CAPISTRANO UNIFIED SCHOOL DISTRICT
BOARD REPORT

To: Board of Trustees

From: Clark Hampton, Deputy Superintendent, Business and Support Services

Date: December 12, 2018

Board Item: Resolution No. 1819-25, Resolution of the Board of Trustees of the Capistrano Unified School District Approving Agreements to Lease District Surplus Real Property and Directing Staff to Assess Potential Uses of the Lease Proceeds (South Bus Yard Property)

HISTORY

The District's Board previously declared certain property surplus, consisting of approximately 5.51 acre property located at 26126 Victoria Blvd, Dana Point, CA 92624 (Property) pursuant to the Education Code § 17455 et seq. The District's Board also authorized and instructed District staff to seek authorization from the State Board of Education (SBE) to pursue leasing the Property through a "Request for Proposals" (RFP) process by obtaining a waiver from SBE. District staff obtained a waiver from SBE and circulated an RFP document seeking proposals from parties interested in leasing the Property. Pursuant to the RFP process, the District staff identified Toll Brothers, Inc. (Toll) as the entity that offered the most beneficial terms to the District for the lease the Property. District staff, in consultation with legal counsel, negotiated two agreements with Toll to effectuate the lease of the Property: 1) a "Option to Lease Real Property" agreement which grants Toll a time period to review the Property to determine if the Property will meet Toll's needs in exchange for certain monetary deposits to be delivered to the District, (the Option Agreement) and 2) a "Ground Lease" Agreement which establishes the terms and conditions by which Toll will lease the Property from the District in exchange for monthly rental payments (the Lease Agreement).

BACKGROUND INFORMATION

The Education Code establishes the process by which school districts can lease real property that is no longer needed for school purposes. In summary, the Education Code establishes a "bid auction process" which requires school districts to solicit bids and enter into a lease with the bidder who submits the highest bid. However, the SBE allows school districts to apply for a waiver of the "bid auction process" and instead use a RFP process which allows school districts to solicit proposals and then enter into a lease with the proposer that offers the best overall lease terms and conditions. The RFP process provides more flexibility because it allows school districts to negotiate and consider factors other than overall price when assessing offers from interested parties, such as the length of the lease term and the proposed use of the property.

The Education Code also suggests that the proceeds from the Property lease may be used for capital outlay or for school district property maintenance and allows the District to establish an account to hold the proceeds from the lease to be used for specified purposes.

CURRENT CONSIDERATIONS

Pursuant to the RFP process authorized by the SBE, District staff, in consultation with legal counsel, negotiated the Option Agreement and Lease Agreement with Toll which collectively establish the terms and conditions by which Toll can lease the Property. The Option Agreement allows Toll to review the Property and seek the necessary approvals to develop the Property during a "feasibility period" in exchange for monetary deposits to the District. The Lease Agreement establishes the terms and conditions of Toll's lease of the Property. Thus, the District can execute the Option Agreement and approve the Lease Agreement for execution, if Toll decides to proceed with the lease after the feasibility period established in the Option Agreement.

This Resolution includes current copies of the Option Agreement and the Lease Agreement for the Board's review and approval. It is anticipated that further revisions to the Option Agreement and the Lease Agreement will be made prior to final Board approval on December 12, 2018, and final documents shall be provided pursuant to the Brown Act. This Resolution authorizes staff to execute the Option Agreement 30 days after the final agreements are approved by the Board.

Further, this Resolution 1) directs staff to review and assess the specific capital outlay, maintenance and other facility related needs of school sites located in the City of Dana Point, 2) establishes priority projects, 3) directs staff to establish a separate fund to receive proceeds from the lease of the Property, and 4) directs use of such proceeds for priority projects and capital facilities needs.

FINANCIAL IMPLICATIONS

Toll will pay the District for the right to review the Property pursuant to the Option Agreement and lease the Property pursuant to the Lease Agreement. In sum, the Option Agreement requires Toll to deposit $300,000 into an escrow account within eight days of the execution of the Option Agreement and another $1,000,000 after the Feasibility Period. If Toll proceeds with the Lease Agreement, these deposits shall be given to the District as part of the monthly rent payments owed by Toll. The Option Agreement also establishes a release procedure by which portions of the deposits will be released to the District if Toll does not enter into the lease agreement within certain timeframes.

The Lease Agreement establishes the rent to be paid by Toll during the term of the Lease, which starts at $1,000,000 per year for the first three years of the Lease and increases based on the development initiated by Toll on the Property, pursuant to the calculations set forth in the Lease.

STAFF RECOMMENDATION

It is recommended the Board of Trustees adopt Resolution No. 1819-25, Resolution of the Board of Trustees of the Capistrano Unified School District Approving Agreements to Lease District Surplus Real Property and Directing Staff to Assess Potential Uses of the Lease Proceeds.

APPROVED BY: Clark Hampton, Deputy Superintendent, Business and Support Services

CAPISTRANO UNIFIED SCHOOL DISTRICT

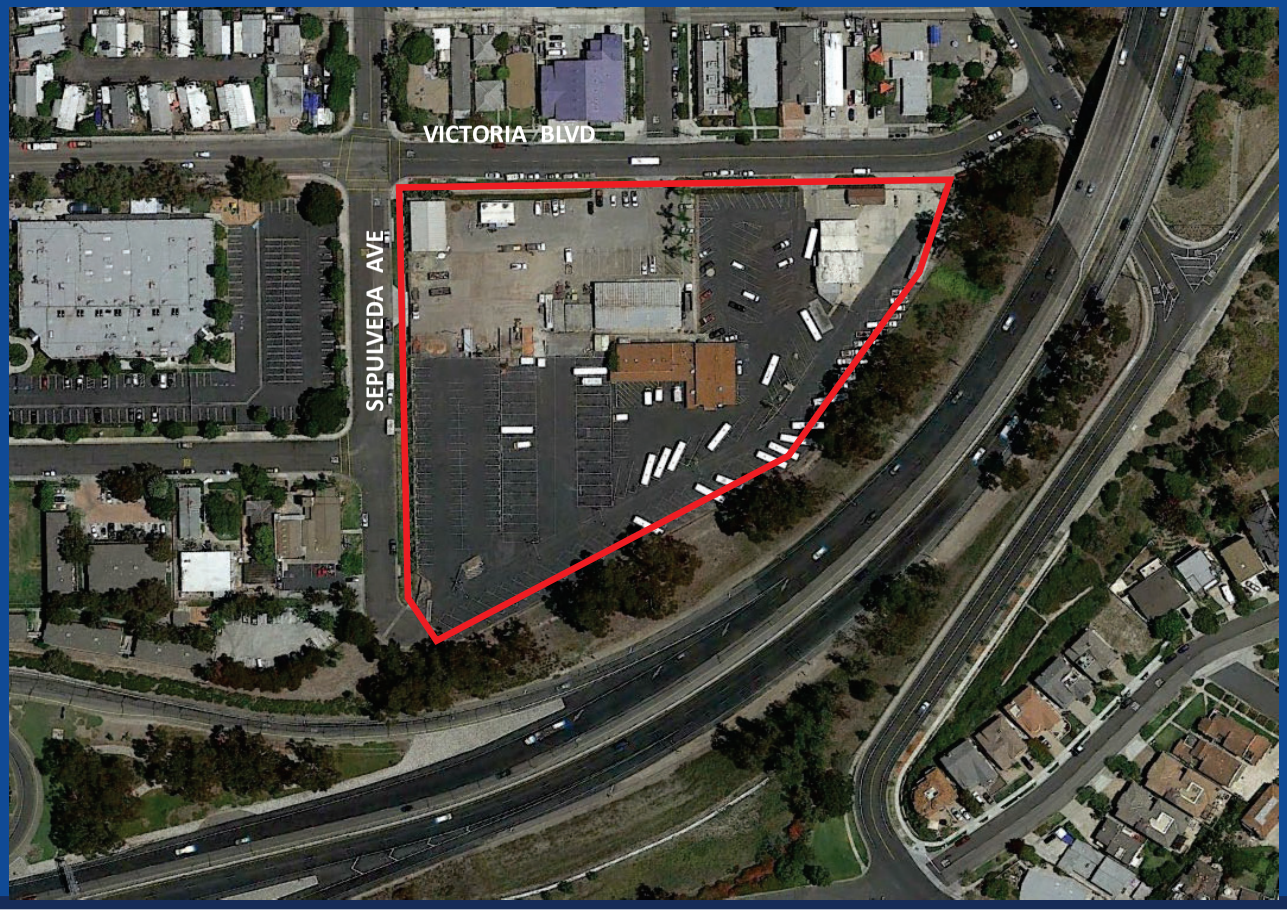
South Bus Yard Property

December 12, 2018

PROJECT DIMENSIONS INC

SOUTH BUS YARD PROPERTY DANA POINT

AERIAL PHOTO OF PROPERTY



SOUTH BUS YARD PROPERTY DANA POINT

MISSION STATEMENT

Obtain the highest and best use proposals for the Property from qualified developers to maximize the financial benefit to the District's schools under a land lease scenario

PROPOSAL PROCESS

- The Request for Proposal (RFP) was emailed and mailed to multifamily developers and other interested parties on May 29, 2018
- The RFP was posted to the District's website
- A site walk was held two weeks prior to the due date for responses to the RFP
- One week before the due date, responses to all questions received were emailed out to all firms and individuals on the list and posted on the District website
- Responses to the RFP were received at the District Headquarters and opened by Deputy Superintendent Hampton at 12:15 pm on June 19, 2018

FIVE PROPOSALS WERE RECEIVED

- Toll Brothers Apartment Living
- Mill Creek Residential
- Raintree Partners Proposal A
- Raintree Partners Proposal B
- SummerHill Housing Group

SELECTION OF TOLL BROTHERS

Toll Brothers Apartment living was selected as the most beneficial proposal for the project for the following reasons:

- Best financial offer: highest annual ground rent
- Best terms during the Entitlement Phase
- Met the objective of the Mission Statement
- Financial Strength of the Respondent

OVERVIEW OF TOLL BROTHERS

- Founded in 1967 and listed on the NYSE since 1986, symbol “TOLL”
- Market capitalization of approximately $ 5.5 Billion
- Approximately $ 1.7 Billion of liquidity as of June 2018
- Nationally recognized, award winning luxury brand
- Over 5,800 units developed or under construction across the United States

OVERVIEW OF TERMS OF THE OPTION AGREEMENT

- Option Term: 24 months with two 6-month Extensions
- Feasibility Period: 75 Calendar Days
- Deposits: $300,000 with signing of Option; becomes non-refundable at end of Feasibility Period. Additional $1,000,000 at end of Feasibility Period; pro rata shares become non-refundable at milestones during the 24 month Option Term. An additional $250,000 for each Extension. Payments are applicable to rent.
- Pursuit of Project Entitlements: Toll Bothers responsible for all costs to design and obtain entitlement and development rights.

OVERVIEW OF THE TERMS OF THE LEASE

- Term: 99 Years; no extensions
- Initial Annual Rent: $3,150,000 for 425 market rate units
- Minimum Annual Rent: $2,500,000 if entitled for less units or affordable units
- Rent Increases: 13.14% every five years
- Use of Property: Multi-family residential and accessory uses
- Taxes and Utilities: Toll to pay all taxes and utility charges
- Encumbrance: Toll may encumber the Property with Institutional Investor
- Ownership of Project: At end of Lease, all buildings and improvements become property of District without any encumbrances

PROPOSED BOARD APPROVAL/RESOLUTION

- Approves Toll Brothers' proposal as "most beneficial"
- Approves the negotiated Option Agreement and Ground Lease
- Delegates authority to execute the Option Agreement in 30 days
- Delegates authority to execute the Ground Lease after Toll Brothers exercises its option to proceed
- Directs staff to review and assess the specific capital outlay, maintenance and other facility related needs of school sites located in the City of Dana Point
- Establishes priority projects through School Facilities Assessment
- Directs staff to establish a separate fund to receive proceeds from the lease of the Property
- Directs use of such proceeds for priority projects and capital facilities

CAPISTRANO UNIFIED SCHOOL DISTRICT
San Juan Capistrano, California

RESOLUTION NO. 1819-25

RESOLUTION OF THE BOARD OF TRUSTEES OF THE CAPISTRANO UNIFIED SCHOOL DISTRICT APPROVING AGREEMENTS TO LEASE DISTRICT SURPLUS REAL PROPERTY AND DIRECTING STAFF TO ASSESS POTENTIAL USES OF THE LEASE PROCEEDS

(SOUTH BUS YARD PROPERTY)

WHEREAS, the Capistrano Unified School District (District) owns an approximately 5.51 acre property located at 26126 Victoria Blvd, Dana Point, CA 92624 (Property);

WHEREAS, the District's Board previously declared the Property surplus and authorized staff to pursue leasing the Property pursuant to the "surplus property sale procedure" set forth in Education Code section 17455, et seq. which allows school districts to lease property deemed surplus;

WHEREAS, pursuant to the District's Board authorization and direction, the District requested and received a waiver from the State Board of Education which authorized the District to pursue selling the Property through a "Request for Proposals" (RFP) process, as set forth through the waiver;

WHEREAS, at the direction of the District's Board, District circulated an RFP seeking proposals from parties interested in leasing the Property;

WHEREAS, through the RFP process, the District staff identified Toll Brothers, Inc. (Toll) as the entity that offered the most beneficial terms to the District for the lease the Property;

WHEREAS, the District negotiated the following agreements with Toll to effectuate the lease of the Property: 1) a "Option to Lease Real Property" agreement which grants Toll a time period to review the Property to determine if the Property will meet Toll's needs in exchange for certain monetary deposits to be delivered to the District, attached hereto as Exhibit "A" (the "Option Agreement") and 2) a "Ground Lease" Agreement which establishes the terms and conditions by which Toll will lease the Property from the District in exchange for monthly rental payments, attached hereto as Exhibit "B" (the Lease Agreement);

WHEREAS, Education Code section 17455 et seq. does not limit the District's use of proceeds from the lease of the Property (the Lease Proceeds) but suggests that Lease Proceeds may be used for capital outlay or for costs of maintenance of school district property as set forth in Education Code section 17462;

WHEREAS, Education Code section 41003 authorizes the District Board to designate an account maintained by the District which will receive the proceeds from the lease of real property by stating as follows: "[t]he governing board of a school district may, by resolution,

specify the particular fund or funds maintained for the district into which shall be deposited moneys received for the rental or lease of real property;" and

WHEREAS, District staff can conduct a thorough review of the District properties and school facilities located within the District, and specifically within the City of Dana Point, through its master planning process to determine how best to designate and spend the Lease proceeds and make a formal recommendation to the Board based on the requirements of the Education Code.

NOW, THEREFORE, THE BOARD OF TRUSTEES OF THE CAPISTRANO UNIFIED SCHOOL DISTRICT DOES HEREBY FIND, RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. All of the recitals herein contained are true and correct.

Section 2. The Option Agreement and the Lease Agreement with Toll are hereby deemed the most beneficial proposal received by the District and are hereby approved subject to any minor revisions agreed to by District's legal counsel and the District's Superintendent or a designee.

Section 3. Authority is hereby delegated to the Superintendent, or a designee, to execute the final Option Agreement after thirty (30) days from approval of this Resolution and deliver any and all documents which are necessary or advisable in order to commence the lease option period as established by the terms of the Option Agreement.

Section 4. If Toll exercises its option to lease the Property pursuant to the Option Agreement, authority is hereby delegated to the Superintendent, or a designee, to execute the Lease Agreement and deliver any and all documents which are necessary or advisable in order to commence the ground lease as established by the terms of the Lease Agreement.

Section 5. District staff will review and assess the specific capital outlay, maintenance and other facility related needs of school sites located in the City of Dana Point. The District's School Facilities Assessment and projects identified through site stakeholder engagement for schools located in Dana Point shall have first priority for projects funded by lease proceeds.

Section 6. Proceeds shall first be used and prioritized exclusively to address any capital outlay and facilities needs identified in Section 5 above.

Section 7. The Board directs staff to establish a separate fund to receive proceeds collected from the lease of the property.

Section 8. Proceeds from lease of property shall only be used for capital facility needs.

Section 9. The Superintendent or a designee is hereby authorized and directed, for and in the name of and on behalf of the District, to take any further action necessary to effectuate this Resolution.

Section 10. This Resolution shall take effect upon adoption.

ADOPTED, SIGNED AND APPROVED this 12th day of December, 2018.

AYES	( )
NOES	( )
ABSTAIN	( )
ABSENT	( )

I, Kirsten M. Vital, Secretary of the Capistrano Unified School District Board of Trustees, hereby certify that the above and foregoing Resolution was duly and regularly adopted by the said Board at the meeting on the 12th day of December, 2018, by a roll call vote.

_____

Clerk of the Board of Trustees

_____

Kirsten M. Vital
Superintendent
Secretary of the Board of Trustees

Exhibit A

Attach copy of Option Agreement

Exhibit B

Attach copy of Lease Agreement

OPTION TO LEASE REAL PROPERTY

THIS OPTION TO LEASE REAL PROPERTY ("**Agreement**") is made and entered into as of _____, 2018 ("**Effective Date**"), by and between the CAPISTRANO UNIFIED SCHOOL DISTRICT, a public school district duly organized and validly existing under the Constitution and the laws of the State of California ("**Optionor**"), and TOLL BROS, INC., a Pennsylvania corporation ("**Optionee**"), with reference to the following facts. Optionor and Optionee are sometimes hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

R E C I T A L S:

A. The Optionor owns approximately 5.51 gross acres of land located at 26126 Victoria Blvd, Dana Point, California 92624, more commonly known as the South Bus Yard property ("**Property**"), more particularly described on **Exhibit "A"** attached hereto.

B. Optionor and Optionee desire to enter into this Agreement pursuant to which Optionor grants Optionee an option to lease the Property from Optionor pursuant to the Ground Lease attached hereto as **Exhibit "B"** (the "**Lease**").

C. Optionee contemplates entitling, designing, constructing, operating, maintaining, and leasing a multi-family residential Project on the Property (the "**Project**").

D. Optionor desires to grant an exclusive option to Optionee to lease the Property in accordance with the provisions of this Agreement and the Lease.

A G R E E M E N T :

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements herein set forth, and other valuable consideration, receipt of which is hereby acknowledged, Optionor and Optionee agree as follows.

I
GRANT OF OPTION

1.1 Grant. Optionor hereby grants to Optionee an exclusive option to lease the Property, subject to the terms and conditions set forth in this Agreement (herein referred to as the "**Option**"). The term of the Option ("**Option Term**") shall commence on the Effective Date and shall terminate twenty four (24) months (730 calendar days) following the Effective Date.

1.2 Option Term Extensions. Optionee may extend the Option Term for up to two (2) consecutive Option Term Extensions, each one being one hundred eighty (180) calendar days, by delivering to Optionor and "Escrow Holder" (as defined below), on or before the expiration of the Option Term, (i) written notice of Optionee's election to exercise such extension right and (ii) the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000.00) (each, an "**Extension Payment**") for each of the two Option Term Extensions when exercised. Upon Escrow Holder's receipt of an Extension Payment, Escrow Holder shall promptly deliver such Extension Payment

to Optionor. Except in the event of Optionor's Default (as defined in Section 7.2 below), all Extension Payments made by Optionee shall be non-refundable when paid and retained by Optionor.

1.3 Option Consideration. The Option is granted in consideration of Optionee's payment to Optionor of the sum of ONE HUNDRED DOLLARS ($100). Optionee shall pay such amount to Optionor upon the execution of this Agreement.

1.4 Opening of Escrow. Within three (3) business days following the mutual execution and delivery of this Agreement by Optionor and Optionee, the Parties shall open an escrow (the "**Escrow**") with First American Title Insurance Company ("**Escrow Holder**"), at its offices located at _____ Phone: (___) ___-____, by causing an executed copy of this Agreement to be deposited with Escrow Holder. Escrow shall be deemed open on the date that a fully executed copy of this Agreement is delivered to Escrow Holder (the "**Opening of Escrow**"). Escrow Holder shall provide each of the Parties with written confirmation of the date of the Opening of Escrow. Escrow Holder or Westminster Abstract, as agent for Escrow Holder, shall also provide title insurance services related to this Agreement (the "**Title Company**").

1.5 Deposits. Within five (5) days after the Opening of Escrow, Optionee shall place into escrow THREE HUNDRED THOUSAND DOLLARS ($300,000) as a good faith deposit upon execution by both parties of this Agreement (the "**Initial Deposit**"). In addition, provided Optionee has not elected to terminate this Agreement pursuant to Section 1.7 below, Optionee shall place into escrow an additional deposit of ONE MILLION DOLLARS ($1,000,000) (the "**Additional Deposit**") within three (3) business days after the expiration of a feasibility period of seventy-five (75) calendar days from the Opening of Escrow (the "**Feasibility Period**"). The Initial Deposit shall be refundable to Optionee in the event that Optionee has elected to terminate this Agreement pursuant to Section 1.7 below prior to the expiration of the Feasibility Period. The Initial Deposit and the Additional Deposit shall collectively be deemed the "**Deposit**." Except as otherwise expressly set forth in this Agreement, the Deposit shall become non-refundable to the Optionee on an incremental basis and released to the Optionor as follows:

(a) The Initial Deposit of THREE HUNDRED THOUSAND DOLLARS ($300,000) shall be non-refundable to Optionee and released to Optionor after the expiration of the Feasibility Period if Optionee chooses to not exercise its right to lease the Property for any reason whatsoever during the Option Term or should the Optionee not lease the Property for any reason.

(b) An additional amount of FOUR HUNDRED THOUSAND DOLLARS ($400,000) from the Deposit shall be deemed non-refundable to the Optionee and released to the Optionor on the date which is twelve (12) months after the expiration of the Feasibility Period if Optionee chooses to not exercise its right to lease the Property for any reason whatsoever during the Option Term or should the Optionee not lease the Property for any reason.

(c) An additional amount of THREE HUNDRED THOUSAND DOLLARS ($300,000) from the Deposit shall be deemed non-refundable to the Optionee and released to the Optionor on the date which is: 1) eighteen (18) months after the expiration of the Feasibility Period or 2) one day after the Final Approval Date (as defined in Section 3.1 below), whichever is sooner,

if Optionee chooses to not exercise its right to lease the Property for any reason whatsoever during the Option Term or should the Optionee not lease the Property for any reason.

(d) The remaining deposit amount of THREE HUNDRED THOUSAND DOLLARS ($300,000) shall be deemed non-refundable to the Optionee and released to the Optionor on the date which is: 1) twenty four (24) months after the expiration of the Feasibility Period or 2) one day after the Final Approval Date, whichever is sooner, if Optionee chooses to not exercise its right to lease the Property for any reason whatsoever during the Option Term or should the Optionee not lease the Property for any reason.

