provide an occurrence policy, Tenant's architect and/or engineer shall provide insurance covering claims made as a result of performance of the construction work, construction contract or this Lease and shall maintain such insurance in effect for not less than five (5) years following completion of performance of the construction work. All policies shall be endorsed with the following specific language: "This policy shall not be canceled or materially changed without first giving thirty (30) days' notice to County by certified mail."

(f) **Documentation.** The following documentation shall be submitted to County at the time specified above:

i. Properly executed Certificates of Insurance clearly evidencing all coverages, limits, and endorsements required above.
ii. Signed copies of the specified endorsements for each policy.

iii. Upon County’s written request for certified copies of insurance policies said policy copies shall be submitted within thirty (30) days' of County’s request.

(g) **Policy Obligations.** Tenant’s indemnity and other obligations shall not be limited by the foregoing insurance requirements.

(h) **Material Breach.** If Tenant or its general contractor or its architect or engineer, for any reason, fail to maintain insurance coverage which is required by this Lease, the same shall be deemed a material breach of this Lease. County, at its sole option, may terminate this Lease and obtain damages from Tenant resulting from such breach. Furthermore, County may purchase the required insurance coverage, and the cost of same shall be payable by Tenant to County within thirty (30) days' of County’s notice of its action to Tenant.

6.4 **Soil Conditions.** County makes no covenants or warranties respecting the condition of the soil, or sub-soil, or any other condition of the Premises. Tenant shall have the right to conduct any tests, at Tenant's sole cost and expense, it deems to be necessary to determine the condition of the soil, prior to the Project Approval Date. A copy of such soils report, if any, shall be provided to County prior to the Project Approval Date.

6.5 **Diligent Prosecution to Completion.** Once the work is begun, Tenant shall, with reasonable diligence, prosecute to completion, all construction of improvements, additions or alterations. All work shall be performed in a good and workmanlike manner and free of substantial defects, shall comply with the approved plans and specifications submitted to County as required by this Lease, and shall comply with all applicable governmental permits, laws, ordinances and regulations.

6.6 **Protection of County Against Cost or Claim.** No reference to the Mechanic’s Lien Law made in this Lease shall be construed to be an agreement or an acknowledgment that such law applies to improvements constructed pursuant to this Lease, or that such improvements are, or are not, public works. Tenant shall pay, or cause to be paid, the total cost and expense of all works of improvement, as that phrase is defined in the Mechanics' Lien Law (commencing with California Civil Code §3109). No such payment shall be construed as rent. Tenant shall not suffer or permit to be enforced against the Premises, or any part of it, any mechanic’s, materialman’s, contractor’s or subcontractor’s lien, arising from any work of improvement, however it may arise. However, Tenant may, in good faith, and at Tenant’s own expense, contest the validity of any such asserted lien, claim, or demand, provided Tenant has furnished,
within ten (10) days of recordation of such a lien, the bond required in Civil Code Section 3143 (or any comparable statute hereafter enacted for providing a bond freeing the Premises from the effect of such a lien claim). Tenant shall defend and indemnify County against all liability and loss of any type, arising out of work performed on the Premises by Tenant, together with attorneys' fees and all costs and expenses incurred by County in negotiating, settling, defending, or otherwise protecting against such claims.

6.7 County's Right to Discharge Lien. If Tenant does not cause to be recorded the bond described in California Civil Code Section 3143, or otherwise protect the Premises under any alternative or successor statute, and a final judgment has been rendered against Tenant by a court of competent jurisdiction for the foreclosure of a mechanics', materialman's, contractor's or subcontractor's lien claim and if Tenant fails to stay the execution of the judgment by lawful means or to pay the judgment, County shall have the right, but not the duty, to pay or otherwise discharge, stay, or prevent the execution of any such judgment or lien or both. Tenant shall reimburse County for all sums paid by County under this Section 6.7, together with all County's attorneys' fees and costs, plus interest on those sums, fees and costs at the rate of ten percent (10%) per year from the date of payment until the date of reimbursement.

6.8 Notice of Completion. On completion of any substantial work of improvement during the term, Tenant shall file, or cause to be filed, a notice of completion. Tenant hereby appoints County, as Tenant's attorney-in-fact, to file the notice of completion on Tenant's failure to do so after the work of improvement has been substantially completed.

6.9 Notice of Changes in Plans. On completion of any work of improvement, Tenant shall give County notice of all changes in plans or specifications made during the course of the work, and shall at the same time and in the same manner, supply County with "as built" drawings accurately reflecting all such changes. Changes that substantially alter plans and specifications previously approved by County shall constitute a breach of Tenant's obligations hereunder.

6.10 Ownership of Improvements During Term. All fixtures and improvements constructed on the Premises by Tenant, as permitted by this Lease, shall be owned by Tenant until expiration of the term or sooner termination of this Lease. Tenant shall not, however, remove any improvements from the Premises nor waste, destroy or modify any improvements on the Premises, except as permitted by this Lease. The parties covenant for themselves and all persons claiming under them that the improvements are real property.

6.11 Ownership at Termination. At the option of County, all fixtures and improvements on the Premises, including, without limitation, the Shelter, at the expiration of the term or sooner termination of this Lease shall, without compensation
to Tenant, then become County's property free and clear of all claims to or against them by Tenant or any third person, and Tenant shall indemnify County against all liability and loss arising from such claims or from County's exercise of any rights conferred by this Section 6.11.

6.12 Tenant's Duty to Remove. At the expiration or sooner termination of this Lease, County may, at its option, demand that Tenant remove from the Premises all or some of the fixtures and improvements installed by Tenant, including, without limitation, the Shelter. A demand to take effect at the normal expiration of the term shall be effected by notice given at least one hundred eighty (180) days before the expiration date. A demand to take effect on any other termination of this Lease shall be effected by notice given in or concurrent with notice of such termination or within sixty (60) days after such termination. Tenant shall comply with the notice before the expiration date for normal termination, and within sixty (60) days after the notice for other terminations.

6.13 County's Election to Purchase Trade Fixtures. At its option, County may elect to purchase Tenant's trade fixtures located in the Shelter or on the Premises. The price shall be Tenant's depreciated cost, based on the estimated useful life of the fixtures determined from Tenant's books calculated on a straight-line basis. At its option, County may without notice offset against the purchase price any or all sums then due from Tenant to County.

6.14 Acceptance of Project. After Tenant has filed a notice of completion for the Project or any other work of improvement and supplied County with "as built" drawings, County's governing body shall, by resolution, accept the Project or any other work of improvement as complete, if it finds, in its sole discretion, that the Project or any other work of improvement has been completed in accordance with the previously approved plans and specifications.

7. RECORDS AND AUDITS; INSPECTIONS OF PREMISES

7.1 Records. Tenant shall keep and maintain full and complete documentation and accounting records concerning all funds pertaining to construction of the Project and operation of the Shelter. Tenant shall also maintain the accounting records in conformity with generally accepted accounting principles or as directed by the Sonoma County Auditor-Controller.

7.2 Maintenance of Records. Tenant shall maintain and preserve all records in its possession related to construction of any works of substantial improvement under this Lease for the term of this Lease, all "as built" construction documents and shall provide a copy of "as built" construction documents to the County within sixty (60) days from date of notice of completion.
7.3 **Additional Records.** Tenant shall require any recipient of funds allocated through this Lease, including but not limited to any contractor hired to construct any portion of the Shelter, to maintain all records relating to Project construction, performance, and expenses incurred in implementing the Project, for three (3) years. Tenant shall require that any such recipient make such records available to County upon County's request.

7.4 **County's Right to Inspections.** County, acting through its County Administrator, Real Estate Manager, County Architect, Facilities Operations Manager or other duly authorized representative, shall have the right to enter upon the Premises at any and all reasonable times during normal business hours throughout the term of this Lease for the purpose of inspecting the same and posting any notices required or permitted under law.

8. **CONDITION, MAINTENANCE, UTILITIES, REPAIRS**

8.1 **As-Is Condition.** Except as expressly provided in Section 8.6 below, Tenant hereby acknowledges that neither the County nor anyone acting for or on behalf of the County, has made any representation, warranty or promise to Tenant concerning the physical aspects or condition of any portion or part of the Premises or improvements, the feasibility, desirability or convertibility of the Premises into any particular use, the zoning, building or land use restrictions applicable to the Premises, projected income or expenses for any of the Premises, the conditions of the soil, subsoils, ground water, or surface waters or the presence or absence of any toxic waste or hazardous substances or material, and that by entering into this Lease has not relied on any representation, statement or warranty of the County, or anyone acting for or on behalf of the County, and that all matters concerning the Premises shall be independently verified by Tenant, and that Tenant shall use and occupy the Premises on Tenant’s own examination thereof, AND THAT TENANT IS LEASING THE PREMISES IN “AS IS” PHYSICAL CONDITION AND “AS IS” STATE OF REPAIR. Tenant does hereby waive and the County does hereby disclaim all warranties of any type or kind of description but not limitation, those of fitness for particular purpose, tenantability, habitability and use. Tenant hereby expressly waives any and all claims for damages or for rescission or cancellation of this Lease because of any representations made by the County or by any agent of the County. Tenant acknowledges that it has had sufficient time to conduct all inspections, reviews and studies of the Premises that Tenant may deem necessary. Tenant hereby expressly assumes the risk that adverse physical conditions and the full extent thereof, may not be revealed by Tenant’s inspections, reviews and studies of the Premises. It is an expressly bargained-for agreement herein that Tenant shall be responsible, at Tenant’s sole cost and expense, for causing the Premises to comply in all respects with all Laws and Orders.

8.2 **Tenant's Duty to Maintain Premises.** Throughout the term, Tenant shall, at Tenant's sole cost and expense, maintain the Premises, the Shelter, all parking
lots, all landscaping, and all other improvements constructed on the Premises in firstclass condition and repair and in accordance with all Laws and Orders. It is the specific, bargained-for intent of the parties that Tenant's maintenance and repair obligations shall be absolute and total, that County shall have no obligation or responsibility for such work, and that this provision has been specifically negotiated by the parties and the consideration for this Lease reflects this negotiation. Tenant shall be solely responsible for the design and function of all improvements. County shall not have any responsibility whatsoever to maintain the Premises or improvements. Tenant hereby waives the provisions of California Civil Code Sections 1941 and 1942 with respect to County's obligations for tenantability of the Premises and Tenant's right to make repairs.

8.3 Utilities. Tenant shall bear the costs of all utilities furnished to the Premises. County shall not be responsible for furnishing any utilities or services to the Premises. All of Tenant's utilities must be connected to the utility service provider's point of demarcation and not to County's utility distribution systems.

8.4 Repairs, Alteration, Reconstruction. Tenant shall promptly and diligently repair, restore and replace all damage to or destruction of all or any part of the Improvements. The completed work of maintenance, compliance, repair, restoration or replacement shall be equal in value, quality, and use to the condition of the improvements before the event giving rise to the work, except as expressly provided to the contrary in this Lease. County shall not be required to furnish any services or facilities, or to make any repairs or alterations of any kind in or on the Premises. County's election to perform any obligation of Tenant under this provision on Tenant's failure or refusal to do so shall not constitute a waiver of any right or remedy for Tenant's default, and Tenant shall promptly reimburse, defend, and indemnify County against all liability, loss, costs and expense arising from it. Nothing in this provision defining the duty of maintenance shall be construed as limiting any right given elsewhere in this Lease to alter, modify, demolish, remove or replace any improvement. No deprivation, impairment or limitation of use resulting from any event or work contemplated by this Section shall entitle Tenant to any offset, abatement, or reduction in rent or waiver of any condition of this Lease, nor to any termination or extension of the term. In determining whether Tenant has acted promptly as required under this Section, one of the criteria to be considered is the availability of any applicable insurance proceeds.

8.5 Major and Minor Repairs Distinguished. No prior approval is necessary for repairs, alterations and additions costing less than Five Thousand Dollars ($5,000). County's approval is required for Tenant's minor repairs, alterations, or additions. Tenant shall provide a schedule, budget and description of work adequate for County's review and approval. Tenant shall not commence work without prior written approval of County. "Minor" means a construction cost equal to or greater than Five Thousand Dollars ($5,000), but less than Twenty-Five Thousand Dollars ($25,000).
"Construction costs" includes all costs that would constitute the basis of a valid claim or claims under the mechanics' lien laws in effect at the time the work is commenced for any demolition and any removal of existing improvements or parts of improvements as well as for preparation, construction and completion of all new improvements or parts of improvements. "Major" repairs, alterations, or additions means a construction cost exceeding Twenty Five Thousand Dollars ($25,000). For major repairs, alterations or additions, Tenant shall comply with all conditions of Article 6 - Improvements, or obtain County's written waiver of said conditions.

8.6 Damage and Destruction. It is the intent of the parties that Tenant shall be responsible for the repair and restoration of the Premises, and any part thereof, in the event of any Casualty Loss (as defined in Section 8.6.3 below), regardless of when it occurs during the term. No damages, compensation or claim shall be payable by County for any inconvenience, any interruption or cessation of Tenant's business, or any annoyance, arising from any damage to or any destruction of all or any portion of the Premises. Tenant shall not receive any abatement in or reduction of rent as a result of any damage or destruction to the Premises or any loss of use of the Premises (or any part thereof) as a result thereof.