Notwithstanding anything contained in this Agreement to the contrary, the entire Deposit shall be promptly refunded to the Optionee in the event of Optionor's Default or a material adverse change in the condition of the Property, including without limitation an event of casualty, prior to the execution of the Lease.

In the event Optionee enters into the Lease, the Deposit shall be applied to the Rent as follows: 1) One Million Dollars ($1,000,000) of the Deposit shall be applied to the Base Rent due in Year 1, and 2) the remaining Deposit shall be applied to the Base Rent first coming due in Year 2.

1.6 Escrow Instructions. This Agreement, together with the Lease and any standard instructions of Escrow Holder, shall constitute the joint escrow instructions of Optionor and Optionee to Escrow Holder as well as an agreement between Optionor and Optionee. In the event of a conflict between any provision of any standard instructions of Escrow Holder and this Agreement, this Agreement shall prevail.

1.7 Termination. Optionee may terminate this Agreement at any time, for any reason or no reason, in its sole and absolute discretion, by delivering written notice to Optionor of such termination ("**Termination Notice**"). Effective upon the delivery of the Termination Notice, this Agreement shall have no further force or effect and, except as otherwise expressly provided in this Agreement, Optionor may retain all portions of the Deposit released to Optionor prior to the date of such Termination Notice, and the remainder of the Deposit shall be promptly refunded to Optionee.

II
EXERCISE AND CLOSING OF OPTION

2.1 Exercise Notice. If Optionee desires to exercise the Option, Optionee may do so at any time during the Option Term by delivering the following (the "**Exercise Deliveries**") to Escrow Holder, with a copy to Optionor no later than 4:00 p.m. Pacific Time on the last day of the Option Term (the "**Exercise Date**"):

(a) A written notice of Optionee's election to exercise the Option ("**Exercise Notice**");

(b) three (3) originals of the Lease, each executed in counterpart by Optionee as "Tenant" with all exhibits and blanks (other than the Effective Date) completed;

(c) one (1) original of the Memorandum of Lease in the form attached to the Lease as an Exhibit (the "**Memorandum of Lease**"), executed by Optionee as Tenant and notarized; and

(d) Optionee shall accompany the Exercise Notice with evidence reasonably satisfactory to Optionor of Optionee having sufficient financial resources to complete the performance of its obligations under the terms of the Lease ("**Evidence of Optionee Financial Capability**"). Optionee shall have the right, but not the obligation, to provide the Evidence of Optionee Financial Capability to Optionor up to ninety (90) days prior to Optionee's delivering the Option Exercise Notice. Regardless of whether Optionee provides the Evidence of Optionee Financial Capability concurrently with or prior to Optionee's delivery of the Option Exercise Notice, Optionor shall notify Optionee of its approval of or objection of the Evidence of Optionee Financial Capability in writing within ten (10) business days of receipt thereof from Optionee. Without limiting the foregoing, Optionor agrees that if Optionee's financial condition at the time of its exercise of the Option is reasonably sufficient to meet the annual rent requirements under the Lease, as evidenced by documentation demonstrating Optionee's financial viability, such as, by way of example but not limitation, financial statements, letters of commitment from financial institutions or reasonable likelihood of Optionee's ability to obtain such financing, financial commitments pursuant to the terms of any joint venture agreements with financially capable third parties, which demonstrate reasonable likelihood of the availability of sufficient funds for performance under the Lease, the Evidence of Optionee Financial Capability shall be deemed to have been satisfied. Notwithstanding the forgoing, in the event of any adverse material change in Optionee's financial condition subsequent to Optionee's providing Evidence of Financial Capability, Optionee shall promptly provide written notification to Optionor detailing such change and Optionor shall have ten (10) business days of receipt thereof to notify Optionee of Optionor's approval of or objection of the Evidence of Financial Capability as a result of said material adverse change in Optionee's financial condition. For purposes hereof, "material adverse change" shall be defined as a 20% or greater decrease in the net worth or liquidity of Optionee from the financial statements submitted in connection with exercise of the Option. Notwithstanding anything contained herein to the contrary, Optionor's approval of the Evidence of Optionee Financial Capability shall not be required provided that Optionee has delivered evidence to Optionor prior to delivery of the Option Exercise Notice that Optionee's parent company has no less than $250,000,000 in cash and available liquidity and $1,000,000,000 in equity as of the Exercise Date.

2.2 Preparation for Closing of Option Exercise. No later than ten (10) business days following the Exercise Date, Escrow Holder shall perform the following:

(a) Promptly prepare and submit to Optionor and Optionee an estimated closing statement identifying all of the following: (i) escrow fees and costs for the "Closing" as defined below; (ii) title charges for the "Leasehold Policy" (as defined in Section 3.6); (iii) documentary transfer tax payable upon recordation of the Memorandum of Lease; (iv) proration, as of the date estimated for Closing by the Parties, of all current general and special real property taxes and assessments for the Property previously paid or payable for the current fiscal tax period; and

(b) Update the Title Report (as defined in Section 3.2 below) and identify to Optionor and Optionee any further documents, funds or instruments required to issue the Leasehold Policy.

2.3 Review and Approval of Exercise Deliveries. Optionor shall have ten (10) business days following the Exercise Date to review the blanks appearing in the form of Lease attached hereto that have been completed by Optionee and shall notify Optionee and Escrow Holder in writing ("**Optionor Notice**") of either (a) Optionor's approval of the Exercise Deliveries, as presented by Optionee; or (b) any revisions to any of the Exercise Deliveries that Optionor believes are required to conform such instruments to the terms of this Agreement. In the event Optionor believes that the Exercise Deliveries fail to conform to the requirements of this Agreement, then Optionor's Notice shall so state and identify the specific revisions which Optionor believes are required for its approval. Otherwise, Optionor's Notice shall confirm Optionor's approval of the form of the Exercise Deliveries. In the event the Optionor Notice requests revisions, Optionor and Optionee shall negotiate in good faith to determine whether such revisions should be included in whole or in part, within twenty (20) business days following the Exercise Date, and shall confirm in writing any changes to be made to the Exercise Deliveries upon such resolution, which writing (or an Optionor Notice approving the Exercise Deliveries without change) is referred to herein as the "**Approval Notice**". All references in this Agreement to "Lease" and "Memorandum of Lease" after delivery of the Approval Notice shall refer to the form of such instrument identified in the Approval Notice.

2.4 Optionor Closing Deliveries. Optionor shall deliver to Escrow Holder, within five (5) business days following delivery of the Approval Notice, all of the following funds and documents, each duly executed by Optionor, and if applicable, acknowledged:

(a) three (3) original counterparts of the Lease;

(b) one (1) original counterpart of the Memorandum of Lease;

(c) an Optionor's Affidavit in the form of **Exhibit "D"** attached hereto and any additional documents or instruments required from Optionor to issue the Leasehold Policy; and

(d) Optionor's written approval of the estimated closing statement.

2.5 Additional Optionee Closing Deliveries. If not sooner delivered, Optionee shall deliver to Escrow Holder, within five (5) business days after delivery of the Approval Notice, all of the following funds and documents, each duly executed by Optionee, and if applicable, acknowledged:

(a) three (3) original counterparts of the Lease and one (1) original counterpart of the Memorandum of Lease per Section 2.3, if and to the extent, revised in the Approval Notice, which revised instruments, if any, shall replace those delivered on the Exercise Date;

(b) good funds in an amount equal to all fees, costs and charges payable by Optionee under Section 2.7 below.

(c) Optionee's approval of the estimated closing statement.

2.6 Closing of Option Exercise. Upon receipt of the deliveries described in Sections 2.4 and 2.5 above, Escrow Holder shall perform the following:

(a) Assemble three (3) fully executed originals of the Lease and one (1) fully executed original of the Memorandum of Lease and date each of the executed originals of the Lease and Memorandum of Lease as of the date the Memorandum of Lease is submitted for recording;

(b) Record the Memorandum of Lease when Escrow Holder is committed to issue to Optionee the Leasehold Policy in the form described in Section 3.6 below; and

(c) Deliver (i) two (2) fully executed originals of the Lease to Optionor, (ii) one (1) fully executed original of the Lease to Optionee, and (iii) a conformed copy of the recorded Memorandum of Lease to both Parties.

2.7 Closing and Closing Costs.

(a) The term **"Closing"** as used in this Agreement shall mean the recordation of the Memorandum of Lease, and the completion of the deliveries by Escrow Holder described in Section 2.6 above.

(b) Optionee shall pay all escrow fees and charges, all recording charges and the additional premium charged by the Title Company to issue an extended coverage (versus standard coverage) Leasehold Policy. Optionee shall also pay all documentary and other transfer taxes, and the premium charged by the Title Company to issue a standard coverage Leasehold Policy. Optionee shall also pay all title, escrow, recording and other fees and costs in connection with a Leasehold Encumbrance (as defined in the Lease).

2.8 Optionee Closing Conditions. Optionee's obligation to consummate the transaction provided for herein is subject to the satisfaction of each of the following conditions, each of which is for the sole benefit of Optionee and may only be waived by Optionee in writing:

(a) Leasehold Policy. Title Company shall be irrevocably committed to issue the Leasehold Policy in favor of Optionee, subject only to the Permitted Exceptions (as defined in Section 3.6 below). In the event Title Company is unable to provide a Leasehold Policy in accordance with the requirements of this Agreement, Optionor may identify a comparable, national title company who, upon written notice from Optionor, may replace the Title Company identified in Section 1.4 above and shall be directed to meet the requirements of the Title Company as set forth in this Agreement.

(b) Due Performance. Optionor shall not be in default under this Agreement, and shall have duly performed each and every covenant, undertaking and agreement to be performed by it prior to the Closing hereunder.

(c) Optionor's Representations and Warranties. Each representation and warranty made in this Agreement by Optionor shall be true and correct as of the Closing.

(d) Removal of Underground Storage Tanks. Optionor shall have removed the Storage Tanks from the Property, performed all required Environmental Remediation, and obtained all required Governmental Approvals (as such terms are defined in Section 6.6 below).

(e) No Material Adverse Change. There shall be no material adverse change in the condition of the Property, including, without limitation, an event of casualty.

2.9 Optionee's Waiver of Conditions. Optionee may at any time or times on or before the Closing, at its sole election, waive any of the conditions precedent to Optionee's obligations hereunder and consummate the transaction, but any such waiver shall be effective only if contained in a writing signed by Optionee and delivered to Optionor and Escrow Holder. Notwithstanding anything contained in this Agreement to the contrary, in the event any of the conditions precedent for the benefit of Optionee are not completely fulfilled and satisfied, then in addition to any other rights or remedies Optionee may have hereunder, Optionee may terminate this Agreement, in which event the Deposit shall be promptly returned to Optionee, and neither Party shall have any further obligation to the other except as otherwise provided in this Agreement.

III
INVESTIGATIONS

3.1 Scope and Schedule of Performance. For the period commencing as of the Effective Date and ending on the date on which "Final Approval" (as defined in Section 4.2 below) first occurs (the "**Final Approval Date**"), Optionor and Optionee shall, subject to the terms of Section 9.13 below, use commercially reasonable efforts to perform the respective actions set forth in **Exhibit "C"** attached hereto to entitle and permit the Project consistent with the schedule set forth in such exhibit (the "**Scope and Schedule of Performance**"); provided, however, that despite the commercially reasonable efforts of a party, the failure of an action to occur by the projected date set forth in the Scope and Schedule of Performance shall not constitute a breach of a covenant by such Party, and in no event shall any delay or failure to act by any third party governmental or quasi-governmental entity be deemed a breach of a covenant by such party.

3.2 Documents and Materials. Within three (3) business days following the Effective Date, the Optionor shall deliver copies of all documents associated with the Property including, without limitation, (a) any existing soils, environmental and building reports and engineering data pertaining to the Property and any architectural studies, structural/seismic reports, surveys, grading plans, topographical maps and similar data regarding the Property, and (b) a copy of all agreements or contracts affecting the Property, including any leases and occupancy agreements. Optionor shall cause the Title Company to provide Optionee, at Optionee's expense, with a current preliminary title report, copies of all documents referenced in such report and a map plotting all locatable easements (collectively, "**Title Report**") within ten (10) business days following the Effective Date.

3.3 Access to the Property. From and after the Effective Date, Optionee and/or Optionee's contractors, consultants, representatives, employees or agents shall have the right to enter the Property for purposes of conducting various studies and tests, including solar,

engineering, surveying, soils, geological and environmental, as Optionee, in Optionee's sole discretion, deems appropriate. All acts done on the Property by Optionee, or on behalf of Optionee, shall be performed at no expense to Optionor and in accordance with all applicable laws, rules and regulations. Optionee shall and does hereby agree: (a) to not allow any liens to be recorded against or to attach to the Property in connection with Optionee's inspection and investigation of the Property; and (b) to indemnify and hold harmless Optionor in accordance with Section 3.3(c) below. Prior to access by Optionee onto the Property, Optionee shall: (1) deliver to Optionor written evidence that Optionee has procured the insurance required under Section 3.3(a) below; and (2) to the extent practicable, provide Optionor with prior written or telephonic notice of any intended entry and in any event, give Optionor forty-eight (48) hours prior telephonic or written notice of any intended access which involves invasive testing or boring on the Property or which may result in any impairment of the use of any portion of the Property. In connection with Optionee's entry upon the Property pursuant to this Agreement, Optionee shall: (i) access the Property in a safe manner; (ii) conduct no invasive testing or boring without the written consent of Optionor, not to be unreasonably withheld, conditioned, or delayed which objection, to be valid, shall set forth the specific reasonable grounds for such objection and modifications to the proposed plans for testing that would render them acceptable to Optionor; (iii) allow no dangerous or hazardous condition created by Optionee or Optionee's agents to remain following such access; (iv) comply with all laws and obtain all permits required in connection with such access; and (v) restore the Property to substantially the same condition prior to any entry by Optionee, to the extent that the need for such restoration is caused by the acts of Optionee. In the event that Optionor fails to respond to a written request by Optionee to conduct invasive testing or boring as set forth in Section 3.3(ii) above within five (5) business days after receipt of such request, Optionee shall have the right to provide a second written request for approval stating in bold letters that Optionor's failure to respond within an additional period of five (5) business days shall be deemed to be approval. If Optionor's failure to respond continues for five (5) business days after receipt of a second written request for approval, the request for approval shall be deemed approved.

(a) Insurance. Prior to entering the Property, and without limiting Optionee's indemnification of Optionor during the term of this Agreement, Optionee shall deliver to Optionor a certificate of insurance naming Optionor as an additional insured (on a primary, non-contributing basis) evidencing commercial general liability insurance with limits of not less than Two Million Dollars ($2,000,000.00).

(b) Invasive Testing. Pursuant to Section 3.3, prior to conducting any tests, examinations, inspections, studies or the like on the Property which will be of an invasive nature, including without limitation a Phase II Environmental Site Assessment, Optionee shall first obtain the prior written consent of Optionor, not to be unreasonably withheld, conditioned, or delayed, and shall deliver to Optionor: (i) a proposal from the engineer who will perform the invasive testing (the "**Engineer**"), outlining the scope of such tests and studies; and (ii) in the event Optionee elects to obtain a Phase II Environmental Site Assessment, a certificate of insurance evidencing a policy of contractor pollution liability coverage naming the Engineer as insured, together with a copy of the endorsement to the corresponding policy naming Optionor as an additional insured, issued by an insurance company licensed to do business in California and having a rating of at least "A: VII" by A.M. Best Company, with a limit of at least $1,000,000 per occurrence, a deductible of not more than $25,000 and a copy of an endorsement to such policy

providing that such insurance coverage is primary and that any insurance maintained by Optionor shall be excess and noncontributory.

(c) Indemnification of Optionor. Optionee hereby agrees to protect, indemnify, defend (with counsel reasonably acceptable to Optionor) and hold Optionor and its officials, trustees, agents, representatives, consultants, contractors, and employees free and harmless from and against any and all claims, costs, expenses, losses, damages, liabilities, fees, fines and penalties (collectively, "**Claims**") to the extent resulting from Optionee's access of the Property or its exercise of its right of entry onto the Property pursuant to this Section 3.3, including any inspections, surveys, tests or studies performed by Optionee or its employees, consultants or contractors, except to the extent such claims result from the negligence or willful misconduct of Optionor or its agents, employees or representatives and provided that Optionee shall not be responsible for and the foregoing indemnity shall not cover any defects or negative information discovered as a result of Purchaser's access of the Property or its exercise of its right of entry onto the Property. Notwithstanding the foregoing, Optionee's indemnification with respect to the discharge of Hazardous Materials below, onto, or in the Property shall be governed by Section 3.3(e) below rather than this Section 3.3(c).

(d) Environmental Matters. As of the Effective Date and throughout the Option Term Optionee hereby covenants that it shall not permit itself or any of its third party contractors or consultants to use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon or affecting the Property in violation of any Environmental Law (as defined below).

(e) Indemnification of Optionor. Optionee hereby agrees to indemnify, defend (with counsel reasonably acceptable to Optionor) and hold harmless Optionor and its officials, trustees, agents, representatives, consultants, contractors, and employees from and against all judgments, suits, proceedings, liabilities, losses, costs, orders, obligations, damages, expenses or claims (whether by third parties or governmental authorities) to the extent arising out of or in any way relating to the release or discharge of Hazardous Materials, as defined below, onto or in the Property caused by the negligent acts or negligent omissions of Optionee, its agents, representatives or employees during its entry onto the Property pursuant to this Section 3.3; provided, however, that in no event shall Optionee be liable under this Section or any other provision of this Agreement for the discovery of any Hazardous Materials or the dispersion of any Hazardous Materials located upon, about, or beneath the Property that were not introduced onto or placed upon the Property by Optionee unless such dispersion is caused by negligence or willful misconduct of Optionee, its agents, representatives or employees.

(i) Scope of Indemnification. The indemnity obligation includes, but is not limited to, remedial, removal, response, abatement, cleanup, legal costs incurred by the indemnitor, investigative, and monitoring costs, penalties, fines and disbursements, (including, without limitations, reasonable attorneys', consultants', and experts' fees) of any kind whatsoever, which may at any time be imposed upon or incurred by any indemnitee under this Section arising, directly or indirectly: (i) from requirements of any federal, state or local environmental law; (ii) in connection with claims by governmental authorities or third parties related to the condition of the demised Property; and/or (iii) from the failure of any indemnitor under this Section to obtain, maintain, or comply with any environmental permit.

(ii) Hazardous Materials. The term "**Hazardous Materials**" means any substance, product, waste or other material of any nature whatsoever which is or becomes defined, listed, or regulated as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "solid waste," including any hazardous, toxic or dangerous substance, waste, containment, pollutant, gas or material, including, without limitation, gasoline, waste oil and other petroleum products and constituents thereof, which are now or may become regulated under any federal, state or local statute, regulation, ordinance or other law now or hereafter in effect, including, without limitation, any substance, waste or material which is now or hereafter: (i) designated as a "hazardous substance" under the Federal Water Pollution Control Act and/or the Comprehensive Environmental Response, Compensation and Liability Act; (ii) designated as a hazardous waste or regulated substance pursuant to the Resource Conservation and Recovery Act; (iii) designated or listed as a hazardous material under the Hazardous Material Transportation Act; or (iv) is in any way regulated under the following laws of the State of California: California Health & Safety Code (Section 25100, *et seq*., Section 25300, *et seq*., Section 39000, *et seq*.) and the California Porter Cologne Water Quality Control Act, California Water Code (Section 13000, *et seq*.) and all successor statutes thereto.

(iii) Environmental Laws. The term "Environmental Laws" means all applicable federal, state, and local environmental health and safety statutes, ordinances, codes, rules, regulations, orders, and decrees regulating, relating to or imposing liability or standards concerning, or in connection with, Hazardous Materials.

(f) Survival of Indemnities. All indemnities under this Section shall survive a termination of this Agreement.

(g) Compliance with Laws. In connection with its due diligence investigations of the Property, and in connection with its efforts to obtain the Project Entitlements, Optionee shall comply with all applicable laws, ordinances, and codes, including, without limitation, all applicable ordinances of the City of Dana Point.

3.4 Due Diligence/Title Conditions. Subject to Section 3.3 above, Optionee shall have until the expiration of the Option Term, as defined in Section 1.1 above, as extended, if applicable, ("**Option Expiration Date**") to: (i) conduct such inspections, investigations, tests and studies pertaining to the Property, including any Phase I and/or Phase II studies conducted thereon (subject however, to advance notice to Optionor and subject to such reasonable controls, conditions or requirements and indemnity obligations (including, without limitation, the requirements set forth in Section 3.3 hereof) and any other protocol that may be reasonably imposed with respect to; (ii) review and approve all documents and materials pertaining to the Property to be provided by Optionor to Optionee, including, without limitation, all engineering, soils, physical, geotechnical, environmental and other inspection reports in the possession of Optionor or under its control; (iii) negotiate with Optionor regarding those title and survey matters, if any, to remain as exceptions to the title insurance provided by the "Option Policy" and the "Leasehold Policy" (as those terms are defined in Section 3.6 below), subject to the terms of Section 3.5 below; and (iv) investigate the likelihood of issuance of the Project Entitlements on terms and conditions and in a time frame acceptable to Optionee.

3.5 Title Review. Optionee shall have until 5:00 p.m. (local time at the Property) on the date that is thirty (30) days after receipt of the Title Report (the "**Title Review Period**") to review and approve the Title Report. Unless Optionee gives Optionor written notice (a "**Title Objection Notice**") of Optionee's disapproval of any exceptions set forth in the Title Report prior to the expiration of the Title Review Period, Optionee shall be deemed to have approved of all such exceptions (other than Disapproved Exceptions, as defined below) and of the Title Report. If Optionee timely delivers a Title Objection Notice to Optionor, then Optionor may elect in its sole discretion, by giving written notice of such election to Optionee on or before the date that is ten (10) business days after Optionee's delivery of the Title Objection Notice (the "**Optionor Response Period**"), to cause such exception to be removed from title or endorsed over (subject to Optionee's approval of the form of endorsement in Optionee's reasonable discretion) on or prior to the Closing. Unless Optionor gives written notice to Optionee on or before the expiration of the Optionor Response Period that Optionor will cause such exception to be removed (or endorsed over, subject to the preceding sentence) from title on or prior to the Closing, Optionee shall have until the expiration of the Feasibility Period to either elect to accept title subject to such previously disapproved matter or to terminate this Agreement. If Optionee fails to notify Optionor in writing of its election prior to the expiration of the Feasibility Period, then Optionee shall be deemed to have elected to accept title subject to such previously disapproved matter. In the event that Optionor gives written notice to Optionee that Optionor will cause such disapproved matter to be removed (or endorsed over, subject to the terms hereof) from title on or prior to the Closing, then if Optionor fails to remove or endorse over such item, Optionee shall have the option of declaring Optionor in default hereunder or waiving Optionee's objection in writing and proceeding to the Closing.