8.6.1 Damage During Term. Tenant shall promptly and diligently repair, restore and replace at its sole cost and expense any part of the Premises affected as required to maintain or comply with the terms of this Lease, or to remedy any Casualty Loss to all or any part of the improvements. (In no event shall such work be commenced later than one hundred eighty (180) days following such Casualty Loss.) The completed work of maintenance, compliance, repair, restoration or replacement shall be at least equal in cost to the original cost of the improvements, except as expressly provided to the contrary in this Lease. County shall not be required to furnish any services or facilities, or to make any repairs or alteration of any kind in or on the Premises. In the event that Tenant does not commence such repair or restoration within one hundred eighty (180) days of the Casualty Loss, County may (but shall not be obligated to) undertake, at Tenant’s sole cost and expense, such repairs or restoration. County’s election to perform any obligation of Tenant under this provision on Tenant's failure or refusal to do so shall not constitute a waiver of any right or remedy for Tenant’s default, and Tenant shall promptly reimburse, defend, and indemnify County against all liability, loss, costs and expense (including attorneys’ fees) arising from it. Nothing in this provision defining the duty of maintenance shall be construed as limiting any right given elsewhere in this Lease to alter, modify, demolish, remove or replace any improvement, or as limiting provisions relating to condemnation or as otherwise set forth in this Lease. No deprivation, impairment or limitation of use resulting from any event or work contemplated by this Section 8.6 shall entitle Tenant to any offset, abatement, or reduction in rent nor to any extension of the term.
8.6.2 Funds Available for Repair. Within sixty (60) days after any Casualty Loss, Tenant shall provide County with proof that it has reasonably sufficient funds available to complete restoration or repair as required by this Lease.

8.6.3 Definition of Casualty Loss. For purposes of this Lease the term "Casualty Loss" shall mean any casualty, injury, damage, or destruction to the Premises or any part thereof.

8.7 County's Obligations to Prepare Premises Prior to Project Approval Date. On or before the Project Approval Date, County shall remove and properly dispose of all stored materials, debris or structures located on the surface of the Premises.

9. ASSIGNMENT AND SUBLÉASING; FINANCING

9.1 Restricted Transfers.

9.1.1 Consent Required; Definition of "Transfer." Tenant shall obtain County’s written consent, which consent shall not be unreasonably withheld, before entering into or permitting any Transfer. A "Transfer" consists of any of the following, whether voluntary or involuntary and whether effected by death, operation of law, or otherwise:

(a) Any assignment, mortgage, pledge, encumbrance, or other transfer of any interest in this Lease;

(b) Any sublease or occupancy of any portion of the Premises by any persons other than Tenant and its employees; and

(c) Any of the changes (e.g., a change of ownership or reorganization) included in the definition of Transfer in Section 9.7.

Any person to whom any Transfer is made or sought to be made is a "Transferee."

9.1.2 County’s Remedies. If a Transfer fails to comply with this Article 9, County may, at its option, do either or both of the following: (a) void the Transfer; or (b) declare Tenant in default under Section 11.1 if Tenant fails or refuses to rescind or revoke the Transfer within thirty (30) days of written notice to Tenant from County.

9.2 Transfer Procedure.

9.2.1 Transfer Notice. Before entering into or permitting any transfer, Tenant shall provide to County a written "Transfer Notice" at least sixty (60)
days before the proposed effective date of the Transfer. The Transfer Notice shall include all of the following:

(a) Information regarding the proposed Transferee, including the name, address, and ownership of Transferee; the nature of Transferee’s business; and Transferee’s current financial statements (certified by Transferee, or, if Transferee is a corporation, partnership, or sole proprietorship, by an officer, a partner, or the owner of Transferee);

(b) All the terms of the Proposed Transfer, including the consideration payable by Transferee; the portion of the Premises that is subject to the Transfer ("Subject Space"); a general description of any planned alterations or improvements, if any, to the Subject Space; the proposed use of the Subject Space; the effective date of the Transfer; a calculation of the “Transfer Premium,” if any, as defined in Section 9.4.2, payable in connection with the Transfer; and a copy of all documentation concerning the proposed Transfer;

(c) Any other information or documentation reasonably requested by County; and

(d) An executed estoppel certificate from Tenant in a form acceptable to County.

9.2.2 Application Fee; Transfer Fee. As a condition to the effectiveness of the Transfer Notice, Tenant shall, when providing a Transfer Notice, pay an application fee of Two Thousand Dollars ($2,000) toward County’s administrative and other costs in reviewing and processing the Transfer Notice. In addition, within thirty (30) days after County’s written request, Tenant shall pay the actual amount of any reasonable legal fees that the County incurs in reviewing and processing the Transfer Notice ("Transfer Fee"). Tenant shall pay the Transfer Fee whether or not County consents to the Transfer.

9.2.3 Limits of Consent. If County consents to any Transfer, the following limits apply:

(a) County does not agree to waive or modify the terms and conditions of this Lease.

(b) County does not, by consenting to the instant Transfer, thereby consent to any further Transfer by either Tenant or Transferee.

(c) Tenant remains liable under this Lease, and any guarantor of the Lease remains liable under the guaranty.
(d) Tenant may enter into that Transfer in accordance with this Article 9 if: (1) the Transfer occurs within six (6) months after County's consent; (2) the Transfer is on substantially the same terms as specified in the Transfer Notice; and (3) Tenant delivers to County, promptly after execution, an original, executed copy of all documentation pertaining to the Transfer in a form reasonably acceptable to County (including Transferee's agreement to be subject and subordinate to the Lease and to assume Tenant's obligations under the Lease to the extent applicable to the Subject Space).

(e) If the Transfer occurs after six (6) months or the terms of the Transfer have materially changed from those in the Transfer Notice, Tenant shall submit a new Transfer Notice and application fee under Sections 9.2.1 and 9.2.2, requesting County's consent and the Subject Space shall again be subject to County's rights under Section 9.5. A material change is one the terms of which would have entitled County to refuse to consent to the Transfer initially or would cause the proposed Transfer to be more favorable to Transferee than the terms in the original transfer Notice.

9.3 County's Consent.

9.3.1 Reasonable Consent. County may not unreasonably withhold its consent to any proposed Transfer that complies with this Article 9. Reasonable grounds for denying consent include any of the following:

(a) Transferee's willingness to pay full, fair market rent for the Subject Space;

(b) Transferee's character, reputation or credit history;

(c) Transferee's intended use of the Premises is inconsistent with the permitted use or will materially and adversely affect County's interest;

(d) Transferee's financial condition is or may be inadequate to support the Lease obligations of Transferee under the Transfer documents;

(e) The Transfer would cause County to violate another lease or agreement in which County is a party.

9.3.2 County's Written Response. Within a reasonable time after receipt of a Transfer Notice that complies with Section 9.2.1, County shall approve or disapprove the proposed Transfer in writing.
9.3.3 **Tenant’s Indemnity.** Tenant shall indemnify, defend, and hold harmless County from and against all claims by any third party (including the proposed Transferee) arising out of or relating directly or indirectly to a proposed Transfer.

9.3.4 **Tenant’s Remedies.** If County wrongfully denies or conditions its consent, Tenant may seek only declaratory or injunctive relief. Tenant specifically waives any damage claims against County in connection with the withholding of consent.

9.4 **Transfer Premium.**

9.4.1 **Transfer Premium Payment.** As a reasonable condition to County’s consent to any Transfer, Tenant shall pay to County one hundred percent (100%) of any Transfer Premium, as defined in Section 9.4.2.