Notwithstanding anything contained in this Agreement to the contrary, Optionor agrees, at its sole cost and expense, to cause all of the following to be removed from title prior to the Closing: any mortgage, deed of trust, or other instrument securing any financial obligation of any party (other than Optionee), any tax liens, abstracts of judgments, mechanics' liens or similar liens or encumbrances which require any monetary payment to remove or release, and any title exceptions reflected in a supplement to or update of the Title Report delivered after the expiration of the Feasibility Period (other than new title exceptions resulting from Optionee's actions) (collectively, the "**Disapproved Exceptions**").

3.6 Title Policies. Optionee shall have the right to obtain from the Title Company one or both of the following: (a) upon expiration of the Feasibility Period, a policy of title insurance, at Optionee's expense, together with any endorsements required by Optionee, insuring the Option and Optionee's rights under this Agreement, and showing the Option vested in Optionee ("**Option Policy**"), subject only to (i) title exceptions approved or deemed approved by Optionee pursuant to Section 3.5 above, (ii) non-delinquent real property taxes and special assessments, (iii) the Memorandum of Option, and (iv) any exceptions arising from Optionee's actions (collectively, the "**Permitted Exceptions**"); and (b) upon Optionee exercising its right to lease the Property, a policy of title insurance together with any endorsements required by Optionee, insuring the Lease and Optionee's leasehold estate in the Property, and showing such leasehold estate vested in Optionee ("**Leasehold Policy**"), subject only to the Permitted Exceptions (excluding the Memorandum of Option, but including the Memorandum of Lease). Optionor shall pay the premium charged by the Title Company to issue a standard coverage Leasehold Policy pursuant to Section 2.7(b) above, and Optionee shall pay the additional premium for ALTA extended coverage

and any title endorsements requested by Optionee, if applicable. Optionor agrees to cooperate in causing the Title Company to issue the Option Policy and the Leasehold Policy, including, without limitation, the recordation of the "Memorandum of Option" as defined in Section 9.14 below and recordation of the Memorandum of Lease at the Closing.

IV
PURSUIT OF PROJECT ENTITLEMENTS

4.1 Project Entitlements. Optionee shall have the right during the Option Term to apply for, process and obtain, at its sole cost and expense, all entitlements, development rights, permits, licenses, consents, and other discretionary approvals required for the development of Optionee's Project on the Property and the issuance of building permits and certificates of occupancy with respect thereto, including, without limitation, General Plan Amendment, Zoning Amendment, flood plain permit, Coastal Development Permit, Specific Site Plan, design review, height variance, tentative tract map, the final tract map, and the California Environmental Quality Act ("**CEQA**") Documentation, (collectively, the "**Project Entitlements**") with all applicable governmental agencies and utilities, and with any committee or holder of approval rights under recorded covenants affecting the Property (each an "**Approving Party**" and collectively, the "**Approving Parties**"). Optionor hereby agrees to cooperate with Optionee in connection with the processing of the Project Entitlements by Optionee, at no out-of-pocket cost to Optionor. Without limiting the generality of the foregoing, Optionor agrees, within ten (10) days after request by Optionee, to execute any applications, consents, letters, authorizations, documents, agreements and/or maps (collectively, "**Project Entitlement Documents**") which are reasonably required by Optionee or requested by any Approving Party to allow Optionee to process and obtain the Project Entitlements. In the event Optionor fails to execute any Project Entitlement Document within such ten (10) day period, then the Option Term shall be automatically extended on a day-for-day basis for each day of delay. Except as set forth above, Optionor shall have no affirmative duty to take any action to support the Project. Optionee, at its sole discretion, shall determine any requirements it deems necessary for acceptable Project Entitlements. For example, Optionee may seek approval of the Project without affordable housing requirements, no retail component requirements, and no extraordinary offsite improvements required for the Project. The foregoing shall not be construed to obligate Optionor to approve or issue any Project Entitlements, and Optionor reserves all of its governmental rights and powers in connection with the Project Entitlements. Optionee shall provide copies to Optionor of all submittals to Approving Parties associated with the Project Entitlements and all written responses received by Optionee, including, but not limited to, any document evidencing approval of any Project Entitlement. Optionee shall promptly reimburse Optionor from time to time after written demand from Optionor describing all reasonable out-of-pocket costs incurred by Optionor with regard to the Project prior to termination of the Option other than by reason of Optionee's exercise of the Option, not to exceed Fifty Thousand Dollars ($50,000) in the aggregate.

4.2 Final Approval. As used herein, the term "**Final Approval**" means that all of the Project Entitlements have been: (a) formally approved by the Approving Party or Approving Parties in a form and content and subject to conditions of approval reasonably acceptable to Optionee; and (b) any statutorily provided appeal and challenge periods (whether judicial, administrative or electoral) to protest the approval of the Project Entitlements have expired without an appeal being taken or challenge made, or (c) if any appeal is taken or any challenge to

the approval is made, the body ruling on the appeal or challenge shall have made a formal, final finding upholding approval of the Project Entitlements in a form and content and subject to conditions of approval reasonably acceptable to Optionee and all further appeal and challenge periods have expired without further appeal being taken or challenge being made. As set forth in the Lease attached as Exhibit "B," the monthly Rent to be paid by Optionee will depend on the number of residential units Optionee is authorized to develop on the Project.

4.3 Delivery of Project Site Information to Optionor. In the case of a decision by Optionee to Terminate this Agreement as described in Section 1.7 herein (but expressly excluding a termination of this Agreement as a result of Optionor's Default), Optionee shall transmit to Optionor within five (5) business days of a notification of termination, print and electronic copies of the last version of any and all site plans, building plans, engineering plans, landscape plans, testing information, technical studies, reports, renderings, and CEQA analysis documentation ("**Site Information**") prepared by the Optionee or its consultants in electronic format to be deposited in "DropBox" or another usable electronic data storage system, to be approved by Optionor. Optionee will also acknowledge in writing that the Optionor shall have full rights to utilize this Site Information or provide it to another party for the use is seeking entitlement of the Property, without any compensation due or payable from the Optionor or other parties. Notwithstanding the foregoing, (a) Site Information shall exclude all internal communications, attorney-client communications, attorney work product, internal budgets and financial projections of Optionee related to Optionee's Project, not otherwise provided, and (b) Optionee shall deliver the Site Information to Optionor on an "as-is" basis, without representation or warranty of any kind and without Optionor's right to rely on such information.

4.4 Grant of Dedications and Easements Within Property. Optionor acknowledges that the Approving Parties may require various dedications, covenants, easements and restrictions and other impositions on the Property affecting not only the leasehold interest to be acquired by Optionee upon exercise of the Option, but also Optionor's fee title to the Property, as conditions to Final Approval of the Project Entitlements. Provided Optionee exercises the Option, Optionor agrees to cooperate and join with Optionee in granting such interests in the Property required by the Approving Parties and consistent with the use of the Property for Optionee's Project without further consideration payable by Optionee to Optionor for doing so, but subject to Optionor's reasonable approval as to the form and content of such grant.

4.5 Failure to Obtain CEQA Approvals and Project Entitlements. Optionee agrees that Optionor shall be excused from its obligation to lease the Property to Optionee pursuant to the terms of this Agreement if and to the extent the necessary approvals under CEQA and the Project Entitlements are not obtained or are successfully challenged by any party during the Option Term. Notwithstanding the foregoing, in the event that Optionee is unable to obtain the necessary approvals under CEQA and the Project Entitlements and nevertheless elects to deliver an Exercise Notice to Optionor, Optionor shall have no right to terminate this Agreement pursuant to this Section 4.5, provided Optionee agrees in writing to indemnify, defend (with counsel reasonably acceptable to Optionor) and hold harmless Optionor and its officials, trustees and employees from and against all judgments, suits, proceedings, liabilities, losses, costs, orders, obligations, damages, expenses or claims to the extent arising out of Optionee's failure to obtain the necessary approvals under CEQA and the Project Entitlements.

V
REPRESENTATIONS AND WARRANTIES

5.1 Optionor Representations and Warranties. Optionor represents and warrants to Optionee that the following matters are true and correct as of the execution of this Agreement and as of the Closing:

(a) Authority. This Agreement and all the documents executed by Optionor which are to be delivered to Optionee pursuant to the terms of this Agreement and the Lease are and/or will be duly authorized, executed, and delivered by Optionor, and will not violate any provisions of any agreement to which Optionor is a party or to which it or the Property is subject.

(b) Legal Proceedings. Optionor has not been served with any legal proceedings or actions of any kind or character affecting the Property or any portion thereof or Optionor's interest therein or affecting this Agreement, and to the best of Optionor's actual knowledge with no duty to investigate, no such legal proceedings or actions have been threatened against Optionor.

(c) Required Actions. All requisite action has been taken by Optionor, under the California Education Code or otherwise, in connection with the entering into this Agreement and the instruments referenced herein (including, without limitation, the Lease), and the consummation of the transaction contemplated thereby. No consent of any partner or other party is required hereunder.

(d) No Conflicts. Neither the execution and delivery of this Agreement and the documents and instruments referenced herein (including, without limitation, the Lease), nor the incurrence of the obligations set forth therein, nor the consummation of the transaction contemplated therein, nor compliance with the terms of this Agreement and the documents and instruments referenced herein (including, without limitation, the Lease) conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Optionor is a party or affecting the Property.

(e) Title. To the best of Optionor's actual knowledge with no duty to investigate, Optionor owns fee title to the Property free and clear of all liens, encumbrances, covenants, restrictions, easements, leases or other matters affecting title, other than recorded title exceptions, which may impair Optionee's ability to develop, lease, use and enjoy the Property for uses contemplated by the Lease. Optionor has not granted any leases, licenses, options or rights of first refusal to any other party.

(f) Condition of Property. Subject to the granting of the Project Entitlements, to the current actual knowledge of the Optionor, with no duty to investigate, there are no physical conditions and/or impediments affecting the Property that would now, or in the future, have the effect of impairing or prohibiting, in any way, Optionee's contemplated use of the Property. Such referenced conditions may include, but shall not be limited to: (i) rights of any other party to the use or occupancy of the Property, (ii) enacted, pending or proposed condemnation proceedings,

(iii) subsurface soils conditions, or (iv) current or proposed plans to alter access to the Property from any surrounding public thoroughfares or private access ways.

(g) Hazardous Materials. Except as set forth in Section 6.6 below, to the best of Optionor's actual knowledge, with no duty to investigate, no Hazardous Materials have been used, generated, manufactured, stored or disposed of on, under or about the Property or transported to or from the Property, and Optionor has no knowledge of the presence, use, treatment, storage, release or disposal of any Hazardous Materials at, on, upon or beneath the Property. Additionally, no notice has been received by or on behalf of Optionor from, and Optionor has no knowledge that notice has been given to any predecessor, Optionor or operator of the Property by, any governmental entity or any person or entity claiming any violation of, or requiring compliance with any Environmental Law for any environmental damage in, on, under, upon or affecting the Property.

(h) No Violation of Laws. There are no violations of any federal, state, regional or local law, ordinance or other governmental rule or regulation pertaining to the Property.

(i) Documents and Materials. Optionor has delivered to Optionee true, correct and complete copies of all documents and materials in its possession or control concerning the physical condition of the Property.

5.2 Optionee Representations and Warranties. Optionee represents and warrants to Optionor that the following matters are true and correct as of the execution of this Agreement and as of the Closing:

(a) Organization; Authority. Optionee is duly organized, validly existing, and in good standing under the laws of the state of its formation. Optionee has the full power and authority to execute, deliver and perform its obligations under this Agreement.

(b) Authorization; Validity. This Agreement and all agreements, instruments and documents herein provided to be executed by Optionee are and as of the exercise of the Option will be duly authorized, executed and delivered by and are and will be binding upon Optionee.

5.3 Indemnity.

(a) Optionee Indemnity. Optionee shall indemnify, defend (with counsel reasonably acceptable to Optionor), protect and hold Optionor harmless from and against all claims, losses, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees and court costs) to the extent arising from the inaccuracy or breach of any representation or warranty by Optionee in this Agreement. Such indemnification shall be binding upon the successors and assigns of Optionee and inure to the benefit of Optionor, its members, and each of their successors and assigns for a period ending one (1) year following the Closing or earlier termination of this Agreement.

(b) Optionor Indemnity. Optionor shall indemnify, defend (with counsel reasonably acceptable to Optionee), protect and hold Optionee harmless from and against all claims, losses, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees and court costs) to the extent arising from the inaccuracy or breach of any

representation or warranty by Optionor in this Agreement. Such indemnification shall be binding upon the successors and assigns of Optionor and inure to the benefit of Optionee, its members, and each of their successors and assigns for a period ending one (1) year following the Closing or earlier termination of this Agreement.

5.4 Survival. The representations, warranties and covenants of Optionor and Optionee under this Section shall survive the Closing or earlier termination of this Agreement for a period of one (1) year.

VI
COVENANTS OF OPTIONOR

Optionor hereby covenants with Optionee, as follows:

6.1 Transfers. No part of the Property, or any interest therein, shall be leased, subleased, licensed, assigned, liened, encumbered in any manner or otherwise transferred by Optionor without the prior written approval of Optionee, which approval shall not be unreasonably withheld, it being agreed that Optionee shall be reasonable in withholding its approval of such transfer if such transfer (a) increases the risk of a material adverse change to the physical condition of all or any part the Property; (b) adversely impacts the economic feasibility of the Project and/or inhibits the likelihood of obtaining the Project Entitlements; (c) does not automatically terminate or expire prior to expiration of the Option Term; or (d) results in the need for Optionor to obtain the approval of any other party to Optionor's issuance of any consent or approval contemplated hereunder, or to Optionor entering into an amendment to this Agreement or to Optionee processing and obtaining the Project Entitlements.

6.2 No New Contracts. During the Option Term, Optionor shall not, without the prior written consent of Optionee (which consent Optionee may withhold in its sole discretion), enter into any contract, easement or agreement affecting or relating to the Property or any portion thereof.

6.3 Notice of Changes. During the Option Term, Optionor shall promptly notify Optionee in writing of any (a) notice or communication from any party concerning any threatened, pending or actual litigation or bankruptcy relating to Optionor or the Property or the Project; (b) event or circumstance which makes any representation or warranty of Optionor to Optionee under this Agreement materially untrue or misleading, and of any covenant of Optionor under this Agreement which Optionor will be incapable of performing or less likely to perform. In any such event, Optionee may terminate this Agreement, in which event the Deposit shall be promptly returned to Optionee, and neither Party shall have any further obligation to the other except as otherwise provided in this Agreement.

6.4 Condition of Property. During the Option Term, Optionor shall not undertake or permit any actions that would result in a material or adverse change in (i) the physical condition of the Property or (ii) the condition of title to the Property, other than the changes specifically authorized by the terms of this Agreement. During the Option Term, Optionor shall comply with any applicable laws, ordinances, rules and regulations affecting the Property and shall pay all assessments levied against the Property prior to such amounts being delinquent.

6.5 Material Adverse Changes. Except as otherwise permitted in the Agreement, if (i) Optionor encumbers the Property, or any portion thereof, in violation of this Agreement, (ii) the physical condition of the Property or the condition of title adversely changes from that existing on the Effective Date (other than as specifically provided in this Agreement), (iii) Optionor fails to remove from title any exceptions which Optionor agreed in writing to remove (including, without limitation, all Disapproved Exceptions), (iv) Optionor fails to satisfy any of its obligations described above, or (v) there is a material breach of any representation or warranty of Optionor set forth in this Agreement, Optionor shall be in default and Optionee shall be entitled to exercise all rights and remedies available to Optionee in accordance with Section 7.2 hereof.

6.6 Hazardous Materials; Removal of Underground Storage Tanks. Optionor shall not permit itself or any third party to use, generate, handle, store or dispose of any Hazardous Materials in, on under, upon, or affecting the Property in violation of any Environmental Law and shall promptly notify Optionee in writing of Optionor's receipt of any notice or information that would cause the representations and warranties of Optionor in Section 5.1(g) above to no longer be true and correct. Prior to the end of the Option Term, Optionor hereby agrees, at its sole cost and expense, to: (a) take all actions necessary and appropriate to remove the existing underground storage tanks (the "**Storage Tanks**") from the Property in accordance with Environmental Laws; and (b) perform all remediation required by all applicable Environmental Laws in connection with the Removal of the Storage Tanks ("**Environmental Remediation**") and obtain all required closures, no further action letters and/or approvals ("**Government Approvals**") with respect to the Environmental Remediation from all federal, state or local governmental bodies, agencies and authorities having jurisdiction over the Property. Optionor hereby agrees to indemnify, defend (with counsel reasonably acceptable to Optionee) and hold harmless Optionee and its officers, directors and employees from and against all suits, proceedings, liabilities, losses, costs, judgments, orders, obligations, damages, expenses or claims (whether by third parties or governmental authorities) arising out of Optionor's failure to fully comply with the terms of this Section 6.6. The terms of Section 3.3(e)(i) (Scope of Indemnification) above shall apply to Optionor's obligations hereunder. The indemnity under this Section shall survive the Closing and the termination of this Agreement.

VII
REMEDIES

7.1 Optionor's Remedies; Liquidated Damages. IF OPTIONEE FAILS TO PERFORM ANY MATERIAL OBLIGATION UNDER THIS AGREEMENT AND DOES NOT CURE SUCH FAILURE OR COMMENCE AND DILIGENTLY PURSUE SUCH CURE AFTER OPTIONOR HAS GIVEN OPTIONEE THIRTY (30) DAYS PRIOR WRITTEN NOTICE ("**OPTIONEE'S DEFAULT**"), THEN UPON WRITTEN NOTICE FROM OPTIONOR, OPTIONOR SHALL BE ENTITLED TO RETAIN THE AMOUNT OF THE DEPOSIT PAID TO OPTIONOR AT SUCH TIME AS LIQUIDATED DAMAGES FOR OPTIONEE'S DEFAULT AS OPTIONOR'S SOLE AND EXCLUSIVE REMEDY. THE PARTIES AGREE THAT, BASED UPON CIRCUMSTANCES NOW EXISTING, KNOWN AND UNKNOWN, IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX OPTIONOR'S ACTUAL DAMAGES BY REASON OF OPTIONEE'S DEFAULT, THAT THE FOREGOING AMOUNT IS A REASONABLE ESTIMATE OF THESE DAMAGES, AND THAT OPTIONOR SHALL RETAIN THE DEPOSIT RECEIVED BY OPTIONOR AT SUCH

TIME AS OPTIONOR'S SOLE AND EXCLUSIVE REMEDY, AT LAW OR IN EQUITY, FOR OPTIONEE'S DEFAULT. OPTIONOR HEREBY WAIVES ANY RIGHT THAT OPTIONOR MAY HAVE TO RECOVER ANY OTHER DAMAGES OR TO EXERCISE ALL OTHER REMEDIES AVAILABLE AT LAW OR IN EQUITY INCLUDING WITHOUT LIMITATION ANY AND ALL RIGHTS OPTIONOR WOULD OTHERWISE HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3389 TO SPECIFICALLY ENFORCE THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF THIS SECTION 7.1 AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.

_____ _____

Optionor's Initials Optionee's Initials

7.2 Optionee's Remedies; Liquidated Damages. IF OPTIONOR FAILS TO PERFORM ANY MATERIAL OBLIGATION UNDER THIS AGREEMENT AND DOES NOT CURE SUCH FAILURE OR COMMENCE AND DILIGENTLY PURSUE SUCH CURE TO COMPLETION AFTER OPTIONEE HAS GIVEN OPTIONOR THIRTY (30) DAYS PRIOR WRITTEN NOTICE ("**OPTIONOR'S DEFAULT**"), THEN OPTIONEE SHALL BE ENTITLED TO RECOVER FROM THE OPTIONOR A SUM EQUAL TO ALL DEPOSITS AND ALL EXTENSION PAYMENTS PREVIOUSLY PAID BY OPTIONEE; PLUS (II) "OPTIONEE'S COSTS". THE TERM "**OPTIONEE'S COSTS**" MEANS ALL ACTUAL DOCUMENTED FEES, COSTS AND/OR EXPENSES INCURRED BY OPTIONEE IN CONNECTION WITH (A) THE ACQUISITION AND DOCUMENTATION OF THIS OPTION AGREEMENT, (B) OPTIONEE'S DUE DILIGENCE INVESTIGATION OF THE PROPERTY, (C) ENTITLEMENT OF THE PROPERTY AND ACQUISITION OF CEQA AND OTHER APPROVALS FOR THE PROPERTY PROCESSED BY OR AT THE EXPENSE OF OPTIONEE; (D) ALL CONSULTANTS FEES, COSTS AND EXPENSES INCURRED IN CONNECTION WITH THE STUDIES, TESTS, MAPS, TITLE, PLANS, SPECIFICATIONS, WORKING DRAWINGS, CONSTRUCTION DOCUMENTS, DESIGNS, MARKETING, TRAFFIC AND OTHER ANALYSIS AND MATERIALS RELATING TO THE PROPERTY AND ITS ENTITLEMENT, DEVELOPMENT, ACQUISITION AND/OR IMPROVEMENT; (E) ALL PROCESSING, PLANNING, DEVELOPMENT, IMPACT AND PERMIT FEES PAID TO THE CITY AND OTHER GOVERNMENTAL AGENCIES IN CONNECTION WITH THE PROPERTY; AND (F) ALL LOAN COMMITMENT AND OTHER FEES AND EXPENSES RELATING TO THE PROPOSED FINANCING OF THE DEVELOPMENT AND CONSTRUCTION OF THE IMPROVEMENTS; THE OPTIONEE'S COSTS SHALL BE LIMITED TO THE SPECIFIC ACTUAL COSTS INCURRED BY OPTIONEE AS DEFINED HEREIN AND SUPPORTED BY VERIFIABLE DOCUMENTATION SUBMITTED TO OPTIONOR. SUBJECT TO THE TERMS HEREOF, IN NO EVENT SHALL THE OPTIONEE'S COSTS DESCRIBED IN THIS SECTION EXCEED THE AMOUNT OF FIVE HUNDRED THOUSAND DOLLARS ($500,000) (THE "**OPTIONEE COST CAP**"), AND SUCH COSTS SHALL NOT INCLUDE ANY SPECIAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS, PUNITIVE DAMAGES, OR ANY OTHER DAMAGES OR COSTS OF LIKE KIND OR NATURE, ALL OF WHICH OPTIONEE AGREES AND UNDERSTANDS ARE NOT RECOVERABLE UNDER THE TERMS OF THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, IN THE EVENT OF AN INTENTIONAL OR WILLFUL BREACH OF THIS AGREEMENT BY OPTIONOR, THE OPTIONEE COST CAP

SHALL BE AUTOMATICALLY INCREASED TO ONE MILLION DOLLARS ($1,000,000). THE PARTIES AGREE THAT, BASED UPON CIRCUMSTANCES NOW EXISTING, KNOWN AND UNKNOWN, IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX OPTIONEE'S ACTUAL DAMAGES BY REASON OF OPTIONOR'S DEFAULT, THAT THE FOREGOING AMOUNT IS A REASONABLE ESTIMATE OF THESE DAMAGES, AND THAT OPTIONEE SHALL BE REPAID THE SUM OF (a) ALL DEPOSITS AND ALL EXTENSION PAYMENTS PAID TO OPTIONOR; PLUS (b) THE FULL AMOUNT OF OPTIONEE'S COSTS AS DEFINED HEREIN, AS OPTIONEE'S SOLE AND EXCLUSIVE REMEDY, AT LAW OR IN EQUITY, FOR OPTIONOR'S DEFAULT. OPTIONEE HEREBY WAIVES ANY RIGHT THAT OPTIONOR MAY HAVE TO RECOVER ANY OTHER DAMAGES OR TO EXERCISE ALL OTHER REMEDIES AVAILABLE AT LAW OR IN EQUITY INCLUDING WITHOUT LIMITATION ANY AND ALL RIGHTS OPTIONEE WOULD OTHERWISE HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3389 TO SPECIFICALLY ENFORCE THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF THIS SECTION 7.2 AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.