9.4.2 **Definition of “Transfer Premium.”** “Transfer Premium” means all base rent, additional rent, and other consideration payable by Transferee to Tenant (including key money and bonus money and any payment in excess of fair market value for services rendered by Tenant to Transferee or assets, fixtures, inventory, equipment, or furniture transferred by Tenant to Transferee in connection with the Transfer) (“Transferee Rent”). If part of the Transfer Premium is payable by Transferee other than in cash, County’s share of that non-cash consideration shall be in a form reasonably satisfactory to County.

9.4.3 **Monthly Payment of Transfer Premium; Calculation.** Tenant shall pay the Transfer Premium on a monthly basis.

9.4.4 **Audit of Transfer Premium.** On County’s request, Tenant shall furnish a complete statement, certified by an independent certified public accountant or Tenant’s chief financial officer, describing in detail the computation of any Transfer Premium that Tenant has derived or will derive from the Transfer. If County’s independent certified public accountant finds that the Transfer Premium for any Transfer has been understated, Tenant shall, within thirty (30) days after demand, pay the deficiency and County’s costs of that audit. If Tenant has understated the Transfer Premium by more than ten percent (10%), County may, at its option, declare Tenant in material and incurable default under Section 11.1, notwithstanding any cure period specified in Section 11.1.

9.5 **County’s Option to Recapture Space.** Despite any other provision of this Article 9, County has the option, by written notice to Tenant (“Recapture Notice”) within thirty (30) days after receiving any Transfer Notice, to recapture the Premises by terminating this Lease. A timely Recapture Notice terminates the Lease,
effective as of the date specified in the Transfer Notice. If County declines or fails timely to deliver a Recapture Notice, County shall have no further right under this Section 9.5 to the Premises unless they become available again after Transfer by Tenant.

9.6 Right to Collect Rent. If this Lease is assigned, County shall collect rent directly from Transferee. If all or part of the Premises is subleased and Tenant defaults, County may collect rent directly from Transferee. County may then apply the amount collected from Transferee to Tenant's monetary obligations under this Lease. Collecting rent from a Transferee or applying that rent to Tenant's monetary obligations does not waive any provisions of this Article 9.

9.7 Transfers of Ownership Interests and Other Organizational Changes.

9.7.1 Change of Ownership; Reorganization. For purposes of this Article 9, "Transfer" also includes:

(a) If Tenant is a partnership or limited liability company: (1) a change in ownership effected voluntarily, involuntarily, or by operation of law of twenty-five percent (25%) or more of the partners or members or twenty-five percent (25%) or more of the partnership or membership interests; or (2) the dissolution of the partnership or limited liability company without its immediate reconstitution.

(b) If Tenant is a closely held corporation (i.e., one whose stock is not publicly held and not traded through an exchange or over the counter): (1) the sale or other transfer of more than an aggregate of twenty-five percent (25%) of the voting share of Tenant (other than to immediate family members by reasons of gift or death); (2) the sale, mortgage, hypothecation, or pledge of more than an aggregate of twenty-five percent (25%) of the value of Tenant's unencumbered assets; or (3) the dissolution, merger, consolidation, or other reorganization of Tenant.

9.7.2 Transfer to Affiliate. Despite any other provision of this Lease, County's consent is not required for any Transfer to an Affiliate, as defined in Subsection 9.7.3, as long as the following conditions are met:

(a) At least ten (10) business days before the Transfer, County receives written notice of the Transfer (as well as any documents or information reasonably requested by County regarding the Transfer or Transferee);

(b) The Transfer is not a subterfuge by Tenant to avoid its obligations under the Lease;
(c) If the Transfer is an assignment, Transferee assumes in writing all of Tenant's obligations under this Lease relating to the Subject Space; and

(d) Transferee has a tangible net worth, as evidenced by financial statements delivered to County and certified by an independent certified public accountant in accordance with generally accepted accounting principles that are consistently applied ("Net Worth"), at least equal to Tenant's Net Worth either immediately before the Transfer or as of the date of this Lease, whichever is greater.

9.7.3 Definition of "Affiliate." An "Affiliate" means any entity that controls, is controlled by, or is under common control with Tenant. "Control" means the direct or indirect ownership of more than fifty percent (50%) of the voting interest in the ordinary direction of the entity's affairs.

9.8 Financing.

9.8.1 Encumbrance of Leasehold. Tenant shall have the right from time to time to encumber the Leasehold hereunder by deed of trust, assignment of leases, subleases or any other security interest which is customarily used to impose a lien on real property interests for the purpose of securing a debt for a loan or loans or other obligations of Tenant, provided that the following conditions are met: (a) the deed of trust and all rights acquired under it shall be subject to each and all of the covenants and restrictions stated in this Lease and to all rights and interests of County except as otherwise provided in this Lease; and (b) Tenant shall give County prior notice of any such deed of trust, and shall accompany the notice with a true copy of the proposed note and deed of trust.

9.8.2 Encumbrances on County's Title. Upon the Commencement Date, the Premises shall be free and clear of all mortgage liens other than those expressly agreed to in accordance with this Lease. Thereafter, any deed of trust placed on the Premises by County shall be subject to this Lease, to any deed of trust then in existence on the leasehold estate as permitted by this Lease, and to Tenant's right as permitted by this Lease subsequently to encumber the leasehold estate.

10. INSURANCE; INDEMNIFICATION

10.1 Duty to Maintain Insurance. Tenant shall obtain insurance acceptable to County in company or companies acceptable to County. The required documentation of insurance shall be furnished to County upon the execution of this Lease.

10.1.1 Liability Insurance. Commercial general liability insurance, including coverage for personal injury and property damage for all activities of Tenant
arising out of or in connection with this Lease using an occurrence policy form, with policy limits of not less than One Million Dollars ($1,000,000) combined single limit for each occurrence. Such policy shall be endorsed with the following specific language:

(a) "The County of Sonoma is named as an additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Lease."

(b) "The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability."

(c) "The insurance provided herein is primary coverage to the County of Sonoma with respect to any policy of insurance or self-insurance programs maintained by the County. No insurance held or owned by the County shall be called upon to contribute to a loss."

(d) "This policy shall not be canceled or materially changed without first giving the County of Sonoma thirty (30) days' notice by certified mail."

10.1.2 Workers' Compensation. Workers' Compensation Insurance with statutory limits as required by the Labor Code of the State of California. Tenant shall require all subtenants similarly to provide Workers' Compensation Insurance for all of their employees. All policies shall be endorsed with the following specific language: "This policy shall not be canceled or materially changed without first giving thirty (30) days' notice to the County of Sonoma by certified mail."

10.1.3 Fire Insurance. Fire insurance with standard extended coverage, including vandalism and malicious mischief endorsements, covering all personal property, improvements and alterations in, on or about the Premises to the extent of at least eighty percent (80%) of their full replacement cost, without depreciation. The proceeds from any such policy shall be used by Tenant for the replacement of personal property or the restoration of improvements or alterations. All policies shall be endorsed with the following specific language: "This policy shall not be canceled or materially changed without first giving thirty (30) days' notice to the County of Sonoma by certified mail."