_____ _____

Optionor's Initials Optionee's Initials

VIII
RESERVED

IX
MISCELLANEOUS

9.1 Notices. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be sent to and from the Parties shall be in writing and shall be deemed duly served and given by deposit in the United States mail, certified, return receipt requested, by email with confirmation of receipt by return email, with delivery confirmation by overnight courier, or by overnight courier, return receipt, addressed to the following address:

To Optionor: CAPISTRANO UNIFIED SCHOOL DISTRICT
Attn: Clark Hampton, Deputy Superintendent
33122 Valle Road
San Juan Capistrano, CA 92675
Email: cdhampton@capousd.org

With Copy to: Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive South, Suite 300
Cerritos, California 90703
Attention: Andreas C. Chialtas
Email: achialtas@aalrr.com

To Optionee: Toll Bros., Inc.
250 Gibraltar Road
Horsham, PA 19044
Attn: Mark J. Warshauer, Esq., Senior Vice President and Counsel
Email: mwarshauer@tollbrothers.com

Toll Bros., Inc.
250 Gibraltar Road
Horsham, PA 19044
Attn: Charles Elliott, Managing Director
Email: celliott@tollbrothers.com

and

Jackson Tidus
2030 Main Street, 12th Floor
Irvine, California 92614
Attn: Andrew P. Bernstein, Esq.
E-mail: abernstein@jacksontidus.law

The date of notice shall be the date marked on the return receipt or with the date on which the electronic confirmation of receipt is received.

9.2 Brokers and Finders. Optionor and Optionee agree to each individually pay their respective brokers and that such payment shall be paid per separate agreement, if any. If any claims for brokers' or finders' fees arise for the consummation of this Agreement, then Optionee hereby agrees to indemnify, save harmless and defend Optionor from and against such claims if they shall be based upon any statement or representation or agreement by Optionee, and Optionor hereby agrees to indemnify, save harmless and defend Optionee if such claims shall be based upon any statement, representation or agreement made by Optionor. The provisions of this Paragraph shall survive the termination of this Agreement.

9.3 No Assignment. Optionee shall have no right to assign or transfer its rights or obligations under this Agreement to any other person or entity, without the express written consent of Optionor, which consent may be withheld by Optionor in its sole and absolute discretion. Notwithstanding the foregoing, Optionee shall have the right to assign, transfer or convey its rights or obligations under this Agreement to an entity that owns, is owned or controlled by, or is under common control with Optionee (as shown by reasonable written evidence delivered to Optionor) without the consent of Optionor.

9.4 Amendments. This Agreement may be amended or modified only by a written instrument executed by the parties hereto.

9.5 Interpretation. Words used in the singular number shall include the plural, and vice-versa, and any gender shall be deemed to include each other gender. The captions and

headings of the Articles and Paragraphs of this Agreement are for convenience of reference only, and shall not be deemed to define or limit the provisions hereof.

9.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

9.7 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the Option and the lease of the Property by Optionee and supersedes all prior agreements and understandings between the parties hereto relating to the subject matter hereof.

9.8 Severability. If any provision or provisions, or if any portion of any provision or provisions, in this Agreement is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Agreement to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Optionor and Optionee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Agreement shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Optionor and Optionee under the remainder of this Agreement shall continue in full force and effect.

9.9 Counterparts. This Agreement may be executed in one or more counterparts, including the transmission of counterparts via facsimile or electronic mail, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

9.10 No Liability of Optionee. Optionee shall have no liability to any third parties with respect to any matters arising out of, or pertaining to, the Property.

9.11 Eminent Domain. Optionor shall promptly notify Optionee in writing of any condemnation proceeding commenced during the Option Term against the Property, or any portion thereof. If any such proceeding relates to or may result in the loss of any portion of the Property, Optionee may elect either to: (a) terminate this Agreement, in which event the Deposit shall be returned to Optionee and neither party shall have any further rights or obligations under this Agreement, or (b) continue this Agreement in effect, in which event, Optionee shall be entitled to make a claim for such portion of any compensation, awards, or other payments or relief attributable to its interest in the Property and resulting from such condemnation proceedings (and Optionor agrees to support Optionee in making such claim).

9.12 Legal Fees. Subject to the terms of Section 9.19 below, if either Party hereto brings an action against the other by reason of the breach of any covenant, provision or condition hereof, or otherwise arising out of or in connection with this Agreement, the prevailing Party shall entitled to recover from the other all reasonable attorney's fees and costs actually incurred in connection with the action. The prevailing Party in any such action shall be entitled, in addition to and separately from the amounts recoverable hereunder, to the payment by the losing Party of the prevailing Party's reasonable attorneys' fees, expert witness fees, court costs and litigation expenses incurred in connection with (a) any appellate review of the judgment rendered in such

action or of any other ruling in such action, and (b) any proceeding to enforce a judgment in such action. It is the intent of the parties that the provisions of this Section 9.12 be distinct and severable from the other rights of the parties under this Agreement, shall survive the entry of judgment in any action and shall not be merged into such judgment.

9.13 Force Majeure. Should the performance of any act required or permitted by this Agreement to be performed be prevented or delayed by reason of (a) any act of God, (b) strike, lockout, labor trouble, or inability to secure materials, (c) moratorium on building, construction or planning approvals, or other restrictive governmental laws or regulations which prohibit or effectively prohibit performance, (d) litigation and/or challenges to any Project Entitlements or permits (collectively, "**Project Challenges**"), or (e) any other cause except financial inability not the fault of the party required to perform the act, then the time for performance of the act and the Option Term will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused; provided, however, that (i) with respect to a Project Challenge (x) the Option Term will only be extended if Optionee is diligently contesting and/or pursuing a resolution of such Project Challenge, and (y) in no event shall the Option Term be extended due to Project Challenges for a period in excess of an aggregate of three (3) years; and (ii) nothing contained in this section shall excuse the prompt payment by Optionee when due and payable under the terms of this Agreement, the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act, or the delivery of possession of the Property by Optionor to Optionee as required by this Agreement and the Lease.

9.14 Recordation of Memorandum of Option. On or before Optionee's payment of the Initial Deposit, Optionor and Optionee shall each execute (and have acknowledged) and deliver to Escrow Holder a memorandum of this Agreement in the form attached hereto as **Exhibit "E"** ("**Memorandum of Option**"). Upon written request of Optionee, Escrow Holder shall record the Memorandum of Option against the Property in the Official Records of Orange County, California. In the event that this Agreement terminates for any reason (other than Optionor's default) prior to the parties' entering into the Lease, Optionee shall, upon written request from Optionor, execute a commercially reasonable quitclaim deed or similar instrument requested by Optionor as is necessary to cause the Memorandum of Option to be removed from title to the Property.

9.15 Successors and Assigns. Subject to Section 9.3 above, the rights and obligations of the parties under this Agreement shall be binding upon the parties' respective successors and assigns.

9.16 Performance on Non-Business Day. Unless otherwise stated, the term "day" shall mean "calendar day". If the time period for the performance of any act called for under this Agreement occurs or expires on a Saturday, Sunday, or any other day in which banking institutions in the State of California are authorized or obligated by law or executive order to close ("**Holiday**"), the act in question may be performed on the next succeeding day that is not a Saturday, Sunday, or Holiday.

9.17 Business Day. The term "business day" shall mean any day Monday through Friday, other than a Holiday.

9.18 Joint Effort. Preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not be construed more severely against one of the parties than against the other.

9.19 Judicial Reference. The Parties agree that any disputes between them arising out of, related to or in connection with this Agreement or any other document relating to the subject matter of this Agreement shall be heard and resolved by a referee under the provisions of the California Code of Civil Procedure, Sections 638 – 645.1, inclusive (as same may be amended, or any successor statute(s) thereto) (the "**Referee Sections**"). Any fee to initiate the judicial reference proceedings shall be paid by the Party initiating such procedure; provided however, that the costs and fees, including any initiation fee, of such proceeding shall ultimately be borne in accordance with Section 9.19(b) below. The venue of the proceedings shall be in the county in which the Property is located.

(a) Appointment of Referee(s). Within 10 days of receipt by any Party of a written request to resolve any dispute or controversy pursuant to this Section 9.19, the Parties shall agree upon a single referee who shall try all issues, whether of fact or law, and report a finding and judgment on such issues as required by the Referee Sections. If the Parties are unable to agree upon a referee within such 10 day period, then any Party may thereafter file a lawsuit in the county in which the Property is located for the purpose of appointment of a referee under California Code of Civil Procedure Sections 639 and 640, as same may be amended or any successor statute(s) thereto. If the referee is appointed by the court, the referee shall be a neutral and impartial retired judge with substantial experience in the relevant matters to be determined, from Jams/Endispute, Inc., the American Arbitration Association or similar mediation/arbitration entity. The proposed referee may be challenged by any Party for any of the grounds listed in Section 641 of the California Code of Civil Procedure, as same may be amended or any successor statute(s) thereto.

(b) Powers of Referee. The referee shall have the power to decide all issues of fact and law and report his or her decision on such issues, and to issue all recognized remedies available at law or in equity for any cause of action that is before the referee, including an award of attorneys' fees and costs in accordance with California law. The referee shall not, however, have the power to award punitive damages, nor any other damages which are not permitted by the express provisions of this Agreement, and the Parties hereby waive any right to recover any such damages. The referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge, with rights to regulate discovery and to issue and enforce subpoenas, protective orders and other limitations on discovery available under California law; provided, however, that the referee shall limit discovery to that which is essential to the effective prosecution or defense of the action, and in no event shall discovery by either Party include more than one non-expert witness deposition unless both Parties otherwise agree.

(c) Conduct of Proceeding. The reference proceeding shall be conducted in accordance with California law (including the rules of evidence), and in all regards, the referee shall follow California law applicable at the time of the reference proceeding. In accordance with Section 644 of the California Code of Civil Procedure, the decision of the referee upon the whole issue must stand as the decision of the court, and upon the filing of the statement of decision with the clerk of the court, or with the judge if there is no clerk, judgment may be entered thereon in the same manner as if the action had been tried by the court.

(d) Cooperation. The Parties shall promptly and diligently cooperate with one another and the referee, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute or controversy in accordance with the terms of this Section 9.19. To the extent that no pending lawsuit has been filed to obtain the appointment of a referee, any Party, after the issuance of the decision of the referee, may apply to the court of the county in which the Property is located for confirmation by the court of the decision of the referee in the same manner as a petition for confirmation of an arbitration award pursuant to Code of Civil Procedure Section 1285 et seq. (as same may be amended or any successor statute(s) thereto).

9.20 Further Assurances. Each of the Parties agrees to cooperate in good faith with each other, and to execute and deliver such further documents and perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions contemplated under this Agreement. This Section shall survive the Closing.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the Effective Date.

OPTIONOR:	OPTIONEE:
CAPISTRANO UNIFIED SCHOOL DISTRICT	TOLL BROS, INC., a Pennsylvania corporation
By:_____	By: _____
Print Name: _Clark Hampton_____	Print Name: _____
Title: __Deputy Superintendent_____	Title: _____

Attest:

_____

Approved as to form:

_____
Andreas C. Chialtas,
Atkinson, Andelson, Loya, Ruud & Romo,
Counsel for Capistrano Unified School District

EXHIBIT "A"

DESCRIPTION OF PROPERTY

EXHIBIT "B"

FORM OF LEASE

[See Attached]

EXHIBIT "C"

SCOPE AND SCHEDULE OF PERFORMANCE

ACTIVITY DESCRIPTION	PROJECTED DATE
Option Agreement Executed / Start of 24 Month Option Term	January 2019
Open Escrow and Initial Deposit	January 2019
Start of Feasibility Period	January 2019
End of Feasibility Period / Additional Deposit to Escrow	April 2019
Kick Off Entitlements	April 2019
Circulate CEQA Documents / Studies	March 2020
End of 24 Month Option Term / Optionee Exercises Option	January 2021

EXHIBIT “D”

OWNER’S AFFIDAVIT

(First American form to be attached)

EXHIBIT "E"

Memorandum of Option

(See Attached)

MEMORANDUM OF OPTION
RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CAPISTRANO UNIFIED SCHOOL DISTRICT
Attn: Clark Hampton, Deputy Superintendent,
Business and Support Services
33122 Valle Road
San Juan Capistrano, CA 92675

With a copy to:

Toll Bros., Inc.
250 Gibraltar Road
Horsham, PA 19044
Attn: Mark J. Warshauer, Esq., Vice President and Counsel

_____

(Space Above For Recorder's Use)

MEMORANDUM OF GROUND LEASE OPTION

THIS MEMORANDUM OF GROUND LEASE OPTION (the "Memorandum") dated as of _____, 2018 (the "Grant Date") is entered into by and between CAPISTRANO UNIFIED SCHOOL DISTRICT, a public school district duly organized and validly existing under the Constitution and the laws of the State of California ("Optionor"), and TOLL BROS, INC., a Pennsylvania corporation ("Optionee").

WHEREAS, Optionor and Optionee are the parties to an Option to Lease Real Property dated as of the Grant Date ("Option Agreement") which grants an option to ground lease the real property legally described in Exhibit "A" attached hereto (the "Premises").

NOW THEREFORE, the parties hereby agree as follows:

1. Grant of Option. Optionor hereby grants to Optionee an option to ground lease the Premises (the "Option") on all of the terms and conditions described in the Option Agreement for a term commencing on the Grant Date and ending on the first to occur of the following: ***[Must add the terms which are finalized per the final Option Agreement]*** _____) (the "Option Period"), subject to two (2) one hundred eighty day extension periods (each, an "Extension Period") upon payment of the extension payments and satisfaction of the other conditions provided in the Option Agreement.

2. Termination of Option. Unless the Option is validly exercised by Optionee during the Option Period (as the same may be extended), this Memorandum shall terminate ten (10) days after expiration of the Option Period (or after the Extension Periods if the Option Period has been timely extended in accordance with the Option Agreement), and be of no effect against the persons who would otherwise be affected by it under California Civil Code Sections 1213 to 1220, inclusive, as those sections may hereafter by amended, or otherwise, and anyone taking title to or an interest in

the Premises after that date may conclusively presume that any and all interest in the Premises created by the Option Agreement or the Lease described therein, or otherwise held by Optionee, has been fully relinquished and extinguished.

3. Purpose of Memorandum; Conflict. This Memorandum is prepared and recorded for the purpose of putting the public on notice of the Option Agreement, and this Memorandum in no way modifies the terms and conditions of the Option Agreement. In the event of any inconsistency between the terms and conditions of this Memorandum and the terms and conditions of the Option Agreement, the terms and conditions of the Option Agreement shall control.

4. Counterparts. This Memorandum may be executed in counterparts, each of which shall constitute an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Memorandum has been executed as of the Grant Date.

OPTIONOR:

CAPISTRANO UNIFIED SCHOOL DISTRICT

By: _____
Name: Clark Hampton
Title: Deputy Superintendent

OPTIONEE:

TOLL BROS, INC.,
a Pennsylvania corporation

By: _____
Name: _____
Title: _____

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

State of California)
County of Orange)

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

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

WITNESS my hand and official seal.

Signature_____

(Seal)

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

State of California)
County of Orange)

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

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

WITNESS my hand and official seal.

Signature_____

(Seal)

EXHIBIT “A”

DESCRIPTION OF PREMISES

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

GROUND LEASE

Between

CAPISTRANO UNIFIED SCHOOL DISTRICT

Landlord

and

TOLL BROS., INC.

Tenant

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GROUND LEASE

This Ground Lease ("**Lease**") is entered into as of _____, ("**Effective Date**") by and between **CAPISTRANO UNIFIED SCHOOL DISTRICT**, a public school district duly organized and validly existing under the Constitution and the laws of the State of California ("**Landlord**") and **TOLL BROS., INC.**, a Pennsylvania corporation ("**Tenant**").

RECITALS

A. Landlord owns approximately 5.51 gross acres of land located at 26126 Victoria Blvd., in Dana Point, California 92624, more commonly known as the South Bus Yard property more particularly described on Exhibit "A" attached hereto, together with all rights, easements and other appurtenances (collectively, the "**Premises**").

B. Tenant desires to lease the Premises for the purpose of redeveloping the Premises with a multi-family residential development together with associated recreational facilities and other improvements that may be constructed by Tenant from time to time (collectively, the "**Improvements**"), for the rent and on the terms and conditions set forth in this Lease.

C. Landlord and Tenant are both signatories to that certain Option to Lease Real Property (the "**Option Agreement**") dated as of _____, 2018.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions herein contained, the parties hereto agree as follows:

ARTICLE 1.
LEASE OF PREMISES AND TERM OF LEASE

Section 1.1 Demise of Premises. Landlord hereby leases the Premises to Tenant and Tenant hereby leases the Premises from Landlord, on the terms and conditions set forth in this Lease.

Section 1.2 Delivery of Possession. Possession of the Premises shall be delivered by Landlord to Tenant upon the Effective Date, subject only to the "Permitted Exceptions" (as that term is defined in the Option Agreement). Any and all improvements of any type located on or under the Premises as of the Effective Date shall be the property of Tenant and may be removed, used or demolished by Tenant, as Tenant may determine.

Section 1.3 Term. The term of this Lease (the "**Term**") shall commence on the Effective Date and shall terminate ninety-nine (99) years after the Effective Date. The "Memorandum of Lease" as defined in Section 15.10 below, shall be executed and acknowledged by both Landlord and Tenant and recorded in the Official Records of Orange County, California no later than five (5) days following the Effective Date.

ARTICLE 2.
RENT

Section 2.1 Annual Rent. Tenant agrees to pay to Landlord for the use and occupancy of the Premises, annual fixed rent ("**Annual Rent**") in the following amounts:

(a) The Annual Rent during Years 1, 2, and 3 of the Term shall be ONE MILLION DOLLARS ($1,000,000) per year. Pursuant to the Option Agreement, Tenant shall receive a credit against Annual Rent due in Years 1 and 2 of the Term as follows: (i) Tenant shall receive a credit of ONE MILLION DOLLARS ($1,000,000) against Annual Rent due in Year 1, so that no Annual Rent will be due in Year 1; and (ii) Tenant shall receive a credit of THREE HUNDRED THOUSAND DOLLARS ($300,000) against Annual Rent due in Year 2, which credit shall be applied against the first monthly installments of Annual Rent due during Year 2 pursuant to Section 2.3 below until such credit has been exhausted.

(b) The Annual Rent during Year 4 of the Term shall be ONE MILLION FIVE HUNDRED THOUSAND DOLLARS ($1,500,000).

(c) Based on the current estimate (the "**Approved Unit Estimate**") that there will be 425 approved market-rate units in the Project (as defined in Section 3.1 below) (each, an "**Approved Unit**"), the parties agree that the Annual Rent established for Year 5 of the Term will be THREE MILLION ONE HUNDRED FIFTY THOUSAND DOLLARS ($3,150,000) ("**Estimated Rent**"). If the number of Approved Units at the end of the "Option Period" (as defined in the Option Agreement) is less than the Approved Unit Estimate, the Annual Rent shall be reduced by multiplying the difference between the Approved Unit Estimate and the actual number of Approved Units by THIRTEEN THOUSAND DOLLARS ($13,000) and subtracting that calculated amount from the Estimated Rent. If the City requires Tenant to provide "Affordable Units" (as defined in California Health and Safety Code Section ___), Tenant will comply with the provisions of California Government Code Section 65915 (or any successor statute), and provide Affordable Units for "Very Low Income Households" as described in California Health and Safety Code Section 50105 (or any successor statute) as a portion of the Approved Units. If the City requires the Project to include Affordable Units for Very Low Income Households, the Annual Rent shall be reduced by multiplying the number of the Affordable Units by TWENTY THREE THOUSAND FIVE HUNDRED DOLLARS ($23,500) per Affordable Unit and subtracting the total from the Estimated Rent. The parties agree and acknowledge that while the Annual Rent may be less than the Estimated Rent depending upon the actual number of Approved Units and Affordable Units, in no event shall Annual Rent for Year 5 be less than TWO MILLION FIVE HUNDRED THOUSAND DOLLARS ($2,500,000).

Section 2.2 Rent Increases. The Annual Rent shall be increased by thirteen and fourteen one hundredths percent (13.14%) in Year 6 of the Term and every five (5) years thereafter. Thus, the total rent paid by Tenant during the Term shall be as shown in Exhibit "C" attached hereto.

Section 2.3 Manner and Place for Payment of Rent. The commencement of Annual Rent shall occur upon the Effective Date. Rent payment shall be made in equal monthly installments of one twelfth (1/12) of the Annual Rent on or before the first day of each month by

wire transfer of funds or by check (at Tenant's election). Rent shall be prorated as necessary for the first and last month and year, if partial months or years. The Rent is calculated on a triple net basis. All rent that becomes due and payable under this Lease shall be paid to Landlord at the address of Landlord listed herein below, or such other place as Landlord may from time to time designate by written notice given to Tenant.

Section 2.4 Net Rent. Tenant shall pay all of the rent provided for in this Lease to Landlord, absolutely net throughout the term of this Lease, without deduction for any charges, assessments, impositions or deductions of any kind and without abatement, deduction or set-off (other than as specifically set forth in Section 2.1 above). Under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall Landlord be expected or required to make any payment of any kind whatsoever or to perform any act or obligation whatsoever or be under any obligation or liability hereunder with respect to the Premises, except as specifically set forth in this Lease or as required by any common law, statute or regulation.

Section 2.5 No Joint Venture. Nothing in this Lease shall constitute Landlord and Tenant as partners, joint venturers, or tenants in common, nor require Landlord to participate in any costs, liabilities, expenses or losses of Tenant.

Section 2.6 Late Rent. If any Rent payment due pursuant to this Lease is not received by Landlord within ten (10) days after such amount shall be due, then, without any requirement for notice to the Tenant, the Tenant shall immediately pay to Landlord a late charge equal to five percent (5.00%) of each such overdue amount (the "**Late Fee**"). Acceptance of such Late Fee by Landlord shall in no event constitute a waiver of the Landlord's other rights and remedies granted hereunder.

ARTICLE 3.
USE OF PREMISES

Section 3.1 Use and Operation. Tenant shall initially use the Premises for constructing, operating, maintaining, and leasing a multi-family residential project with associated recreational facilities thereon, as more particularly described in Exhibit "B" attached hereto ("**Project**"). Tenant shall have the right to change the use of the Premises to retail, hotel, or office uses (together with ancillary uses, including without limitation related amenities and parking facilities) without Landlord's consent. Tenant shall not otherwise change the use of the Premises without first obtaining the written consent of Landlord, which consent shall not unreasonably be withheld, conditioned, or delayed if continued use of the Premises for the Project is not then commercially reasonable or becomes a non-conforming use. Tenant shall conduct its business at all times in accordance with the requirements of this Lease. It is understood that subject to the express limitations contained in this Lease, Tenant shall have control of the operation of the Project, and the right of Landlord to receive rent shall not be deemed to give Landlord any interest, control or discretion in the operation of the Project.

Section 3.2 Zoning and Use Permits. Subject to the terms of Section 3.1 above, when Landlord's approval is necessary or appropriate to obtain any governmental approval such as a use permit, variance or rezoning in order to construct or operate the Project or in connection with any changed use of the Premises, Landlord agrees to execute such documents, petitions, applications and authorizations as may be necessary or appropriate in obtaining the same and hereby appoints Tenant its attorney-in-fact to execute in the name and on behalf of Landlord any such documents, petitions, applications or authorizations; provided, however, that any such permits, variances or rezoning shall be obtained at the sole cost and expense of Tenant, and Tenant agrees to protect and save Landlord and Landlord's interest in the Premises, free and harmless from any such cost and expense.

Section 3.3 Only Lawful Uses Permitted. Tenant shall not use said Premises or any portion of said Premises to be improved, developed, used or occupied in any manner or for any purpose that is in violation of any valid law, ordinance or regulation of any federal, state, county or local governmental agency, body or entity. Furthermore, Tenant shall not maintain or commit any nuisance as now or hereafter defined by any statutory or decisional law applicable to said Premises on said Premises or any part of said Premises.

Section 3.4 Restrictions by Tenant. In connection with Tenant's development, use and operation of said Premises, Tenant shall have the right, any time and from time to time during the term of this Lease, to enter into, deliver, record, and otherwise consent to or impose covenants, conditions or restrictions, condominium plans, parcel maps, subdivision maps, and easements (all of such matters and actions are hereinafter collectively referred to as "**Restrictions and Covenants**") applicable to and against Tenant's interest in said Premises and the leasehold estate created hereby, and Landlord shall cooperate with Tenant and on written request of Tenant shall join with Tenant in executing such Restrictions and Covenants at no cost or expense to the Landlord. Except as herein provided, Tenant shall not have the power or authority to impose Restrictions and Covenants on the fee estate of Landlord without Landlord's prior written approval which shall be at Landlord's sole discretion, provided, however, that, at no cost or expense to the Landlord, Landlord agrees to join in and bind Landlord's fee interest in any easements or dedications in favor of a governmental or quasi-governmental agency or public utility company if required as a condition to Tenant's development of the Property with the Project or as a condition to providing utility services to the Project. Tenant shall reimburse Landlord for Landlord's actual out-of-pocket costs reasonably incurred in connection with its review of any documents or instruments that Landlord is asked to execute pursuant to this provision, including but not limited to reasonable attorney fees and costs.

ARTICLE 4.
TAXES AND UTILITIES

Section 4.1 Tenant: to Pay Taxes. In addition to the rents required to be paid under this Lease, Tenant shall pay, and Tenant hereby agrees to pay, any and all taxes (including possessory interest taxes, assessments, and other charges levied or assessed during the term of this Lease by any governmental agency or entity) on or against said Premises, any portion of said Premises, any interest in said Premises (other than the interest of Landlord), or any improvements or other property in or on said Premises owned by Tenant, except for any increase in real estate taxes or assessments on account of any transfer or change in ownership by Landlord

of its fee title to the Premises other than to Tenant. Tenant is on notice that a possessory interest subject to property taxation may be created by this Lease and that Tenant may be subject to the payment of property taxes levied on such interest.

Pursuant to Section 107.6 of the California Revenue and Taxation Code ("**Code**"), Landlord hereby notifies Tenant that: (i) a possessory interest with respect to the Premises is created and/or continued pursuant to the Lease ("**Possessory Interest**") and is subject to property taxation under the Code; and (ii) Tenant shall be subject to, and shall bear, the payment of all property taxes and related charges and expenses attributable to all periods during the term of this Lease with respect to the Possessory Interest and improvements to the Premises (collectively, "**Taxes**"). Tenant acknowledges that the foregoing complies with Section 107.6 of the Code. Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord) and hold harmless the Landlord against all Taxes which are payable by Tenant during the Term hereof pursuant to this Section 4.1.

Section 4.2 Payment Before Delinquency. Unless Tenant contests the imposition of the tax or assessment, or has filed an application and is waiting for the tax assessor to approve a property tax exemption for the Project, any and all taxes and assessments and installments of taxes and assessments required to be paid by Tenant under this Lease shall be paid by Tenant before each such tax, assessment or installment of tax or assessment becomes delinquent.

Section 4.3 Contest of Tax. Tenant shall have the right to contest, oppose, or object to the amount or validity of any tax, assessment, or other charge levied on or assessed against said Premises or any part of said Premises; provided, however, that the contest, opposition or objection must be filed before the tax, assessment or other charge at which it is directed becomes delinquent (unless such taxes have been paid under protest), and written notice of the contest, opposition or objection must be given to Landlord at least ten (10) days before the date the tax, assessment or other charge becomes delinquent (unless such taxes have been paid under protest). Landlord shall, on written request of Tenant, join in any such contest, opposition or objection if Tenant determines such joinder is necessary or convenient for the proper prosecution of the proceedings but Landlord shall not be liable for any costs or expenses incurred or awarded in the proceeding.

Section 4.4 Tax Hold-Harmless Clause. Tenant shall indemnify and hold Landlord and the property of Landlord, including said Premises and any improvements now or hereafter on said Premises, free and harmless from any liability, loss or damage to the extent resulting from any taxes, assessments or other charges required by this Article to be paid by Tenant and from all interests, penalties and other sums imposed thereon and from any sales or other proceedings to enforce collection of any such taxes, assessments or other charges.

Section 4.5 Utilities. Tenant shall pay or cause to be paid, and hold Landlord and the property of Landlord, including said Premises, free and harmless from, all charges for the furnishing of gas, water, sanitary sewer, electricity, telephone service, cable and satellite service, and other public utilities to said Premises and for the removal of garbage and rubbish from said Premises.

Section 4.6 Payment by Landlord. Unless Tenant contests the imposition of the tax, assessment or other charge, should Tenant fail to pay within the time specified in this Article any taxes, assessments or other charges required by this Article to be paid by Tenant, Landlord may, upon ten (10) days' prior written notice to Tenant, pay, discharge or adjust such tax, assessment or other charge for the benefit of Tenant. In such event, Tenant shall promptly on written demand of Landlord reimburse Landlord for the full amount paid by Landlord in paying, discharging or adjusting such tax, assessment or other charge, together with interest thereon at the prime rate of interest as published in the Wall Street Journal, as it may be adjusted from time to time (or, if such rate is no longer published in the Wall Street Journal, then pursuant to an alternate reference rate of interest that is then generally in use, comparable to the prime rate of interest and reasonably acceptable to Landlord and Tenant), on the date of payment plus three percent (3%) per annum from the date of payment by Landlord until the date of repayment by Tenant. Where no time within which any charge required by this Article to be paid by Tenant is specified in this Article, such charge must be paid by Tenant before it becomes delinquent.

ARTICLE 5.
CONSTRUCTION

Section 5.1 Notice of Commencement of Construction. Except for inspections authorized under the Option Agreement, no work of any kind shall be commenced on and no building or other materials shall be delivered for the Project by or on behalf of Tenant, nor shall any other demolition, building or land development work be commenced or building materials be delivered on said Premises by or on behalf of Tenant before the Effective Date. Tenant agrees to provide Landlord with at least sixty (60) days prior written notice of the commencement of such demolition or building work or the delivery of such materials by or on behalf of Tenant ("**Construction Notice**"). This section shall apply only to initial demolition or building work or delivery of material and not to subsequent work or deliveries. Landlord shall, at any time and all times have the right to post and maintain on said Premises and to record as required by law any notice or notices of non-responsibility provided for by the mechanics' lien laws of the State of California.

Section 5.2 Construction of Project. Tenant shall, at Tenant's expense, design, permit, construct, or cause the Project to be constructed on the Premises in general accordance with the development approvals and entitlements issued to Tenant for the Project by the City of Dana Point ("**City**") and other governmental agencies prior to execution of this Lease (the "**Final Approvals**"). Tenant shall not be obligated to commence or complete construction of the Project by any specific date; provided however, that (a) when Tenant commences construction of the Project, it shall use commercially reasonable efforts to diligently complete the same, subject to the force majeure provisions of Section 15.1 hereof; and (b) nothing in this section shall affect Tenant's obligation to pay Annual Rent when due.

Section 5.3 Condition Precedent to Construction. Before commencement of any work upon the Premises, Tenant shall deliver to Landlord (i) evidence of builder's risk insurance required under Section 8.03(a)(ii), (ii) evidence of proper worker's compensation insurance procured to cover all persons employed in connection with the construction of the Improvements on the Premises, and (iii) evidence of building permits.

Section 5.4 Project Completion. The Project shall be constructed, and all work performed on said Premises and all buildings or other improvements erected on said Premises shall be in accordance with all valid laws, ordinances, regulations and orders of all federal, state, county or local governmental agencies or entities having jurisdiction over said Premises. All work performed on said Premises pursuant to this Lease, or authorized by this Lease, shall be done in a good and workmanlike manner. Completion of construction of the Project ("**Project Completion**") shall be deemed to have occurred in full compliance with all valid laws, ordinances, regulations and orders when valid temporary or final Certificates of Occupancy or their equivalent have been issued by the proper governmental agencies or entities for all structures or other improvements comprising the Project. Nothing set forth herein shall limit Tenant's right to contest any alleged non-compliance with law as provided in Section 7.4 hereof.

Section 5.5 Mechanics' Lien. Tenant hereby agrees to indemnify and save Landlord harmless from and against any loss, damage or liability to the extent arising out of any mechanics' liens for claims for labor or services, materials or supplies or equipment performed or furnished to the Premises after the Effective Date. Notwithstanding the foregoing, Tenant shall not be responsible for (and such indemnity shall not apply to) any such claims caused by Landlord or its agents.

Section 5.6 Ownership of the Project. Title to all Improvements, including the Project to be constructed on the Premises by Tenant, shall be owned by Tenant until expiration of the Term or the earlier termination of this Lease. Upon the expiration or sooner termination of this Lease, the Project and all buildings and improvements shall belong to and become the property of Landlord, free from any rights, claims and liens of Tenant or any person, agency, political subdivision, firm or corporation claiming under Tenant without any compensation therefor from Landlord to Tenant or to any other person, agency, political subdivision, firm or corporation, except as to the rights of Tenant to compensation in the event of condemnation as set forth in Article 9. On the expiration or sooner termination of this Lease such building and improvements shall be surrendered to Landlord free of any rights or claims and liens of Tenant or any Lender, excepting that movable furniture, personal property and trade fixtures may be removed by Tenant and any subtenants at or before the expiration or sooner termination of this Lease, provided, however, that the removal of any of the property so excepted will not structurally injure the building or improvements or render the buildings or improvements or any part thereof unfit for use and occupancy. Tenant shall pay the cost of restoration of, or repairing any damage to, the Premises arising from the removal of the property so excepted. Except as provided herein, Landlord shall take possession of all real property on the Premises in an "as-is" condition upon expiration or sooner termination of this Lease.

ARTICLE 6.
ENCUMBRANCE OF LEASEHOLD ESTATE

Section 6.1 Tenant's Right to Encumber. Tenant may, at any time and from time to time during the term of this Lease, encumber to one or more institutional lender(s) or other lender, investor, mortgage broker, securities dealer, private equity group, or other person or entity then making or arranging loans, and any affiliate of such person (referred to in this Lease as "**Lender**"), by deed of trust or mortgage or other security instrument, or similar, all of Tenant's interest under this Lease and the leasehold estate hereby created in Tenant (referred to

in this Lease as "**Leasehold Encumbrances**") for any purpose or purposes without the written consent of Landlord so long as said Leasehold Encumbrances are from an "Institutional Lender." Tenant may, at any time and from time to time during the term of this Lease, execute a Leasehold Encumbrance in favor of any non-Institutional Lender with the written consent of Landlord, which shall not be unreasonably withheld, conditioned, or delayed. "**Institutional Lender**" shall mean a bank, saving and loan association, trust company, insurance company, institutional pension fund, real estate investment trust, or similar type of organization, including, without limitation a federal or state agency regularly making or guaranteeing loans, or an agent, trustee and/or broker acting on behalf of any of the foregoing, that (a) regularly finances commercial or residential multi-family developments, and (b) has a net worth of no less than One Hundred Million Dollars ($100,000,000). Notwithstanding anything to the contrary contained in this Lease, no Leasehold Encumbrances incurred by Tenant in accordance with this Section shall, and Tenant shall not have power to incur any encumbrances that shall, constitute in any way a lien or encumbrance on Landlord's fee interest in the Premises. Tenant shall give written notice to Landlord of any Leasehold Encumbrance to an Institutional Lender, together with a copy of the recorded leasehold deed of trust, mortgage or other security interest evidencing the Leasehold Encumbrance. If Tenant requests Landlord's consent to a Leasehold Encumbrance to a non-Institutional Lender, Tenant shall give Landlord prior written notice of the same, accompanied with a copy of the proposed Leasehold Encumbrance. Any Leasehold Encumbrances shall be subject to all covenants, conditions, and restrictions set forth in this Lease and to all rights and interests of Landlord, unless and to the extent expressly provided in this Article 6. Landlord agrees, within fifteen (15) days after request from a Lender or Tenant, to execute a recognition, nondisturbance and attornment agreement (but not a subordination agreement) with such Lender and Tenant in a commercially reasonable form acceptable to all parties.

Section 6.2 Notice to and Service on Lender. Landlord shall mail to any Lender who has given Landlord written notice of its name and address, a duplicate copy of any and all notices Landlord may from time to time give to or serve on Tenant pursuant to or relating to this Lease, including but not limited to any notice of default, notice of termination, or notice regarding any matter on which Landlord may predicate or claim a default. Any notices or other communications permitted by this or any other Section of this Lease or by law to be served on or given to Lender by Landlord shall be deemed duly served on or given to Lender by deposit in the United States mail, certified, return receipt requested or by overnight courier, return receipt, addressed to Lender at the last mailing address for Lender furnished in writing to Landlord by Tenant or Lender. The date of notice shall be the date marked on the return receipt.

Section 6.3 No Modification Without Lender's Consent. Tenant and Landlord hereby expressly stipulate and agree that they will not modify this Lease in any way nor cancel or terminate this Lease by mutual agreement, without the express prior written consent of any Lender under a Leasehold Encumbrance. Any modification, cancellation or termination of this Lease without the express prior written consent of any Lender shall be void at the option of such Lender.

Section 6.4 Rights of Lender. Following the occurrence of an event of default by Tenant under a Leasehold Encumbrance (after expiration of any applicable notice and cure periods), a Lender shall have the right at any time during the term of this Lease to:

(a) Do any act or thing required of Tenant under this Lease, and any such act or thing done and performed by Lender shall be as effective to prevent a forfeiture of Tenant's rights under this Lease as if done by Tenant; and

(b) Realize on the security afforded by the leasehold estate by foreclosure proceedings, accepting an assignment in lieu of foreclosure, or other remedy afforded in law or in equity or by the security instrument evidencing the Leasehold Encumbrance (referred to in this Lease as "the Security Instrument"), and

(c) Transfer, convey, or assign the right, title and interest of Tenant in and to the leasehold estate created by this Lease (or to cause the trustee under any deed of trust to so transfer, convey or assign) to any purchaser at any foreclosure sale, whether the foreclosure sale is conducted pursuant to court order or pursuant to a power of sale contained in the Security Instrument, or to an assignee under an assignment in lieu of foreclosure; and

(d) Acquire and succeed to the interest of Tenant under this Lease by virtue of any foreclosure sale, whether the foreclosure sale is conducted under a court order or a power of sale contained in the Security Instrument, or by virtue of an assignment in lieu of foreclosure.

Notwithstanding anything to the contrary set forth elsewhere in this Lease, the Lender or any person or entity acquiring the leasehold estate shall assume the obligations of "Tenant" under this Lease and be liable to perform Tenant's obligations under this Lease, only during the period, if any, in which that entity or person has ownership of the leasehold estate or possession of the Premises.

Section 6.5 Right of Lender to Cure Defaults. Before Landlord may terminate this Lease because of any default under or breach of this Lease by Tenant, Landlord must give (i) written notice of the default or breach (the "**Initial Default Notice**") and then (ii) subsequent to the time provided to cure default or breach provided in Article 11 of this Lease, written notice of the failure of the Tenant to cure the default or breach (the "**Second Default Notice**") to Lender concurrent with transmittal of each of such notices to Tenant, and afford Lender the opportunity after service of such Second Default Notice to:

(a) Cure the breach or default (including the payment of all accrued and delinquent rent) within sixty (60) days after service on Lender of the Second Default Notice where the default can be cured by the payment of money to Landlord or some other person;

(b) Cure the breach or default within ninety (90) days after service on Lender of the Second Default Notice where the breach or default must be cured by something other than the payment of money and can be cured by the Lender within that time;

(c) Cure the breach or default in such reasonable time as may be required where something other than the payment of money is required to cure the breach or default and cannot be reasonably performed by the Lender within ninety (90) days after service on Lender of the Second Default Notice, provided that acts to cure the breach or default (or to obtain possession by way of receiver to permit the cure of a breach or default) are commenced within

that time period after service of the Second Default Notice on Lender by Landlord, and are thereafter diligently continued by Lender; or

(d) In the case of a breach or default which cannot be cured by Lender, the Lender pursues its foreclosure remedies as provided in Section 6.6 below to completion or acquires title, in its own name or in the name of a nominee, to the leasehold estate under this Lease by an assignment in lieu of foreclosure, at which time said breach or default shall be deemed to have been cured.

Section 6.6 Foreclosure in Lieu of Curing Default. Notwithstanding any other provision of this Lease, a Lender may forestall termination of this Lease by Landlord for a default under or breach of this Lease by Tenant by commencing proceedings to foreclose the Leasehold Encumbrance. The proceedings so commenced may be for foreclosure of the Leasehold Encumbrance by order of court or for foreclosure of the Leasehold Encumbrance under a power of sale contained in the Security Instrument. The proceedings shall not, however, forestall termination of this Lease by Landlord for the default or breach by Tenant unless:

(a) The proceedings are commenced within sixty (60) days after service on Lender of the Second Default Notice;

(b) The proceedings are, after having been commenced, diligently pursued in the manner provided by law to completion, subject to (i) delays caused due to the issuance by the court of a temporary restraining order, an injunction, a stay or other court order, or (ii) delays caused by the need to obtain any required leave of any court (as in the case of a bankruptcy proceeding); and

(c) Lender keeps and performs all of the terms, covenants, and conditions of this Lease (including the payment of rent, including past due rent, under this Lease) requiring the payment or expenditure of money by Tenant until the foreclosure proceedings are complete or are discharged by redemption, satisfaction, payment, or conveyance of the leasehold estate to Lender; subject, however, to notice and opportunity to cure as provided in this Article 6 and in Article 11 below.

Section 6.7 Assignment Without Consent on Foreclosure. Provided that Lender gives written notice of transfer to Landlord setting forth the name and address of the transferee as well as the effective date of the transfer, the written consent of Landlord shall not be required for transfer of Tenant's right, title and interest under this Lease to:

(a) Any of the following (each, a "Foreclosure Transferee"): (i) a purchaser, which includes the Lender, at a foreclosure sale of the Leasehold Encumbrance, whether the foreclosure is conducted pursuant to court order or pursuant to a power of sale in the Security Instrument; or (ii) Lender or its assignee pursuant to an assignment in lieu of foreclosure; or (iii) any new lessee pursuant to a new lease obtained pursuant to Section 6.13 of this Lease.

(b) A purchaser, assignee or transferee from any Foreclosure Transferee (a "**Subsequent Transferee**"). The Foreclosure Transferee, or the Subsequent Transferee, shall be subject to all the terms and conditions of this Lease except that (i) the time for performance of

any unperformed acts required by Article 5 of this Lease shall be extended for that period equal to the aggregate of the following: (A) the delay in performance of the act caused by Tenant's inability or failure to perform the act, (B) the time required to transfer the Lease to the Foreclosure Transferee and/or to the Subsequent Transferee; and (C) the time required for the Foreclosure Transferee or Subsequent Transferee to retain the services of a new architect or other design professional and/or a new contractor to complete the Project; (ii) the performance of any acts required by Article 5 of this Lease that have already been performed shall be deemed satisfied and (iii) the Foreclosure Transferee shall be able to absolutely assign or transfer this Lease to a Subsequent Transferee without Landlord's consent as provided hereinabove and any purchaser, assignee or transferee of this Lease from any Subsequent Transferee shall be able to assign this Lease pursuant to Article 10 of this Lease.

Section 6.8 Lender as Assignee of Lease. The Lender shall not be liable to perform the obligations of the Tenant under this Lease unless and until such time as Lender becomes the owner of the leasehold estate created hereby and acquires the right, title and interest of Tenant under this Lease through foreclosure, transfer in lieu of foreclosure, assignment or otherwise, and thereafter the Lender shall remain liable only so long as the Lender remains as the owner of the leasehold estate and shall be automatically freed and released from liability for obligations arising under the Lease from and after Lender's assignment of the Lease to a third party in accordance with the terms of the last paragraph of Section 6.4 above. Any liability of a Lender and its assigns to the Landlord shall be limited to the value of the Tenant's interest in the Lease and the ground leasehold estate created thereby.