10.1.4 Automobile Liability. Automobile liability insurance covering bodily injury and property damage in an amount not less than One Million Dollars ($1,000,000), combined single limit for each occurrence. Said insurance shall include coverage for owned, hired and non-owned vehicles. All policies shall be
endorsed with the following specific language: "This policy shall not be canceled or materially changed without first giving thirty (30) days' notice to the County of Sonoma by certified mail."

10.2 Proceeds. All moneys collected from the insurance company or companies pursuant to Section 10.1 hereof from damage or destruction to the improvements or fixtures shall be held by County in trust to be used and applied for the repair, restoration and reconstruction of the improvements and fixtures.

10.3 Policy Obligations. Tenant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

10.4 Increases in Minimum Policy Limits. For insurance with no statutory limit, and for which no other provision for inflation or cost-of-living increases is provided in this Lease, policy limits shall be periodically increased at the request of the County.

10.5 Certificate of Insurance. Tenant shall furnish County with copies of all such policies promptly on receipt of them, or with certificates evidencing the insurance. Before the Effective Date, Tenant shall furnish County with binders representing all insurance required by this Lease.

10.6 Failure to Maintain Insurance, Proof of Compliance. Tenant shall deliver to County, in the manner required for notices, copies or certificates of all insurance policies required by this Lease, together with evidence satisfactory to County of payment required for procurement and maintenance of the policy, within the following time limits:

10.6.1 Execution of Lease. For insurance required at the commencement of this Lease, upon the Effective Date of this Lease.

10.6.2 After Execution of Lease. For insurance required at a later date, at least twenty (20) days before the requirement takes effect, or as soon thereafter as the requirement, if new, takes effect.

10.6.3 Renewals and Replacements. For any renewal or replacement of a policy already in existence, at least thirty (30) days before expiration or other termination of the existing policy.

10.6.4 Failure to Procure and Maintain Insurance. Notwithstanding anything stated to the contrary herein, in the event Tenant fails or refuses to procure or maintain insurance as required by this Lease, or fails or refuses to furnish County with required proof that the insurance has been procured and is in force and paid for, County shall have the right, at County's election and without notice, to
procure and maintain such insurance or to immediately terminate this Lease. In the
event County elects to terminate the Lease pursuant to this paragraph and Tenant later
obtains and provides evidence of the required insurance acceptable to County, this
Lease may be reinstated at the sole discretion of County. If reinstated, Tenant shall
immediately reimburse County for all of County’s processing costs, including, without
limitation, staff time.

10.7 Indemnity. Tenant agrees to accept all responsibility for loss or
damage to any person or entity, including but not limited to County, and to defend,
indemnify, hold harmless, reimburse and release County, its officers, agents, and
employees, from and against any and all actions, claims, damages, liabilities, liabilities
and expense, including but not limited to attorneys’ fees and the cost of litigation
incurred in the defense of claims as to which this indemnity applies or incurred in an
action by County to enforce the indemnity provisions herein, whether arising from
personal injury, property damage or economic loss of any type, that may be asserted by
any person or entity, including Tenant, arising out of or in connection with any of the
circumstances described in Sections 10.7.1, 10.7.2, 10.7.3 and 10.7.4, whether or not
there is concurrent negligence on the part of County, but, to the extent required by law,
excluding liability due to the sole or active negligence or due to the willful misconduct of
County. If there is a possible obligation to indemnify, Tenant’s duty to defend exists
regardless of whether it is ultimately determined that there is not a duty to indemnify.
County shall have the right to select its own legal counsel at the expense of Tenant,
subject to Tenant’s approval, which approval shall not be unreasonably withheld. This
indemnification obligation is not limited in any way by any limitation on the amount or
type of damages or compensation payable to or for Tenant or its agents under workers’
compensation acts, disability benefits acts, or other employee benefit acts.

10.7.1 Use of Premises. Use of the Premises in any manner by
Tenant, its agents, employees, invitees, subtenants, licensees and contractors, and the
agents, employees, patrons, contractors and invitees of subtenants, including any use
of the Premises not allowed under this Lease.

10.7.2 Breach by Tenant. Any breach by Tenant of the terms,
covenants or conditions herein contained.

10.7.3 Approval of Lease. The approval of this Lease by County.

10.7.4 Other Activities. Any other activities of Tenant, its agents,
employees and subtenants whether or not there is concurrent negligence on the part of
the County, but excluding liability due to the sole active negligence or sole willful
misconduct of County. This indemnification obligation is not limited in any way by any
limitation on the amount or type of damages or compensation payable by or for Tenant
or its agents under workers’ compensation acts, disability benefit acts or other
employee benefit acts.
10.8 **Exculpation of County.** County, its officers, agents, and employees, shall not be liable to Tenant for any loss or damage to Tenant or Tenant’s property from any cause. Tenant expressly waives all claims against County, its officers, agents, and employees, for injury or damage to person or property arising for any reason regardless of whether or not there is concurrent passive or active negligence of County, its officers, agents, and employees, unless such injury or damage is caused by or due to the sole negligence or willful misconduct of County, its officers, agents, and employees.

11. **DEFAULTS AND REMEDIES**

11.1 **Tenant’s Default.** The occurrence of any of the following shall constitute a default by Tenant under this Lease:

(a) Tenant’s failure to pay when due any rent required to be paid under this Lease if the failure continues for thirty (30) days after written notice of the failure from County to Tenant;

(b) Tenant’s failure to perform any other obligation under this Lease if, for thirty (30) days after written notice of the failure from County to Tenant, Tenant fails to commence in good faith to perform such obligation;

(c) Tenant’s abandonment of the Premises, including Tenant’s absence from the Premises for one hundred eighty (180) consecutive days;

(d) To the extent permitted by law: (1) a general assignment by Tenant or any guarantor of the Lease for the benefit of creditors; (2) the filing by or against Tenant, or any guarantor, of any proceeding under an insolvency or bankruptcy law, unless (in the case of an involuntary proceeding) the proceeding is dismissed within sixty (60) days; (3) the appointment of a trustee or receiver to take possession of all or substantially all of the assets of Tenant or any guarantor, unless possession is unconditionally restored to Tenant or that guarantor within thirty (30) days and the trusteeship or receivership is dissolved; or (4) any execution or other judicially authorized seizure of all or substantially all the assets of Tenant located on the Premises, or of Tenant’s interest in this Lease, unless that seizure is discharged within thirty (30) days.

(e) The committing of waste on the Premises.

11.2 **Replacement of Statutory Notice Requirements.** When this Lease requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notices required by Code of Civil Procedure § 1161 or any similar or successor statute. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by
this Lease) in the manner required by Article 13 shall replace and satisfy the statutory service-of-notice procedures, including those required by Code of Civil Procedure § 1162 or any similar or successor statute.

11.3 County's Remedies on Tenant's Default. On the occurrence of a default by Tenant, County shall have the right to pursue any one or more of the following remedies in addition to any other remedies now or later available to County at law or in equity. These remedies are not exclusive but cumulative.