Section 6.9 Prior Defaults. Nothing in this Article 6 shall be construed to obligate any Foreclosure Transferee or any Subsequent Transferee to remedy any prior default of Lessee.

Section 6.10 Estoppel Certificates. Landlord shall provide to the Lender, on request, an estoppel certificate pursuant to the provisions of Section 15.15 certifying to such matters as the identity of all documents evidencing the Lease and any revisions to the Lease, the status and terms of the Lease; the status of rent payments, satisfaction of conditions, defaults, and confirmation of Landlord's consent to Lender's Leasehold Encumbrance if required.

Section 6.11 Superiority of Ground Lease. This Lease, any replacements thereof, and any subleases or subtenancies, shall be at all times superior to any lien or encumbrance on Landlord's fee title interest in the Premises.

Section 6.12 No Subordination. Landlord's rights in the Premises and this Lease, including without limitation Landlord's right to receive Annual Rent, shall not be subordinated to the rights of any Lender or other encumbrance holder.

Section 6.13 New Lease to Lender. Notwithstanding any other provision of this Lease, should this Lease terminate because of any default under or breach of this Lease by Tenant, Landlord agrees to enter into a new Lease for the Premises with Lender under a Leasehold Encumbrance, as Tenant (a "**New Lease**"), provided all of the following conditions are satisfied:

(a) A written request for the New Lease is served on Landlord by Lender within sixty (60) days after termination of the Lease;

(b) The New Lease:

(i) Is for a term ending on the same date the term of this Lease would have ended had this Lease not been terminated;

(ii) Provides for the payment of rent at the same rate that would have been payable under this Lease during the remaining term of this Lease had this Lease not been terminated; and

(iii) Contains the same terms, covenants, conditions, and provisions as are contained in this Lease (except those that have already been fulfilled or are no longer applicable);

(c) Lender, on execution of the New Lease by Landlord, shall pay any and all sums that would at the time of the execution of the New Lease be due under this Lease but for its termination and shall otherwise fully remedy, or agree in writing to remedy, any other defaults under or breaches of this Lease committed by Tenant that can be remedied by Lender;

(d) Lender, on execution of the New Lease, shall pay all reasonable costs and expenses, including attorneys' fees and court costs, incurred by Landlord in terminating this Lease, recovering possession of the Premises from Tenant or the representative of Tenant, and preparing the New Lease;

(e) The New Lease shall be subject to all existing subleases between Tenant and subtenants, provided that for any commercial sublease, the subtenant agrees in writing to attorn to Lender (or its assignee) on the condition that Landlord agrees that it will not terminate any such subleases;

(f) After any termination of this Lease after which a Lender has the right to obtain a New Lease, Tenant and/or Lender shall be solely responsible for receiving all rent and other payments due from all subtenants. Landlord shall not be responsible or liable for the collection of any such payment and Tenant shall indemnify and defend Landlord from any claim, damage, or action arising out of the payments as set forth herein. All rights and obligations of Landlord and a Lender provided under this Section 6.13 with respect to a New Lease following the termination of this Lease shall survive the termination of this Lease;

(g) The New Lease shall be assignable by Lender or any of its affiliated companies, but not by any unaffiliated assignee of Lender, without the prior written consent of Landlord, unless and to the extent otherwise provided in Article 10 and upon any such assignment to an assignee assuming the remaining obligations of Tenant under this Lease, the assignor shall be released from any and all further liability under the New Lease arising following the date of such assignment; and

(h) Any New Lease shall enjoy the same priority in time and in right as this Lease over any lien, encumbrance or other interest created by Landlord before or after the date of such New Lease, to the extent permitted by law.

Section 6.14 No Merger of Leasehold and Fee Estates; No Voluntary Surrender. For as long as any Leasehold Encumbrance is in existence, there shall be no merger of the leasehold estate created by this Lease and the fee estate of Landlord in the Premises merely because both estates have been acquired or become vested in the same person or entity, unless Lender otherwise consents in writing. Tenant shall not voluntarily surrender or terminate the Ground Lease at any time when a Leasehold Encumbrance is outstanding without written approval from the Lender of any Leasehold Encumbrance.

Section 6.15 Lender as Assignee of Lease. No Lender under any Leasehold Encumbrance shall be liable to Landlord as an assignee of this Lease unless and until Lender acquires all rights of Tenant under this Lease through foreclosure, an assignment in lieu of foreclosure, or as a result of some other action or remedy provided by law or by the instrument creating the Leasehold Encumbrance. Any Lender and its assignees shall remain liable for obligations arising under the Lease only as set forth in Section 6.8 above.

Section 6.16 Lender as Including Subsequent Security Holders. The term "Lender" as used in this Lease shall mean not only the party that loaned money to Tenant and is named as beneficiary, mortgagee, secured party, or security holder in a Security Instrument creating any Leasehold Encumbrance, but also successors and assigns of record to the Lender's interest as beneficiary, mortgagee and/or secured party, as applicable, of the Leasehold Encumbrance.

Section 6.17 Two or More Lenders. In the event two or more Lenders each exercise their rights under this Lease and there is a conflict that renders it impossible to comply with all requests of Lenders, the Lender whose Leasehold Encumbrance would have senior priority in the event of a foreclosure shall prevail other than as provided in Section 6.16 above. Notwithstanding this Section 6.17, any intercreditor agreement entered into by multiple lenders will control over the provisions of this Section upon receipt by Landlord.

Section 6.18 No Fee Mortgages. Landlord agrees to not encumber any or all of its fee estate in the Premises including Landlord's reversionary interest in the Property (the "**Fee Estate**").

Section 6.19 Additional Lender Assurances. In order to facilitate any financing or refinancing by Tenant which involves the hypothecation of Tenant's leasehold estate and rights hereunder, Landlord, if requested so to do by Tenant and at no out of pocket cost or expense to Landlord, agrees to join in executing any instruments which legal counsel for any lender which is or may become a Lender and the holder of a lien that is a first lien and charge upon the leasehold estate of Tenant may reasonably require in order to grant to the Lender or prospective Lender the right to act for Tenant in enforcing or exercising any of Tenant's rights, options or remedies under this Lease, provided that in no event shall Landlord be required to incur any personal liability for the repayment of any obligations secured by any such hypothecation of the leasehold estate of Tenant nor to subordinate the Landlord's rights and reversionary interests in and to the Premises to any such hypothecation nor shall any such instrument adversely affect Landlord's rental, Tenant's payment of taxes, assessments, insurance and/or Tenant's payment or performance of other obligations under this Lease or otherwise diminish or reduce Landlord's rights under this Lease (including without limitation, Landlord's rights under this Article), except in a de minimus manner. Tenant shall reimburse Landlord for Landlord's actual costs

reasonably incurred in connection with its review of any documents or instruments that Landlord is asked to execute pursuant to this provision, including but not limited to reasonable attorney fees and costs.

ARTICLE 7.
ALTERATIONS, REPAIRS AND RESTORATION

Section 7.1 No Obligation of Landlord. Landlord shall not be required or obligated to make any changes, alterations, additions, improvements or repairs in, on, or about the Premises, or any part thereof.

Section 7.2 Maintenance by Tenant. At all times, Tenant shall, at Tenant's cost and expense, keep and maintain the Premises and all improvements hereafter constructed or installed on the Premises as well as all facilities now or hereafter appurtenant to the Premises in good order and repair, reasonable wear and tear excepted, and shall repair all damage resulting from use, including willful action (whether proper or improper) or negligence, by Tenant or any persons permitted to be on the Premises by or with the consent of Tenant, express or implied, except Landlord, or resulting from Tenant's failure to observe or perform any covenant of Tenant under this Lease, subject to the following: (a) Tenant's maintenance obligations required by this Section do not include any repairs or replacements required by applicable laws which would be required to bring the Premises into compliance with laws applicable to new construction except to the extent that the Premises is not exempt from such compliance or is not grandfathered as a legal non-conforming use; and (b) notwithstanding anything to the contrary contained herein, in no event shall Tenant's obligations required by this Section impose on Tenant any obligation to make cosmetic repairs or replacements to the Premises unless such repairs or replacements are required (i) for the Premises to comply with applicable laws, (ii) for the Premises to be maintained in a safe condition, or (iii) to ensure the structural integrity or availability of utilities to the Premises. Tenant's obligation pursuant to this Section shall not alter Tenant's right to raze, alter, or make improvements to the Premises as set forth herein.

Section 7.3 Alterations. Following construction of the Project in accordance with Article 5, Tenant shall have the right, at Tenant's sole cost and expense, to thereafter alter, update, refurbish or remodel the Improvements (an "**Alteration**"), without the consent of Landlord, so long as (a) Tenant has obtained all the approvals and permits required from all governmental agencies having jurisdiction and complied with all conditions of any such approvals and permits; (b) the Alteration is constructed in accordance with plans and specifications prepared by a licensed architect, engineer or contractor; (c) with regard to any Alteration with an estimated cost exceeding 20% of the replacement value of the Improvements, Tenant notifies Landlord in writing, in advance of commencing construction, of the nature of the proposed Alterations and furnishes to Landlord copies of all required approvals and permits and copies of all plans and specifications prior to commencement of construction of the Alteration; (d) all Alterations are performed in a good and workmanlike manner; and (e) Tenant complies with all other terms and conditions of this Lease applicable to construction of the Improvements, including Sections 5.5 and 8.3 hereof. The term "**Alterations**" shall not include the re-construction of the Improvements following a damage or destruction (which shall be governed by the provisions of Section 7.6 as a "**Restoration**").

Section 7.4 Compliance with Applicable Law. Tenant shall, at Tenant's expense, promptly comply with the requirements of every applicable law with respect to the condition, maintenance, use or occupation of the Premises including the making of any alteration or addition in and to any structure upon, connected with, or appurtenant to the Property, whether or not such alteration be structural, or be required on account of any particular use to which the Premises, or any part thereof, may be or is now put, and whether or not such law be of kind now within the contemplation of the parties hereto. Provided, however, Tenant, at its expense shall have the right to contest, oppose, or object to the application of any such laws or regulations, and Landlord shall, if required by law to bring such contest, opposition or objection, join in same at Tenant's request. Provided, further, notwithstanding anything to the contrary, to the extent that compliance with this Section 7.4 requires the remediation of conditions, construction of improvements or any expenditure of monies where the benefit of such expenditure cannot be amortized over the remaining term of this Lease, the Tenant may, but only with the express prior written consent of any Lender under a Leasehold Encumbrance, either terminate this Lease or, with the approval of Landlord, continue the Lease with the cost of such expenditure allocated between Landlord and Tenant based upon the reasonable amortization of the expenditure and the remaining term of this Lease.

Section 7.5 Damage or Destruction. Except for any improvements presently located on the Premises, should, at any time during the term of this Lease, any buildings or improvements hereafter located on said Premises be destroyed in whole or in part by fire, theft, the elements, or any other cause (collectively hereinafter referred to as a "**Casualty**"), this Lease shall continue in full force and effect; provided, however, that Tenant, subject to obtaining the prior written consent of any Lender under a Leasehold Encumbrance, shall have the option of terminating this Lease on the last calendar day of any month by giving Landlord at least thirty (30) days' prior written notice of Tenant's intent to do so and by removing, within one hundred twenty (120) days of the Casualty, at Tenant's own cost and expense all debris and remains of the damaged improvements from said Premises in the event that:

(a) Any buildings or improvements hereafter located on said Premises are so damaged or destroyed by a Casualty after twenty years of this Lease that such buildings or improvements cannot be repaired and restored at a cost which is less than fifty percent (50%) of the cost to replace all of the buildings and improvements located on the Premises if totally destroyed; or

(b) Any buildings or improvements hereafter located on said Premises are so damaged or destroyed by a Casualty after fifteen years of this Lease that such buildings or improvements cannot be repaired and restored at a cost which is less than forty-two percent (42%) of the cost to replace all of the buildings and improvements located on the Premises if totally destroyed; or

(c) Any buildings or improvements hereafter located on said Premises are damaged or destroyed by a Casualty at any time during the term of this Lease and insurance proceeds available to Tenant from the insurance required are not sufficient to cover one hundred percent (100%) of the cost, less Fifty Thousand Dollars ($50,000), to repair and restore such damaged or destroyed buildings or improvements.

Section 7.6 Application of Insurance Proceeds. Except as hereinafter provided in this Section 7.6, and subject to the prior rights of the Lender under the terms of the loan evidenced by a Leasehold Encumbrance, all insurance money paid either to Tenant on account of any damage or destruction, less the actual cost, fees and expenses, if any, incurred in connection with the adjustment of the loss (which costs, fees or expenses shall be reimbursed to the party incurring such expenses) shall be applied to the payment of the cost of the restoration or repairs of such damage or destruction. Such work may include the cost of demolition and temporary repairs and for the protection of property pending the completion of permanent restoration, repairs, replacements, rebuilding, or alterations (all of which temporary repairs, protection of property and permanent restoration, repairs, replacement, rebuilding or operations are hereinafter collectively referred to as the "**Restoration**"). Such proceeds shall be placed with the Lender, if any, and if none, with Tenant, provided no Event of Default then exists, and otherwise with an insurance trustee. If the insurance proceeds are placed with Lender or an insurance trustee pursuant to the preceding sentence, then such proceeds shall be paid out from time-to-time to Tenant or in accordance with Tenant's directions, as such Restoration progresses upon the written approval of Landlord, Lender, if any, and the written request of Tenant; provided, however, that the approval of Landlord to any disbursement of insurance proceeds to Tenant shall not be required at any time that such insurance proceeds are being held and distributed by any Lender for the purpose of such Restoration, provided that such Lender shall disburse such funds during the course of such Restoration as necessary to make progress payments under the terms of any construction contract for such work and based upon its review and approval of work completed and vouchers and invoices from contractors and subcontractors performing such work, receipt of lien releases, and adherence to other procedures customary in the disbursement of construction loan proceeds during the course of construction. Upon the receipt by Landlord of satisfactory evidence that the Restoration has been fully completed and paid for in full and that there are no liens of the character referred to in Section 5.5 hereof, and there is no default under the terms, conditions, covenants and agreements of this Lease which cannot be cured by the payment of money or any default hereunder which has become an event of default, any balance of the insurance money at the time held by an insurance trustee shall be paid to Lender, or if none, to Tenant. In the event Tenant, with the express prior written consent of the Lender under any Leasehold Encumbrance, terminates this Lease pursuant to Section 7.5 Tenant shall surrender possession of the Premises to Landlord immediately and assign to Landlord (or, if the same has already been received by Tenant, pay to Landlord, to the extent not used to pay the expense of removing all debris and remains of the damaged Improvements under Section 7.5) all of its right, title and interest in all of the proceeds from Tenant's insurance upon the Premises, subject to the prior rights of Lender therein.

Section 7.7 Continuing Obligation to Pay Rent. Except for Tenant's right to terminate this Lease as provided in Section 7.5, subject to the express prior written consent of a Lender under any Leasehold Encumbrance, no destruction of, or damage to the structures or any part thereof by fire or any other cause shall permit Tenant to surrender this Lease nor relieve Tenant from its obligations to pay the full Annual Rent payable under this Lease or from any of its other obligations under this Lease. Tenant waives any rights now or hereafter conferred upon it by statute or otherwise to quit or surrender this Lease or the Premises or any suspension, diminution, abatement or reduction of rent on account of any such destruction or damage,

including specifically the provisions of Section 1932 (2) and Section 1933 (4) of the California Civil Code.

ARTICLE 8.
INDEMNITY AND INSURANCE

Section 8.1 Indemnification.

(a) As a material part of the consideration to Landlord, Tenant agrees to indemnify, protect, defend (with counsel reasonably acceptable to Landlord) and hold harmless, individually and collectively Landlord and its directors, officers and employees (individually a "**Landlord Indemnitee**") from and against all lawsuits, causes of action, claims, demands, damages, injuries, fines, losses, judgments, liens, encumbrances, charges, obligations, liabilities, costs and expenses (including but not limited to injury or loss of life to persons or damage to or loss of property, travel expenses and reasonable attorneys' fees, expert witness fees and other costs of defense or of enforcing this indemnity, regardless of whether legal proceedings are actually commenced) (collectively "**Claims**") to the extent arising out of or relating to any of the following performed from and after the Effective Date:

(i) Design, permitting or construction of any "Work of Improvement" (as defined in California Civil Code Section 8050) which shall include any construction on the Premises, any changes to the physical structures on the Premises, the creation of any structure on the Premises, or any change to the topography of the Premises (subject to any limitations in applicable law);

(ii) Any act or omission by any person or entity (other than by a Landlord Indemnitee) occurring on the Premises, or with respect to any Work of Improvement;

(iii) Any mechanics', material persons', vendors' or suppliers' lien claimed by any person, furnishing construction, labor, materials, supplies or services to or for the Project, or with respect to any Work of Improvement;

(iv) Ownership, use, possession or development of the Premises or the Project, any unsafe or dangerous condition on the Premises, and any accident, injury or damage whatsoever to any person or entity occurring on the Premises, or with respect to any Work of Improvement;

(v) The breach or falsity of any material representation or warranty made or given by Tenant under this Lease;

(vi) The breach of any obligation of Tenant contained in this Lease;

(vii) Any willful misconduct or negligent act or omission by Tenant or any of its officers, employees, agents or representatives; and

(viii) Any assertion, claim or cause of action that a Landlord Indemnitee is liable or responsible for the payment or performance of any indebtedness or obligation of Tenant or for any act or omission committed or made by Tenant in connection with the

ownership, operation or development of the Project, whether on account of any theory of relationship, derivative liability, comparative negligence or otherwise.

Notwithstanding the foregoing, Tenant shall not be responsible for (and such indemnity shall not apply to) any Claims caused by the negligence or willful misconduct of Landlord or any Landlord Indemnitee.

(b) Landlord agrees to indemnify, protect, defend (with counsel reasonably acceptable to Tenant) and hold harmless, individually and collectively Tenant and its directors, officers and employees (individually a "**Tenant Indemnitee**") from and against all Claims to the extent caused in whole or in part by the gross negligence or willful misconduct of Landlord or its directors, officers, trustees, employees, agents or contractors.

(c) If any Landlord Indemnitee or any Tenant Indemnitee (either an "**Indemnitee**") receives notice of a Claim or otherwise has actual knowledge of a Claim, it shall promptly (i) inform the indemnifying party ("**Indemnitor**") of such Claim of which it has knowledge and (ii) send to Indemnitor a copy of all written materials it receives from the claimant relating to such Claim. Such written material shall consist of copies of any complaint, motion or other documents filed with any court, tribunal or other body before which a proceeding has been filed. Failure of an Indemnitee to so inform Indemnitor or to provide materials shall not, however, waive, cause forfeiture of or limit the remedies available to any indemnified party with respect to enforcement of its indemnification rights as stated herein, except to the extent such failure inhibits the Indemnitor from taking corrective action.

(d) The Indemnitor shall, promptly upon receipt of written notification of any such Claim or demand, assume in full the responsibility for the defense of any such Claim or demand and pay in connection therewith any loss, damage, deficiency, liability, obligation, cost or expense, including without limitation, reasonable attorneys' fees, expert witness fees and court costs incurred in connection therewith. Subject to subsection (e) below, in the event of any action or proceeding, in court, arbitration or otherwise, in connection with any such Claim or demand, Indemnitor shall have the right and responsibility to assume the defense of any such action, all at Indemnitor's own cost and by counsel selected by Indemnitor and approved by the indemnified party (which approval shall not be unreasonably withheld); and Indemnitor shall promptly satisfy and discharge any final decree or judgment rendered therein. The Indemnitor shall fully and regularly inform the indemnified party of the progress of the defense and any settlement discussions.

(e) The indemnified party shall have the right to engage separate counsel, at its own cost and expense, to advise it regarding the Claim and its defense. Such counsel may attend all proceedings and meetings and the counsel retained by the indemnified party shall actively consult with separate counsel for the indemnified party, provided that the indemnifying party shall fully control the defense. The indemnified party shall reasonably cooperate with the Indemnitor's defense, provided the Indemnitor reimburses the indemnified party all out of pocket costs and expenses incurred in providing such cooperation.

(f) The provisions of this Section 8.1 shall survive the termination of this Lease, and any foreclosure or deed in lieu of foreclosure of the Project.

Section 8.2 Environmental Indemnity.

(a) Tenant hereby agrees to indemnify, hold harmless and defend (with counsel reasonably acceptable to Landlord) Landlord from and against any and all liabilities, claims, penalties, liens, claims of liens, forfeitures, suits, costs and expenses of any type or nature (including, without limitation, costs of defense and settlement and reasonable attorneys' fees), which Landlord may hereafter incur, become responsible for or pay out to the extent arising as a result of (i) death or injury to any person, (ii) destruction or damage to any property, (iii) contamination of or adverse effect on the environment or (iv) any violation of governmental laws, regulations or orders, caused directly or indirectly by, or due in whole or in part to, the release or threatened release of toxic wastes (as defined in Section 15.16(b)) which were, or are claimed or alleged to have been deposited, stored, disposed of, placed or otherwise located or allowed to be located on, above, beneath or about the Premises subsequent to the Effective Date. Nothing herein shall be construed to hold Tenant responsible for and Tenant shall have no obligation to indemnify, hold harmless or defend Landlord with respect to any "Toxic Wastes", as defined in Section 15.16(b), determined to have been deposited, stored, disposed of, placed or otherwise located on, above, beneath or about the Premises (x) prior to the Effective Date, or (y) after the Effective Date by Landlord or its employees, agents or contractors.

(b) Landlord hereby agrees to indemnify, hold harmless and defend (with counsel reasonably acceptable to Tenant) Tenant from and against any and all liabilities, claims, penalties, liens, claims of liens, forfeitures, suits, costs and expenses of any type or nature (including, without limitation, costs of defense and settlement and reasonable attorneys' fees), which Tenant may hereafter incur, become responsible for or pay out to the extent arising as a result of (i) death or injury to any person, (ii) destruction or damage to any property, (iii) contamination of or adverse effect on the environment or (iv) any violation of governmental laws, regulations or orders, caused directly or indirectly by, or due in whole or in part to, the release or threatened release of toxic wastes (as defined in Section 15.16) which were, or are claimed or alleged to have been deposited, stored, disposed of, placed or otherwise located or allowed to be located on, above, beneath or about the Premises prior to the Effective Date. Nothing herein shall be construed to hold Landlord responsible for and Landlord shall have no obligation to indemnify, hold harmless or defend Tenant with respect to any toxic wastes determined to have been deposited, stored, disposed of, placed or otherwise located on, above, beneath or about the Premises subsequent to the Effective Date or afterwards by Tenant.