11.3.1 Termination of Lease. County may terminate this Lease and recover possession of the Premises. Once County has terminated this Lease, Tenant shall immediately surrender the Premises to County. On termination of this Lease, County may recover from Tenant all of the following:

(a) The worth at the time of the award of any unpaid rent that had been earned at the time of the termination, to be computed by allowing interest at the maximum rate permitted by law;

(b) The worth at the time of the award of the amount by which the unpaid rent that would have been earned between the time of the termination and the time of the award exceeds the amount of unpaid rent that Tenant proves could reasonably have been avoided, to be computed by allowing interest at the maximum rate permitted by law;

(c) The worth at the time of the award of the amount by which the unpaid rent for the balance of the term after the time of the award exceeds the amount of unpaid rent that Tenant proves could reasonably have been avoided, to be computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%);

(d) Any other amount necessary to compensate County for all the detriment proximately caused by Tenant's failure to perform obligations under this Lease, including brokerage commissions and advertising expenses, expenses of remodeling the Premises for a new tenant (whether for the same or a different use), and any special concessions made to obtain a new tenant; and

(e) Any other amounts, in addition to or in lieu of those listed above, that may be permitted by applicable law.

11.3.2 Continuation of Lease in Effect. County shall have the remedy described in Civil Code § 1951.4, which provides that when a Tenant has the right to sublet or assign (subject only to reasonable limitations), that County may continue the Lease in effect after the Tenant's breach and abandonment and recover
rent as it becomes due. Accordingly, if County does not elect to terminate this Lease on account of any default by Tenant, County may enforce all of County’s rights and remedies under this Lease, including the right to recover all rent as it becomes due.

11.3.3 Tenant’s Subleases. Whether or not County elects to terminate this Lease on account of any default by Tenant, County may:

(a) Terminate any sublease, license, concession, or other consensual arrangement for possession entered into by Tenant and affecting the Premises;

(b) Choose to succeed to Tenant’s interest in such an arrangement. If County elects to succeed to Tenant’s interest in such an arrangement, Tenant shall, as of the date of notice by County of that election, have no further right to, or interest in, the rent or other consideration receivable under that arrangement.

11.4 Form of Payment After Default. If Tenant draws a check on an account with insufficient funds, County shall have the right to require that any subsequent amounts paid by Tenant to County under this Lease (to cure a default or otherwise) be paid in the form of cash, money order, cashier’s or certified check drawn on an institution reasonably acceptable to County.

11.5 Efforts to Relet. For purposes of this Article 11, Tenant’s right to possession shall not be considered to have been terminated by County’s efforts to relet the Premises, by County’s acts of maintenance or preservation with respect to the Premises, or by appointment of a receiver to protect County’s interest under this Lease.

11.6 Acceptance of Rent Without Waiving Rights. County may accept Tenant’s payments without waiving any rights under this Lease, including rights under a previously served notice of default. If County accepts payments after serving a notice of default, County shall not thereafter commence and pursue an action to enforce rights and remedies under the previously served notice of default. This list is merely illustrative of acts that may be performed by County without terminating Tenant’s right to possession.

11.7 Tenant’s Remedies on County’s Default. Tenant waives any right to terminate this Lease and to vacate the Premises on County’s default under this Lease. Tenant’s sole remedy on County’s default is an action for damages or injunctive or declaratory relief.
12. CONDEMNATION

12.1 Definitions. The following definitions apply in construing provisions to this Lease relating to a taking of or damage to all or any part of the Premises or any interest in them by eminent domain or inverse condemnation:

12.1.1 "Taking" shall mean taking or damaging, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation, in avoidance of an exercise of eminent domain, or while condemnation proceedings are pending. The taking shall be considered to take place as of the later of: (a) the date actual physical possession is taken by the condemnor; or (b) the date on which the right to compensation and damages accrues under the law applicable to the Premises.

12.1.2 "Total taking" shall mean the taking of the fee title to all the Premises, which shall be considered to include any off-site improvements effected by Tenant to serve the Premises.

12.1.3 "Substantial taking" shall mean the taking of so much of the Premises or both so that the remaining Premises would not be economically and feasibly usable by Tenant.

12.1.4 "Partial taking" shall mean any taking of the fee title that is not either a total or substantial taking.

12.1.5 "Notice of intended taking" shall mean any notice of notification on which a reasonably prudent person would rely and which is reasonably interpreted as expressing an existing intention of taking as distinguished from a mere preliminary inquiry or proposal. It includes but is not limited to the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of an intent to take, in writing, containing a description or map of the taking reasonably defining the extent of the taking.

12.1.6 "Award" shall mean compensation paid for the taking whether pursuant to judgment or by agreement or otherwise.

12.2 Notice to the Other Party. The party receiving any notice of the kinds specified below shall promptly give the other party notice of the receipt, contents and date of the notice received: (a) notice of intended taking; (b) service of any legal process relating to condemnation of the Premises; (c) notice in connection with any
proceedings or negotiations with respect to such a condemnation; or (d) notice of intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of condemnation.

12.3 Representative of Each Party. County, Tenant and all persons and entities holding under Tenant, including a Leasehold mortgagee, shall each have the right to represent their respective interest in each proceeding or negotiation with respect to a taking or an intended taking and to make full proof of their claims. No agreement, settlement, sale or transfer to or with the condemning authority shall be made without the consent of County and Tenant. County and Tenant agree to execute and deliver to the other any instruments that may be required to effectuate or facilitate the provisions of this Lease relating to condemnation.

12.4 Total Taking. On a total taking, Tenant’s obligation to pay rent shall terminate on the date of the taking, and the Tenant’s interest in the leasehold shall continue until the taking is completed by deed, contract, or final order except as provided otherwise herein. In any such taking, Tenant shall become a necessary party thereto.

12.5 Substantial Taking. If the taking is a substantial taking under the definition above, Tenant may, by notice to County given within thirty (30) days after Tenant receives notice of the intended taking, elect to treat the taking as a substantial taking. If Tenant does not so notify County, the taking shall be deemed a partial taking. If Tenant gives such notice and County gives Tenant notice disputing Tenant’s contention within thirty (30) days following Tenant’s notice, the dispute shall be promptly determined by arbitration in the manner hereinafter provided in Article 14. If County gives no such notice, the taking shall be considered a substantial taking. A substantial taking shall be treated as a total taking if Tenant delivers possession of the Premises as herein provided to County within sixty (60) days after determination that the taking was a substantial taking, and if Tenant is not in default under the Lease and has complied with all Lease provisions concerning apportionment of the award. If these conditions are not met, the taking shall be treated as a partial taking. In any such taking, Tenant shall become a necessary party thereto.

12.6 Distribution of Award Upon Total or Substantial Taking. In the event of a total or substantial taking, all sums, including damages and interest, awarded for the fee or the leasehold or both shall be deposited promptly with a neutral escrow holder and shall be distributed and disbursed in the following manner.

12.6.1 Tenant Compensation. Tenant shall be entitled to that portion of said compensation or award which is computed and paid for the loss of use of improvements constructed by Tenant, prorated over the remainder of the term of the Lease. The amount to which Tenant shall be entitled hereunder shall not exceed the actual cost of improvements constructed by Tenant, reduced in proportion to the
relationship that the portion of the Lease term which has expired bears to the original Lease term.

12.6.2 **County Compensation.** County shall be entitled to the full remainder and balance of any such payments, damages or awards.

12.7 **Possession of the Premises on Total or Substantial Taking.** Tenant may continue to occupy the Premises and improvements until the condemner takes physical possession. However, at any time following notice of intended total taking, or within the time limits specified for delivering possession in the provision on substantial taking, Tenant may elect to deliver possession of the Premises to County before the actual taking. The election shall be made by notice declaring the election and covenaniting to pay all rents required under this Lease to the date of taking. Tenant’s right to apportionment of or compensation from the award shall then accrue as of the date the Tenant goes out of possession.

12.8 **Partial Taking.**

12.8.1 **Effect on Rent, Term.** On a partial taking, the Lease shall remain in full force and effect covering the remaining property. In the event that such partial taking diminishes the value of the Premises, the base rent shall be reduced in the same ratio as the diminished value of the Premises bears to the value of the Premises prior to such taking. If County and Tenant do not agree, either as to whether the value of the Premises has been diminished as a result of the Taking as to the ratio within thirty (30) days after the award is finally determined, the undecided matters shall be decided by arbitration, in the manner provided in Article 14.

12.8.2 **Restoration of Improvements.** Promptly after a partial taking, at Tenant’s expense and in the manner specified in provisions of this Lease relating to maintenance, repair and alterations, Tenant shall repair, alter, modify or reconstruct the improvements so as to make them reasonably suitable for Tenant’s continued occupancy for the uses and purposes for which the Premises are Leased, provided that if the reasonably estimated costs of the work represents twenty-five percent (25%) of the fair market value of the improvements before the taking, Tenant may, in the manner provided for a substantial taking, elect to treat the taking as a substantial taking. If Tenant does not repair, alter, modify or reconstruct as provided above, the cost of such repair shall be deducted from Tenant’s share of the award and paid to County.

12.8.3 **Apportionment, Distribution of Award for Partial Taking.** Notwithstanding anything provided for hereinabove, on a partial taking, all sums, including all payments, damages or awards, for the fee title or the leasehold or both, shall be deposited promptly with a neutral escrow holder in trust, and shall be distributed and disbursed in the following order of priority:

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(a) **First**, to the cost of restoring the leasehold improvements, plus any amount assessed, awarded, paid or incurred to remove or relocate subtenants, plus any amounts specifically awarded and so designated in the award for detriment to their business;

(b) **Second**, to County any expenses or disbursements reasonably and necessarily incurred or paid by or on behalf of County for or in connection with condemnation proceedings;

(c) **Third**, to Tenant any expenses or disbursements reasonably and necessarily incurred or paid by or on behalf of Tenant for or in connection with the condemnation proceedings, and

(d) **Fourth**, the balance of the award shall be divided between the County and Tenant as the parties then agree to be just and equitable under all the circumstances, regardless of any technical rule of law, and in consideration of all circumstances, including but not limited to the value of the Premises as unimproved property; the difference, if any, between the commercial rental value and the rent under this Lease; Tenant's rent obligations under this Lease following a taking, the rights of any mortgagees hereunder, the economics of operating any remaining portion of the Premises, costs of restoration, and the balance of the remaining term. If County and Tenant do not agree within sixty (60) days after the amount of the award is finally determined, the undecided question shall be decided by arbitration, in the manner provided in Article 14.

12.9 **Limited Taking – Taking of Less Than Fee Title.** On the taking, other than a temporary taking, of less than a fee title interest in the Premises or improvements or both, the question whether the taking is total, substantial or partial, and the effects on term, rent and apportionment of award shall be determined by arbitration, in the manner provided in Article 14.

12.10 **Taking for Temporary Use.** On any taking of the temporary use of all or any part of parts of the Premises for a period or of any estate less than a fee, ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way, and Tenant shall be entitled to any award for the use or estate taken. If a result of the taking is to necessitate expenditure for changes, repairs, alterations, modifications or reconstruction of the improvements to make them economically viable and a practical whole, Tenant shall receive, hold and disburse the award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens and claims, Tenant shall be entitled to any surplus and shall be liable for any deficit. If any such taking is for a period extending beyond the expiration date of the term, the taking shall be treated under the foregoing provisions for total, substantial and partial takings.
13. NOTICES

13.1 Notices. All notices (including requests, demands, approvals, or other communications) under this Lease shall be in writing.

13.1.1 Method of Delivery. Notice shall be sufficiently given for all purposes as follows:

(a) When personally delivered to the recipient, notice is effective on delivery.

(b) When mailed first class to the last address of the recipient known to the party giving notice, notice is effective on delivery.

(c) When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.

(d) When delivered by overnight delivery with charges prepaid or charged to the sender’s account, notice is effective on delivery if delivery is confirmed by the delivery service.

(e) When sent by telex or fax to the last telex or fax number of the recipient known to the party giving notice, notice is effective on receipt as long as (1) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (2) the receiving party delivers a written confirmation of receipt. Subject to the foregoing requirements, any notice given by telex or fax shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient’s time) or on a nonbusiness day.

13.2 Refused, Unclaimed, or Undeliverable Notices. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

13.3 Addresses. Addresses for purposes of giving notice are set forth below:

COUNTY: Real Estate Manager
County of Sonoma
2300 County Center Drive, Suite A200
Santa Rosa, CA 95403
TENANT: Executive Director
Community Action Partnership of Sonoma County
555 Sebastopol Road, Suite A
Santa Rosa, California 95407

Any party may at any time change its address for notices by giving written notice of such change to the other party in the manner provided in this paragraph.

14. ARBITRATION

14.1 Arbitration of Disputes. Any dispute that is required by express terms of this Lease to be resolved by arbitration shall be resolved by neutral binding arbitration before a panel of three arbitrators unless otherwise agreed, to be held in accordance with the commercial/real estate arbitration rules of the American Arbitration Association. Judgment on the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction over the dispute.

14.2 Qualifications of Arbitrators. The arbitrators shall be licensed real estate appraisers familiar with handling commercial lease matters.

14.3 Venue. Hearings shall be held in Santa Rosa, California, or another venue determined by mutual agreement of the parties.

14.4 Demand and Limitations on Claims. Any demand for arbitration must be made in writing to the other party and to the American Arbitration Association. No demand for arbitration may be made after the date on which the institution of legal proceedings based on the claim, dispute, or other matter is barred by the applicable statute of limitations.

14.5 Provisional Remedies. The parties shall each have the right to file with a court of competent jurisdiction an application for temporary or preliminary injunctive relief, writ of attachment, writ of possession, temporary protective order, or appointment of a receiver if the arbitration award to which the applicant may be entitled may be rendered ineffectual in the absence of such relief or if there is no other adequate remedy. This application shall not waive a party’s arbitration rights under this Lease.