Section 8.3 Obligation to Maintain Insurance.

(a) Commencing on the Effective Date (with regard to the insurance required by subsection (ii) below) and on the date Tenant shall commence construction of any alterations or other Improvements on the Premises (with regard to the insurance required by subsection (i) below), and at all times thereafter through and during the Term, Tenant shall keep the Premises insured, or shall cause the Premises to be kept insured, pursuant to policies of insurance against the risks and hazards and with coverage in amounts not less than those specified as follows (individually an "**Insurance Policy**" and collectively, the "**Insurance Policies**"):

(i) Insurance against the risks customarily included under "all risks" policies with respect to improved properties similar to the Premises in an amount equal to the

"full insurable value" (which as used herein shall mean the full replacement value, including the costs of debris removal, which amount shall be determined not less often than every five (5) years) of the Improvements. Tenant shall be entitled to carry a deductible of up to $100,000.00 in Constant Dollars (as defined below) in connection with said coverage provided Tenant self-insures for the amount of the deductible. Tenant hereby further agrees that to the extent available, Tenant will obtain an "agreed amount" endorsement with respect to such insurance so as to prevent either Landlord or Tenant from becoming a co insurer of any loss.

(ii) Commercial general liability and property damage insurance (including, but not limited to, coverage for any construction, reconstruction or alteration by or at the instance of Tenant on or about the Premises) covering the legal liability of Landlord and Tenant against all claims for any bodily injury or death of persons and for damage to or destruction of property occurring on, in or about the Premises and the adjoining streets, sidewalks, passageways, and parking areas utilized by Tenant or any users or occupants of the Premises in combined single limits for both property damage and bodily injury and in the minimum amount of Five Million and No/100 Dollars ($5,000,000.00) in Constant Dollars in connection with any single occurrence. Tenant shall be entitled to carry a deductible of up to $100,000.00 in Constant Dollars in connection with said coverage provided Tenant self-insures for the amount of the deductible. For the purposes of this section, the following definitions shall apply:

(A) "Constant Dollars" means and refers to the present value of the dollars to which such phrase refers. An adjustment shall occur on January 1 of the sixth (6th) calendar year following the Effective Date of this Lease, and thereafter at five (5) year intervals. Constant Dollars will be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The "Base Index Number" will be the level of the Index (as defined below) for the month during which the Effective Date of this Lease occurs; the "Current Index Number" will be the level of the Index for the month of September of the year preceding the adjustment year.

(B) "Index" means and refers to the Consumer Price Index for All Urban Consumers (U.S. City Average), published by the Bureau of Labor Statistics of the United States Department of Labor (base year 1982-84 = 100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then Tenant shall substitute for the Index comparable statistics as compiled by an agency of the United States Government or, if none is available, by a substantial and responsible periodical or publication of nationally recognized authority most closely approximating the result which would have been achieved by the Index.

(b) All insurance required under this Section 8.3 shall be written by companies of recognized financial standing (with a rating from Best's Insurance Reports of not less than A-/VIII) which are authorized to do insurance business in the State of California, and shall expressly provide (i) with respect to the insurance required by Section 8.3(a)(i) above, an effective waiver by the insurer of all rights of subrogation against any additional insured and against such additional insured's interest in the Premises and against any income derived therefrom, (ii) that no cancellation, reduction in amount or material change in coverage thereof

shall be effective until the insurer has endeavored to give at least thirty (30) days written notice thereof to Landlord, and (iii) that during construction, reconstruction, alteration or material remodeling of any Improvements on the Premises such policies shall be in "builder's risk" form if there would be an exclusion of coverage under Tenant's all risks policy as a result of such construction, reconstruction, alteration or material remodeling. Landlord shall also be designated as an additional insured under Tenant's commercial general liability policy. A certificate of insurance in force, in form reasonably acceptable to Landlord, issued by the insurer as provided in Section 8.3(a) hereof, shall be delivered to Landlord on or before the date Tenant is required to obtain the applicable insurance, and prior to expiration of the policy being renewed or replaced. Tenant may obtain the insurance required hereunder by endorsement on its blanket insurance policies, provided that said policies fulfill the requirements of this Section 8.3(b), that said policies reference the Premises, and that Landlord receives the certificate of insurance in force with respect thereto as provided above. Nothing contained in this Lease shall be construed to require Landlord to prosecute any claim against any insurer or to contest any settlement proposed by any insurer. Landlord and Tenant shall each have included in all policies of fire, extended coverage, workers compensation, business interruption and loss of rents insurance respectively obtained by them covering the Premises or the Improvements or the contents thereof, a waiver by the insurer of all rights of subrogation against the other in connection with any loss or damage thereby insured against. Any additional premium for such waiver shall be paid by the primary insured.

(c) Certificates. Within fifteen (15) days after receipt of written request from Landlord (but in no event more often than twice annually), Tenant shall deliver to Landlord a certificate addressed to Landlord issued by Tenant's insurance provider, and dated within thirty (30) days prior to the delivery thereof, which lists the insurers and policy numbers evidencing all the other insurance then required to be maintained by Tenant hereunder, and which such insurance shall be in full force and effect as required by this Lease. In the event that Tenant fails to obtain, maintain or renew any insurance provided for in this Section 8.3 or to pay the premiums therefor, or to deliver to Landlord any of such certificates, Landlord may, but shall not be obligated to, procure such insurance, pay the premiums therefor or obtain such certificates and any costs or expenses incurred by Landlord for such purposes shall be promptly paid by Tenant to Landlord upon demand by Landlord.

(d) Waiver of Subrogation. Landlord and Tenant each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils insured against herein by valid and collectible insurance policies (but only to the extent of the insurance proceeds collected under such policies), regardless of cause or origin, INCLUDING NEGLIGENCE OF EITHER PARTY HERETO, ITS AGENTS, OFFICERS OR EMPLOYEES. Landlord and Tenant each agree to give written notice of the terms of this mutual waiver to their respective property damage insurance carriers. To the extent available under applicable laws and/or insurance regulations, Landlord and Tenant agree to have their respective property damage insurance carriers waive, by proper endorsement, any right to subrogation that such companies may have against Landlord or Tenant, as the case may be, so long as the insurance is not invalidated thereby.

Section 8.4 Reserve Fund.

(a) From after the date that is ten (10) years from the date of receipt of a final certificate of occupancy for the first Approved Unit in the Project, Tenant shall be responsible to at all times maintain a reserve (the "**Reserve Fund**") equal to 1 years' worth of estimated maintenance costs for the Project in order to comply with the maintenance requirements set forth in Section 7.2 above (the "**Maintenance Costs**"). The Reserve Fund may be provided via any of the following means: (I) a cash deposit account established at an Institutional Lender in connection with a Leasehold Encumbrance; or (II) or any of the following that is posted with and held by a nationally recognized title insurance company reasonably acceptable to Landlord and Tenant: (i) cash, (ii) a payment bond issued by a surety company reasonably acceptable to Landlord, or (iii) a letter of credit issued by an Institutional Lender or other financial institution reasonably acceptable to Landlord. The amount of the Reserve Fund shall be determined by an architect selected by Tenant and licensed in the State of California via a letter certified to Landlord and Tenant by such architect, and Tenant shall be responsible for paying any compensation to the architect in connection with such certification.

(b) The Reserve Fund shall be used by Tenant exclusively for payment of Maintenance Costs. Funds from the Reserve Fund shall be withdrawn by Tenant at such times and intervals as Tenant reasonably deems necessary to perform required maintenance upon prior written notice to and approval by Landlord, which approval shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, in the event that the Reserve Fund is held or administered by or on behalf of an Institutional Lender, then the terms of the loan documents between Tenant and such Institutional Lender shall control and govern the disbursement of all amounts held in the Reserve Fund.

(c) In the event any funds remain in the Reserve Fund at the expiration or earlier termination of the Term, such funds shall be paid to Tenant so long as Tenant has complied with the terms of Section 7.2 above.

(d) In the event Tenant fails to perform its obligations under Section 7.2 above and such failure continues beyond the notice and cure period provided for in Section 11.2 below, then in lieu of termination of the Lease, Landlord shall have the right to exercise the self-help rights provided for in Section 11.7 below, in which case, Landlord shall be entitled to withdraw amounts from the Reserve Fund equal to those costs and expenses reasonably incurred by Landlord to cause such maintenance to be performed. Notwithstanding the foregoing, in the event that the Reserve Fund is held or administered by or on behalf of an Institutional Lender, then the terms of the loan documents between Tenant and such Institutional Lender shall control and govern the disbursement of all amounts held in the Reserve Fund.

ARTICLE 9.
CONDEMNATION

Section 9.1 Definitions. As used in this Lease:

(a) "Condemnation" means (i) the taking or damaging, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute, whether by legal proceedings or otherwise, by a condemnor (hereinafter

defined), and (ii) a voluntary sale or transfer to a condemnor, either under threat of condemnation or while condemnation legal proceedings are pending.

(b) "Award" means all compensation, sums or anything of value awarded, paid or received for a total taking, a substantial taking or a partial taking (hereinafter defined), whether pursuant to judgment or by agreement or otherwise.

(c) "Condemnor" means any public or quasi-public authority or private corporation or individual having the power of condemnation excluding, however, Landlord or any successor of Landlord, or any entity acting on behalf of Landlord or any successor of Landlord.

(d) "Total Taking" means the taking by condemnation of the fee title to all the Premises and all the improvements.

(e) "Substantial Taking" means the taking by condemnation of so much of the Premises or improvements or both that one or more of the following conditions results:

(i) The remainder of the Premises would not be economically and feasibly usable, as determined by Tenant in its reasonable discretion; and/or

(ii) A reasonable amount of reconstruction would not make the land and improvements a practical improvement and reasonably suited for the uses and purposes for which the Premises are leased hereunder, as determined by Tenant in its reasonable discretion.

(f) "Partial Taking" means any taking of the fee title and/or improvements that is not either a Total Taking or a Substantial Taking.

(g) "Notice of Intended Condemnation" means any notice or notification on which a reasonably prudent person would rely and which he would interpret as expressing an existing intention of condemnation as distinguished from a mere preliminary inquiry or proposal. It includes but is not limited to service of a condemnation summons and complaint on a party hereto. The notice is considered to have been received when a party receives from the condemnor a Notice of Intended Condemnation to condemn, in writing, containing a description or map reasonably defining the extent of the condemnation.

Section 9.2 Notice and Representation.

(a) The party receiving a notice of one or more of the kinds specified below shall promptly notify the other party of the receipt, contents and dates of such notice.

(i) Notice of Intended Condemnation.

(ii) Service of any legal process relating to condemnation of the Premises or improvements.

(iii) Notice in connection with any proceedings or negotiations with respect to such a condemnation.

(iv) Notice of intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of condemnation.

(b) Landlord, Tenant and Lender shall each have the right to represent its respective interest in each condemnation proceeding or negotiation and to make full proof of its claims. Landlord, Tenant and Lender shall each execute and deliver to the other any instruments that may be required to effectuate or facilitate the provisions of this Lease relating to condemnation.

Section 9.3 Total or Substantial Taking.

(a) On a Total Taking this Lease shall terminate on the date physical possession is taken by the condemnor, and Annual Rent shall be prorated as provided in Section 2.3 above.

(b) If a taking is a Substantial Taking, Tenant may, by notice ("**Tenant's Notice**") to Landlord given within ninety (90) days after Tenant receives a Notice of Intended Condemnation (and, if a Leasehold Encumbrance is then outstanding, along with the prior written consent of Lender), elect to treat the taking as a Substantial Taking. If Tenant does not so notify Landlord, the taking shall be deemed a Partial Taking. If Tenant gives Tenant's Notice and Landlord gives Tenant notice disputing Tenant's contention within thirty (30) days following receipt of Tenant's Notice the dispute shall be promptly submitted to judicial reference pursuant to Section 12.1.

If Landlord gives no such notice, the taking shall be deemed a Substantial Taking. A Substantial Taking shall be treated as a Total Taking if (i) Tenant delivers possession of the Premises to Landlord within ninety (90) days after determination that the taking was a Substantial Taking (*i.e.*, within 90 days after expiration of the 30-day period after delivery of Tenant's Notice where Landlord does not dispute Tenant's contention that the taking was a Substantial Taking or within 90 days after determination that the taking was a Substantial Taking through judicial reference or settlement with Landlord), (ii) an Event of Default by Tenant is not outstanding or, if an Event of Default is outstanding, Tenant remedies same by performance (but only to the extent that such performance is practical in light of the taking) concurrent with or within a reasonable period after its receipt of the award to which it is entitled, and (iii) Tenant has delivered to Landlord any portion of the award in its possession to which Landlord is entitled pursuant to the terms of this Lease. If these conditions are not met, the taking shall be treated as a Partial Taking. In the event that, for purposes of this Section 9.3(b), a dispute arises as to whether an Event of Default is outstanding or whether Landlord is entitled to any portion of the award held by Tenant, then such dispute shall be resolved through judicial reference in accordance with Article 12.

(c) Tenant may continue to occupy the Premises and improvements until the condemnor takes physical possession. At any time following notice of intended Total Taking or within the time limit specified for delivering possession in the provision on Substantial Taking, Tenant may elect to deliver possession of the Premises to Landlord before the actual taking of physical possession. The election shall be made by Tenant, but subject to the express prior written consent to such election by a Lender under any Leasehold Encumbrance, by delivery of

written notice to Landlord declaring the election and agreeing to pay all rents required under this Lease to the date that Tenant goes out of possession and Tenant's right to apportionment of or compensation from the award shall then accrue as of the date that Tenant goes out of possession.

Section 9.4 Partial Taking.

(a) On a Partial Taking this Lease shall remain in full force and effect covering the remainder of the Premises and improvements, except that the Annual Rent shall be reduced as of the date physical possession is taken by the condemnor in the same proportion that the value of the portion of the Premises taken by eminent domain bears to the full value of the Premises at that time.

(b) All compensation and damages payable for a Partial Taking for the redesign, permitting, demolition, alteration, rebuilding, reconstruction, repair, replacement, refurnishing and restoration of the portions of the Premises and Improvements remaining after the Partial Taking to a viable economic unit (the "**Severance Damages**") shall be made available to and used, to the extent reasonably needed, by Tenant to provide replacement Improvements or to restore the remaining Improvements, provided that such replacement and/or restoration is then permitted by existing law, with only such modifications as will not materially reduce the value of the restored Improvements, as compared to the damaged Improvements. Promptly after a Partial Taking and payment by the condemning agency of the Partial Taking Award, at Tenant's expense up to the extent of the Partial Taking Award, and in the manner specified in provisions of this Lease relating to maintenance, repairs and alterations, Tenant shall repair, alter, modify or reconstruct the Improvements ("restoring") so as to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises are leased. The Partial Taking Award shall be held by Lender, if any, and if not, by Tenant, provided no Event of Default then exists, and otherwise by a third party disbursement control company selected by Landlord and Tenant, and shall be disbursed to pay the cost of restoring the Improvements in the same manner as provided in Section 7.6 above for the costs incurred to restore the Improvements following a damage or destruction. If Tenant does not restore as above, the Severance Damages shall instead be paid to any Lender entitled to it and otherwise to Landlord provided that it uses such proceeds to affect such restoring.

Section 9.5 Limited Takings.

(a) On the taking, other than a temporary taking, of less than the fee or leasehold interest in the Premises or improvements or both, the question whether the taking is a Total Taking, Substantial Taking or Partial Taking and the effects on the term, rent and apportionment of awards shall in the event of dispute be submitted to judicial reference pursuant to Section 12.1. Both parties waive their rights under Section 1265.120 of the California Code of Civil Procedure and agree that the right to terminate this Lease in the event of a taking shall be governed by the provisions of this Article 9.

(b) On any taking of the temporary use of all or any part or parts of the Premises or improvements or both for a period, or of any estate less than a fee, ending on or before the normal 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 expenditures 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. Tenant shall pay for any excess cost not covered by the award and such expense. 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 of the award 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 Takings, Substantial Takings and Partial Takings.

Section 9.6 Partial Taking During Final Years of Term. Tenant is relieved of the obligation for restoring imposed under Section 9.4(b) and this Lease shall be terminated on the date physical possession is taken by the condemnor if a Partial Taking occurs during the final ten (10) years of the term of this Lease if the work of restoration would cost more than ten percent (10%) of the then replacement value of the improvements and Tenant complies with all of the following conditions:

(a) Within 30 days after Tenant received the Notice of Intended Condemnation, Tenant gives Landlord notice of election to claim the relief described in this Section 9.6.

(b) An Event of Default by Tenant is not outstanding or, if an Event of Default is outstanding, Tenant remedies same by performance (but only to the extent that such performance is practical in light of the taking) concurrent with or within a reasonable period after its receipt of the award to which it is entitled.

(c) Tenant continues to pay all rents and any other payments when due as required under this Lease, provided that the requirement of this subsection 9.6(c) shall be waived, if and when Tenant delivers possession pursuant to subsection 9.6(d).

(d) Tenant delivers possession of the Premises to Landlord.

(e) Tenant shall receive the present value of the remaining years of Tenant's leasehold interest on that portion of the Premises, and, Landlord shall receive the balance of the award.

Section 9.7 Allocation of Award. Any compensation or damages awarded or payable because of a Total Taking or a Partial Taking shall be allocated between Landlord and Tenant as follows:

(a) All compensation or damages, other than the Severance Damages, that are awarded or payable for the taking by eminent domain of any portion of the Premises shall be allocated and paid (i) to Landlord in the same proportion that the appraised value of Landlord's interests in the portion of the Premises (including the Improvements) and the Lease subject to the taking at the time of taking bears to the total value attributed to the portion of the Premises (including the Improvements) subject to the taking, at the time of taking; and (ii) to Tenant (or to the extent of any Leasehold Encumbrance, to the Lender holding same), in the same proportion that the appraised value of Tenant's interest in the portion of the Premises (including the

Improvements) and the Lease (including the bonus value thereof) subject to the taking at the time of taking bears to the total value attributed to the portion of Premises (including the Improvements) subject to the taking, at the time of taking. The term "time of taking" as used in this subparagraph shall mean 12:01 A.M. of whichever of the following shall first occur: the date that title, or the date that physical possession of the portion of the Premises on which the Improvements are located, is taken by the agency or entity exercising the eminent domain power.

(b) Any Severance Damages to the Improvements awarded or payable upon a Partial Taking shall be paid to Tenant in accordance with Section 9.4(b) above.

ARTICLE 10.
ASSIGNMENT AND SUBLEASING

Section 10.1 Tenant's Right to Assign.

(a) Prior to Project Completion, Tenant may not Transfer its leasehold interest in the Premises to non-affiliated third parties without the express written consent of Landlord, which shall be at Landlord's reasonable discretion.

(b) Subsequent to Project Completion, Tenant may Transfer its leasehold interest in the Premises, either directly or indirectly, to (i) an assignee who is an "Institutional Investor" (as defined below), without Landlord's consent and (ii) any other non-affiliated third party, with the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignee shall have sufficient experience in the operation and management of apartments (or agrees in writing with Landlord to employ a "Qualified Manager", as defined in Section 10.1(g) below) to perform all the agreements, undertakings, and covenants of this Lease. "**Transfer**" shall mean (a) an assignment to a third party of Tenant's interest in this Lease, or (b) a change of those persons or entities holding, directly or indirectly, more than 50% of the voting interests in Tenant (unless the Tenant or its affiliate is a publicly held entity in which event such change in the holders of voting interests shall not apply), or (c) a subletting which grants or conveys to a sublessee the right to possess or use fifty percent (50%) or more of the units within the Premises (a "**Major Sublease**"). The term "**Institutional Investor**" means any of the following persons or entities: (1) any savings bank, savings and loan association, commercial bank, or trust company having shareholder equity of at least Forty Million Dollars ($40,000,000); (2) any fund, credit union, trust or insurance company having assets of at least Forty Million Dollars ($40,000,000); (3) any employment benefit plan subject to ERISA having assets held in trust of Forty Million Dollars ($40,000,000) or more; (4) any pension plan established for the benefit of the employees of any state or local government, or any governmental authority, having assets of at least Forty Million Dollars ($40,000,000); or (5) any other person or entity in the business of owning interests in commercial real estate or residential multi-family developments, with a net worth (either itself, or including its parent, subsidiaries and affiliates) in excess of Forty Million Dollars ($40,000,000). In the event of an assignment of the Lease, the recipient of Tenant's interest in this Lease pursuant to a Transfer shall be referred to herein as the "**Transferee**." A Transfer that is proposed by Tenant shall be referred to herein as a "**Proposed Transfer**," and the transferee under such Proposed Transfer shall be referred to herein as the "**Proposed Transferee**."

(c) To assist Landlord in determining whether or not the Proposed Transferee is an Institutional Investor and is itself a Qualified Manager, or has retained a Qualified Manager, Tenant shall furnish to Landlord, at no expense to Landlord, not less than thirty (30) days prior to the proposed effective date of such Proposed Transfer, for Landlord's review and approval, the following: (i) detailed and complete financial statements of the Proposed Transferee, audited by a reputable certified public accountant, (if the Proposed Transferee causes its statements to be so audited in its normal course of business), (ii) detailed information about the business of the Proposed Transferee, including its experience in owning, operating and managing apartments, or if the Proposed Transferee will be retaining a property management company to manage the Project, detailed information about such third party property management company; and (iii) a copy of the instrument intending to effectuate the Proposed Transfer (whether an assignment, Major Sublease, or change in voting ownership). The date of delivery of the above is referenced herein as the "**Submission Date**". Tenant shall also furnish to Landlord, such other information concerning the Proposed Transfer as Landlord may reasonably require to assist Landlord in determining the financial qualification and experience of the Proposed Transferee and/or its third party managers, provided such information is requested from Tenant by Landlord in writing, no later than twenty (20) days after the Submission Date.

(d) As to any Transfer for which Landlord's consent is required pursuant to this Section 10.1, Landlord shall have thirty (30) days after the Submission Date to notify Tenant, in writing, of whether it consents or does not consent to the Proposed Transfer. In the event that Landlord fails to respond to Tenant's request within such 30-day period, Tenant shall have the right to provide a second written request for consent stating in bold letters that Landlord's failure to respond within an additional period of thirty (30) days shall be deemed to be Landlord's granting of consent to Tenant's request. If Landlord's failure to respond continues for thirty (30) days after receipt of a second written request for consent, the request for consent shall be deemed approved. To be valid, any disapproval notice issued by Landlord pursuant to this Section 10.1, must contain a detailed explanation of the grounds for Landlord's denial of consent consistent with the terms of this Lease. All notices provided to the original Landlord named under the Lease shall be sent to all three notice addresses for Landlord set forth in Section 15.3 (including, without limitation, that for the Superintendent and Assistant Superintendent of Business Services).