14.6 Powers and Duties of Arbitrators. The arbitrators shall have the power to grant legal and equitable remedies, and award damages, that may be granted or awarded by a judge of the Superior Court of the State of California. The arbitrators shall prepare and provide to the parties a written decision on all matters subject to the arbitration, including factual findings and the reasons that form the basis of the arbitrators’ decision. The arbitrators shall not have the power to commit errors of law or legal reasoning, and the award of the arbitrators shall be vacated or corrected for
any such error or any other grounds specified in Code of Civil Procedure section 1286.2 or section 1286.6. The award of the arbitrators shall be mailed to the parties no later than thirty (30) days after the close of the arbitration hearing. The arbitration proceedings shall be reported by a certified shorthand court reporter. Written transcripts of the proceedings shall be prepared and made available to the parties.

14.7 Discovery. The parties shall have the right to discovery in accordance with Code of Civil Procedure sections 1283.05 and 1283.1 as long as the arbitrators’ permission shall not be required to take a discovery deposition and neither party may take more than three depositions without the approval of the other party or the arbitrators. All discovery disputes shall be resolved by the arbitrators.


14.9 Costs and Fees of Arbitrators. Costs and fees of the arbitrators shall be borne by the nonprevailing party unless the arbitrators for good cause determine otherwise.

14.10 Attorney Fees. The prevailing party shall be awarded reasonable attorney fees, expert and nonexpert witness expenses, and other costs and expenses incurred in connection with the arbitration, in accordance with Section 15.20.

15. MISCELLANEOUS PROVISIONS

15.1 Joint and Several Obligations. If Tenant consists of more than one person, the obligation of all such persons is joint and several.

15.2 Captions, Table of Contents. The table of contents of the Lease and the captions of the various articles and sections of this Lease are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content, or intent of this Lease or of any part or parts of this Lease.

15.3 Gender. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter and the feminine includes the neuter, and each includes corporation, partnership or other legal entity when the context so requires.

15.4 Singular and Plural. The singular number includes the plural wherever the context so requires.

15.5 Exhibits, Addenda. All exhibits and addenda to which reference is made in this Lease are incorporated in this Lease by the respective references to them, whether or not they are actually attached, provided that they have been signed or
initialized by the parties. Reference to the "Lease" includes matters incorporated by reference.

15.6 **Merger.** This Lease is intended both as the final expression of the Lease between the parties hereto with respect to the included terms, and as a complete and exclusive statement of the terms of the Lease, pursuant to California Code of Civil Procedure Section 1856. No modification of this Lease shall be effective unless and until such modification is evidenced by a writing signed by both parties. No promise, representation, warranty or covenant not included in this Lease has been or is relied on by either party. Each party has relied on his own examination of this Lease, the counsel of his own advisors, and the warranties, representations, and covenants in the Lease itself. This Lease shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Lease. The failure or refusal of either party to inspect the Premises, to read the Lease or other documents, or to obtain legal or other advice relevant to this transaction, constitutes a waiver of any objection, contention or claim that might have been based on such reading, inspection or advice.

15.7 **Successors.** Subject to the provisions of this Lease on assignment and subletting, each and all of the covenants and conditions of this Lease shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns and personal representatives of the respective parties.

15.8 **Broker's Commissions, Expenses.** Tenant and County mutually covenant that no brokers have been or will be used with respect to this Lease. In the event any broker or finder perfects a claim for a commission or finder's fee based upon any such contract, dealings or communication, the party through whom the broker or finder makes a successful claim shall be responsible for said commission or fee and all costs and any expenses (including reasonable attorneys' fees) incurred by the other party in defending against the same.

15.9 **Applicable Law and Forum.** This Lease shall be construed and interpreted according to California law and any action to enforce the terms of this Lease or for the breach thereof shall be brought and tried in the County of Sonoma.

15.10 **Covenants and Conditions.** All provisions of this Lease whether covenants or conditions, on the part of Tenant shall be deemed to be both covenants and conditions and such covenants shall survive termination.

15.11 **Corporate Authority.** If Tenant is a corporation, Tenant shall deliver to County upon execution of this Lease, a certified copy of a resolution of its board of directors authorizing the execution of this Lease and naming the officers that are authorized to execute this Lease on behalf of the corporation.
15.12 **Time of Essence.** Time is and shall be of the essence of this Lease and of each and every provision contained in this Lease.

15.13 **No Discrimination.** Tenant shall comply with all applicable federal, state and local laws, rules and regulations regarding nondiscrimination because of race, color, ancestry, national origin, religion, sex, sexual orientation, marital status, age, medical condition or disability.

15.14 **AIDS Discrimination.** Tenant has reviewed the provisions of Article II of Chapter 19 of the Sonoma County Code, prohibiting discrimination in housing, employment and services because of AIDS or HIV infection. Tenant agrees to comply with such provisions during the term of this Lease.

15.15 **No Third Party Beneficiaries.** Nothing contained in this Lease shall be construed to create and the parties do not intend to create any rights in third parties.

15.16 **Construction of Lease: Severability.** To the extent allowed by law, the terms, covenants, conditions, provisions and Leases in this Lease shall be construed and given effect in a manner that avoids any violation of statute, regulation or law. County and Tenant covenant and agree that in the event any term, covenant, condition, provision or Lease in this Lease is held to be invalid or void by court of competent jurisdiction, the invalidity of any such term, covenant condition, provision or Lease shall in no way affect any other term covenant, condition provision or Lease in this Lease.

15.17 **Relationship.** The parties intend by this Lease to establish the relationship of landlord and tenant only, and do not intend to create a partnership, joint venture, joint enterprise, or any business relationship other than that of landlord and tenant.

15.18 **Waiver of Jury Trial.** Tenant and County hereby waive any right to a trial by jury or any litigation arising under this Lease.

15.19 **Attorneys’ Fees.** If either party undertakes litigation or arbitration against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to recover from the other party reasonable attorney fees, arbitration costs, and court costs incurred. The prevailing party shall be determined under Civil Code Section 1717(b)(1) or any successor statute.

**TENANT HAS CAREFULLY READ AND CONSIDERED THE TERMS AND CONDITIONS SET FORTH IN THIS LEASE AND HEREBY AGREES THAT TENANT SHALL BE BOUND BY ALL SAID TERMS AND CONDITIONS.**
IN WITNESS WHEREOF, the parties have duly executed this Lease as of the Effective Date.

Licensee: COMMUNITY ACTION PARTNERSHIP OF SONOMA COUNTY, a California non-profit corporation

By: ____________________________
   Helge Lemke
   Executive Director

County: COUNTY OF SONOMA, a political subdivision of the State of California

By: ____________________________
   David C. Kroheberg, Director
   Department of General Services

APPROVED AS TO FORM
FOR COUNTY:

______________________________
Sheryl Bratton,
Chief Deputy County Counsel

APPROVED AS TO SUBSTANCE
FOR COUNTY:

______________________________
Steve Sharpe,
Administrative Analyst

______________________________
Mike Wagner,
Real Estate Manager