(e) Notwithstanding anything to the contrary set forth in this Lease, Tenant shall have the right at any time to Transfer its leasehold interest in the Premises, without Landlord's approval to any of the following (collectively a "**Permitted Assignee**"):

(i) The assignment of Tenant's interest herein to a new or different business entity now or hereafter organized (and the admission of new members or partners in such entity) which either controls, is controlled by or is under common control with Tenant, either directly or indirectly, so long as one or more of the direct or indirect interest holders in Tenant, have active day-to-day involvement in the activities of the Transferee or the Transferee retains the same or a comparable professional management company to manage the Project. For the purposes of this subsection, "control" shall mean the ownership, either directly or indirectly, of not less than twenty percent (20%) of the voting interests or securities in the applicable entity;

(ii) The assignment of Tenant's interest to any party holding a direct or indirect interest in an entity described in (i) above;

(iii) Any transfer of shares, partnership or membership interests to the spouse, children or grandchildren of any person holding such equity interest caused by the death of such person;

(iv) Any Permitted Transferee shall promptly give notice of any assignment of the Lease to such Permitted Transferee and shall execute at the request of Landlord an assumption of all of Tenant's obligations under this Lease, effective as of the date of the assignment, in a form reasonably satisfactory to Landlord.

(f) Except as otherwise specifically provided for herein, each and all of the provisions, agreements, terms, covenants, and conditions herein contained to be performed, fulfilled, observed, and kept by Tenant hereunder shall be binding upon the heirs, executors, administrators, successors, and assigns of Tenant, and all rights, privileges and benefits arising under this Lease in favor of Tenant shall be available in favor of its heirs, executors, administrators, successors, and assigns. Notwithstanding the foregoing, no assignment or subletting by or through Tenant in violation of the provisions of this Lease shall vest any rights in any such assignee or Sublessee. Any approved or permitted assignment of this Lease shall release the assignor of all liability arising due to actions or omissions on or after the effective date of such assignment, provided the assignee assumes all of such liability, including without limitation the obligation of assignee to cure any defaults and delinquencies under this Lease and to pay to Landlord the Annual Rent and any other amounts attributable to the period prior to the assignment.

(g) Notwithstanding any contrary provision of this Article 10, Tenant shall be permitted to hire one or more management companies of its choosing for property management of the Premises and/or may conduct such property management activities using its own staff. Any management company hired by Tenant to perform property management of the Premises shall, with respect to the original Tenant under this Lease, be an entity which controls, is controlled by, or is under common control with, such original Tenant, or, is an entity (a "**Qualified Manager**") which at the time of such engagement (a) has at least five (5) years' of experience in the operation and management of rental apartments similar in type and size to the Project constructed upon the Premises pursuant hereto, without material violations of law or discrimination, and (b) to the extent required under applicable law, has a valid license to manage residential dwelling units issued by the California Department of Real Estate (or its successor).

(h) Tenant shall pay Landlord a flat fee of Ten Thousand Dollars ($10,000) for each Proposed Transfer to reimburse Landlord for its expenses incurred in connection with a review of the proposed documentation for a Proposed Transfer within thirty (30) days following submission of the Proposed Transfer to Landlord.

Section 10.2 Leasehold Encumbrances and Subsequent Transfers. Notwithstanding the provisions of Section 10.1 of this Lease, Tenant may without the prior written consent of Landlord transfer and assign all Tenant's interest under this Lease and Tenant's leasehold estate created under this Lease to a Lender under a Leasehold Encumbrance (as defined in Section 6.1

of this Lease). Any transfer, conveyance, or assignment resulting from a foreclosure or acceptance of a deed in lieu of foreclosure by any Lender (as defined in Section 6. 1 of this Lease), or any transfer, conveyance, or assignment by any Lender (or its nominee that acquires title to the leasehold estate under this Lease) following its acquisition of this Lease and the leasehold estate of Tenant created by this Lease as a result of foreclosure or acceptance of a deed in lieu of foreclosure shall not require the prior consent of Landlord.

Section 10.3 Tenant's Right to Sublease. Notwithstanding the provisions of Section 10.1, Tenant, and its successors and assigns, shall have the right to sublease from time to time, and at all times during the term of this Lease, without Landlord's consent, any of the residential dwelling units within the Project at such rates and on such terms as shall be determined in Tenant's sole and absolute discretion; provided, however, Tenant shall not enter into any such sublease with a term extending beyond the expiration of the term of this Lease unless such sublease is on a month-to-month basis.

ARTICLE 11.
DEFAULT AND TERMINATION

Section 11.1 Abandonment by Tenant. Should Tenant breach this Lease and, following written notice and expiration of any applicable cure period, abandon said Premises prior to the natural expiration of the term of this Lease, such action shall constitute a default under this Lease by Tenant.

Section 11.2 Termination for Breach by Tenant. Should Tenant fail to cure any default or breach of this Lease within thirty (30) days after receipt of written notice of the default where the default can be cured by the payment of money to Landlord or some person, or within one hundred twenty (120) days after receipt of written notice of the default where the default must be cured by other than the payment of money and can be cured within said one hundred twenty (120) days or within such reasonable time as may be required to cure the default which default cannot be cured by payment of money or cannot be performed within one hundred twenty (120) days so long as Tenant diligently pursues the cure, then such default shall be deemed an "Event of Default" and Landlord, in addition to any other remedies available to Landlord at law or in equity, and in all events subject to the rights of Lender under Article 6 hereof, shall have the immediate option to terminate this Lease and all rights attendant hereunder by giving written notice of such intention to terminate in the manner specified in Section 15.4 hereof.

In the event that Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant:

(i) The worth at the time of the award of any unpaid rent which had been earned at the time of such termination;

(ii) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease for which in the ordinary course of things would be likely to result therefrom; plus

(iii) Such other amounts in addition to or in lieu of the foregoing which may be permitted from time to time by applicable California law.

As used in subsection (i) the "worth at the time of award" is computed by allowing interest at a rate equal to the lesser of ten (10%) per annum or the maximum legal rate under the laws of the State of California and by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

Section 11.3 Alternative Remedy. In the event of an Event of Default (as defined in Section 11.2), and if Landlord does not elect to terminate this Lease and Tenant's right to possession of the Premises by electing the remedy provided in Section 11.2, then Landlord may, pursuant to Section 1951.4 of the Civil Code of the State of California, recover all Annual Rent as it becomes due.

Section 11.4 Mitigation by Landlord. Landlord agrees to use commercially reasonable efforts to mitigate its damages following an Event of Default by Tenant.

Section 11.5 No Automatic Termination. Landlord entry into the Premises, following an Event of Default, for maintenance purposes or in an attempt to relet the Premises shall not be considered to terminate Tenant's right to possession of the Premises and no entry of the Premises by Landlord following an Event of Default shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Landlord may at any time after any Event of Default by Tenant elect to terminate this Lease pursuant to Section 11.2.

Section 11.6 Holding Over. Upon the expiration of this Lease, or sooner termination hereof pursuant to the terms hereof, Tenant shall promptly vacate and surrender the Premises to Landlord and leave the Premises in the condition required in Section 11.9. If Tenant holds over after the expiration of the Term for any cause, with or without the express or implied consent of Landlord, such holding over shall be deemed to be a tenancy from month-to-month only, and shall not constitute a renewal or extension of the Term. During any such holdover period, the Annual Rent in effect at the end of the Term shall be increased to one hundred twenty five percent (125%) of such previously effective amounts. Such holdover shall otherwise be subject to the same terms, conditions, restrictions and provisions as herein contained. Such holding over shall include any time employed by Tenant to remove machines, appliances and other equipment during the time periods herein provided for such removal.

Section 11.7 Landlord's Rights of Self-Help. In the event that the Tenant shall default in the performance of any of the agreements, conditions, covenants or terms herein contained, which event of default remains uncured after the grace period provided for in Section 11.2 hereof, the Landlord may immediately, or at any time thereafter, perform the same for the account of the Tenant, and any amount paid, or any expense or liability incurred, by the Landlord in the performance of the same shall be repaid to Landlord, as additional rent, payable by the Tenant within thirty (30) days after demand hereunder together with interest from the date the cost or expense is incurred at an amount equal to the lesser of ten percent (10%) per annum or the maximum lawful rate of interest then in effect under the laws of the State of California; and the Landlord shall have the right to enter the Premises upon not less than two (2) business days

prior notice, except in the case of an emergency, for the purpose of correcting or remedying such default and to remain therein until the same shall have been corrected or remedied.

No performance by Landlord of any of the obligations on Tenant's part to be performed hereunder shall be or be deemed to be a waiver of the Tenant's default in or failure to perform the same nor shall the performance thereof by Landlord release or relieve Tenant from any obligations on its part to be performed under this Lease.

Section 11.8 Waiver of Breach. The waiver by either party (the "**Waiving Party**") of any breach by the other party of any of the provisions of this Lease shall not constitute a continuing waiver or waiver of any subsequent breach by the non-Waiving Party either of the same or different provision of this Lease. The receipt by Landlord of rents payable under this Lease, with knowledge of any breach of this Lease by Tenant or of any default on the part of Tenant in the observance or performance of any of the conditions or covenants of this Lease, shall not be deemed to be a waiver of any provisions of this Lease.

Section 11.9 Surrender of Premises. On expiration or sooner termination of this Lease, Tenant shall surrender said Premises, all Improvements in or on said Premises, and all facilities in any way appertaining to said Premises except as otherwise described in Section 5.6, to Landlord in as good and clean condition as practicable, reasonable wear and tear excepted.

Section 11.10 Liability of Tenant. Notwithstanding anything to the contrary contained in this Lease, including, without limitation, the foregoing provisions of this Article 11, from and after the Effective Date, the liability of any Tenant by reason of the execution hereof, or the acquisition of an ownership interest in this Lease or the leasehold estate created hereby, shall not operate or be construed as personal to such Tenant and the liability of any Tenant shall be limited to its interest (i) in the Premises, the leasehold created hereby and the Improvements, any rents, issues and profits arising from any subleases, or otherwise arising from Tenant's operations relating to the Premises or the Improvements which are unpaid, or which have accrued but are not yet due and payable, at the time of any default hereunder; and (ii) with respect to any obligation to hold and apply insurance proceeds, proceeds of condemnation or other monies hereunder, in any such monies received by it to the extent not so applied, and no other assets of any Tenant shall be affected by or subject to being applied to the satisfaction of any liability which Tenant may have to Landlord or to another person by reason of the execution of this Lease or the assumption of the Tenant's obligations hereunder or the acquisition of Tenant's interest in this Lease or the leasehold created hereby, and any judgment, order, decree or other award in favor of Landlord shall be collectible only out of, or enforceable in accordance with, the terms of this Lease by termination or other extinguishment of Tenant's interest in the Premises, this Lease, any subleases of all or any portion of the Premises and any such rents, issues and profits and such insurance proceeds, proceeds of condemnation or other monies.

Section 11.11 Default by Landlord. If (a) Landlord should be in default in the performance of any of its covenants or obligations under this Lease and the default continues for a period of more than one hundred twenty (120) days after receipt of written notice from Tenant specifying such default, or if such default is of a nature to require more than one hundred twenty (120) days for remedy and continues beyond the time reasonably necessary to cure (provided Landlord has undertaken procedures to cure the default within such 120 day period and diligently

pursues such efforts to cure to completion), or (b) any of Landlord's express representations and warranties set forth in this Lease or in the Option Agreement is false in whole or in part, then Tenant may, in addition to availing itself of any other remedies available at law and/or in equity, at its option, upon written notice to Landlord, (i) terminate this Lease, or (ii) incur any expense reasonably necessary to perform the obligation of Landlord specified in such notice and deduct such expense from the Annual Rent next coming due.

Section 11.12 Waiver of Certain Damages. Notwithstanding any other provision of this Lease, each party hereby waives any and all right to recover from the other party any indirect, consequential, punitive or any other damages, other than compensatory damages, for the breach of this Lease as set forth in this Article 11.

ARTICLE 12.
JUDICIAL REFERENCE.

Section 12.1 Judicial Reference. In the event of a dispute between Landlord and Tenant arising out of, related to or in connection with this Lease, such dispute shall be heard and resolved by a referee under the provisions of the California Code of Civil Procedure, Sections 638 – 645.1, inclusive (as same may be amended, or any successor statute(s) thereto) (the "**Referee Sections**"). Any fee to initiate the judicial reference proceedings shall be paid by the party initiating such procedure; provided however, that the costs and fees, including any initiation fee, of such proceeding shall ultimately be borne in accordance with Section 12.3 below. The venue of the proceedings shall be in the county in which the Premises are located.

Section 12.2 Appointment of Referee(s). Within 10 days of receipt by any party of a written request to resolve any dispute or controversy pursuant to this Article 12, the parties shall agree upon a single referee who shall try all issues, whether of fact or law, and report a finding and judgment on such issues as required by the Referee Sections. If the parties are unable to agree upon a referee within such 10 day period, then any party may thereafter file a lawsuit in the county in which the Premises are located for the purpose of appointment of a referee under California Code of Civil Procedure Sections 639 and 640, as same may be amended or any successor statute(s) thereto. If the referee is appointed by the court, the referee shall be a neutral and impartial retired judge with substantial experience in the relevant matters to be determined, from Jams/Endispute, Inc., the American Arbitration Association or similar mediation/arbitration entity. The proposed referee may be challenged by any party for any of the grounds listed in Section 641 of the California Code of Civil Procedure, as same may be amended or any successor statute(s) thereto.

Section 12.3 Powers of Referee. The referee shall have the power to decide all issues of fact and law and report his or her decision on such issues, and to issue all recognized remedies available at law or in equity for any cause of action that is before the referee, including an award of attorneys' fees and costs in accordance with California law. The referee shall not, however, have the power to award punitive damages, nor any other damages which are not permitted by the express provisions of this Lease, and the parties hereby waive any right to recover any such damages. The referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge, with rights to regulate discovery and to issue and enforce subpoenas, protective orders and other limitations on discovery available under California law;

provided, however, that the referee shall limit discovery to that which is essential to the effective prosecution or defense of the action, and in no event shall discovery by either party include more than one non-expert witness deposition unless both parties otherwise agree.

Section 12.4 Conduct of Proceeding. The reference proceeding shall be conducted in accordance with California law (including the rules of evidence), and in all regards, the referee shall follow California law applicable at the time of the reference proceeding. In accordance with Section 644 of the California Code of Civil Procedure, the decision of the referee upon the whole issue must stand as the decision of the court, and upon the filing of the statement of decision with the clerk of the court, or with the judge if there is no clerk, judgment may be entered thereon in the same manner as if the action had been tried by the court.

Section 12.5 Cooperation. The parties shall promptly and diligently cooperate with one another and the referee, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute or controversy in accordance with the terms of this Article 12. To the extent that no pending lawsuit has been filed to obtain the appointment of a referee, any party, after the issuance of the decision of the referee, may apply to the court of the county in which the Premises are located for confirmation by the court of the decision of the referee in the same manner as a petition for confirmation of an arbitration award pursuant to Code of Civil Procedure Section 1285 et seq. (as same may be amended or any successor statute(s) thereto)

ARTICLE 13.
REPRESENTATIONS AND WARRANTIES

Section 13.1 Landlord Representations and Warranties. Landlord represents and warrants to Tenant that the following matters are true and correct as of the execution of this Lease:

(a) Authority. This Lease is duly authorized, executed, and delivered by Landlord, and does not violate any provisions of any agreement to which Landlord is a party or to which it or the Premises is subject.

(b) Legal Proceedings. There are no pending or, to Landlord's actual knowledge, threatened legal proceedings or actions of any kind or character affecting the Premises or any portion thereof or Landlord's interest therein or affecting this Lease.

(c) Required Actions. All requisite action has been taken by Landlord, under the California Education Code or otherwise, in connection with the entering into this Lease and the instruments referenced herein, and the consummation of the transaction contemplated thereby. No consent of any partner or other party is required hereunder.

(d) No Conflicts. Neither the execution and delivery of this Lease and the documents and instruments referenced herein, nor the incurrence of the obligations set forth therein, nor the consummation of the transaction contemplated therein, nor compliance with the terms of this Lease and the documents and instruments referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any

mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Landlord is a party or affecting the Premises.

(e) Title. Landlord owns fee title to the Premises free and clear of all liens, encumbrances, covenants, restrictions, easements, leases or other matters affecting title, other than recorded title exceptions, which may impair Tenant's ability to develop, lease, use and enjoy the Premises for uses contemplated by this Lease. Landlord has not granted any leases, licenses, options or rights of first refusal to any other party.

(f) Condition of Premises. To the current actual knowledge of the Landlord, with no duty to investigate, there are no physical conditions and/or impediments affecting the Premises that would now, or in the future, have the effect of impairing or prohibiting, in any way, Tenant's contemplated use of the Premises. Such referenced conditions may include, but shall not be limited to: (i) rights of any other party to the use or occupancy of the Premises, (ii) enacted, pending or proposed condemnation proceedings, (iii) subsurface soils conditions, or (iv) current or proposed plans to alter access to the Premises from any surrounding public thoroughfares or private access ways.

(g) Hazardous Materials. Except as set forth in Section 6.6 of the Option Agreement, to the best of Landlord's actual knowledge, with no duty to investigate, no Hazardous Materials have been used, generated, manufactured, stored or disposed of on, under or about the Premises or transported to or from the Premises, and Landlord has no knowledge of the presence, use, treatment, storage, release or disposal of any Hazardous Materials at, on, upon or beneath the Premises. Additionally, no notice has been received by or on behalf of Landlord from, and Landlord has no knowledge that notice has been given to any predecessor, Landlord or operator of the Premises by, any governmental entity or any person or entity claiming any violation of, or requiring compliance with any Environmental Law for any environmental damage in, on, under, upon or affecting the Premises.

(h) No Violation of Laws. There are no violations of any federal, state, regional or local law, ordinance or other governmental rule or regulation pertaining to the Premises.

Section 13.1 Tenant's Representations and Warranties. Tenant represents and warrants to Landlord that the following matters are true and correct as of the execution of this Lease:

(a) Organization; Authority. Tenant is duly organized, validly existing, and in good standing under the laws of the state of its formation. Tenant has the full power and authority to execute, deliver and perform its obligations under this Lease.

(b) Authorization; Validity. This Lease is duly authorized, executed and delivered by and is binding upon Tenant.

ARTICLE 14.
RIGHT OF FIRST REFUSAL

ARTICLE 15.
MISCELLANEOUS

Section 15.1 Force Majeure – Delays. Except as otherwise expressly provided in this lease, should the performance of any act required by this Lease to be performed by either Landlord or Tenant be prevented or delayed by reason of any act of God, strike, lockout, organized labor dispute, inability to secure materials, moratorium on building, construction or planning approvals, or other restrictive governmental laws or regulations which prohibit or effectively prohibit performance, or any other cause except financial inability not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused; provided, however, that nothing contained in this section shall excuse the prompt payment of rent by Tenant when due and payable under the terms of this Lease, the performance of any act rendered difficult or impossible solely because of the financial condition of the party, Landlord or Tenant, required to perform the act, or the delivery of possession of the Premises by Landlord to Tenant as required by this Lease.

Section 15.2 Attorney's Fees. Should any litigation be commenced between the parties to this Lease concerning said Premises, this Lease, or the rights and duties of either in relation thereto, the party, Landlord or Tenant, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted in the litigation to a reasonable sum as and for his attorney's fees in such litigation which shall be determined by the court in such litigation or in a separate action brought for that purpose. The prevailing party in any such action shall be entitled, in addition to and separately from the amounts recoverable hereunder, to the payment by the losing Party of the prevailing Party's reasonable attorneys' fees, expert witness fees, court costs and litigation expenses incurred in connection with (a) any appellate review of the judgment rendered in such action or of any other ruling in such action, and (b) any proceeding to enforce a judgment in such action. It is the intent of the parties that the provisions of this Section 15.2 be distinct and severable from the other rights of the parties under this Agreement, shall survive the entry of judgment in any action and shall not be merged into such judgment.

Section 15.3 Notices to Landlord. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to Landlord by Tenant or any Lender described in this Lease shall be in writing and shall be deemed duly served and given by deposit in the United States mail, certified, return receipt requested, by email with delivery confirmation by overnight courier, or by overnight courier, return receipt, addressed to Landlord at the following address:

LANDLORD: CAPISTRANO UNIFIED SCHOOL DISTRICT
Attn: Superintendent
33122 Valle Road
San Juan Capistrano, CA 92675

With a Copy to (legal counsel): Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive South, Suite 300
Cerritos, California 90703
Attention: Andreas C. Chialtas

The date of notice shall be the date marked on the return receipt or with the date on which the electronic confirmation of receipt is received. Landlord may change Landlord's address for the purpose of this section by giving written notice of such change to Tenant in the manner provided in Section 15.4.

Section 15.4 Notices to Tenant. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to Tenant by Landlord shall be in writing and shall be deemed duly served and given by deposit in the United States mail, certified, return receipt requested, by email with confirmation of receipt by return email, with delivery confirmation by overnight courier, or by overnight courier, return receipt, addressed to Tenant at the following address:

TENANT: Toll Bros., Inc.
250 Gibraltar Road
Horsham, PA 19044
Attn: Mark J. Warshauer, Esq., Senior Vice President and Counsel
Email: mwarshauer@tollbrothers.com

Toll Bros., Inc.
250 Gibraltar Road
Horsham, PA 19044
Attn: Charles Elliott, Managing Director
Email: celliott@tollbrothers.com

With a Copy to (legal counsel): Jackson Tidus
2030 Main Street, 12th Floor
Irvine, CA 92614
Attn: Andrew P. Bernstein, Esq.
Email: abernstein@jacksontidus.law

The date of notice shall be the date marked on the return receipt or with the date on which electronic confirmation of receipt is received. Tenant may change Tenant's address for the purpose of this section by giving written notice of such change to Landlord in the manner provided in Section 15.3 of this Lease.

Section 15.5 Governing Law. This Lease, and all matters relating to this Lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of

this Lease or any decision or holding concerning this Lease arises. The parties acknowledge that each party has been represented by independent counsel in connection with this Lease and that the preparation of this Lease has been a joint effort of both parties. Accordingly, any doctrine which would result in this Lease being interpreted in favor of or against any particular party shall not be applicable.

Section 15.6 Binding on Heirs and Successors. This Lease, and the terms, covenants and conditions hereof, shall be binding on and shall inure to the benefit of the heirs, executors, administrator, successors and assigns of the parties hereto, Landlord and Tenant, but nothing in this section shall be construed as a consent by Landlord to any assignment of this Lease or any interest therein by Tenant except as provided in Article 10 of this Lease.

Section 15.7 Partial Invalidity. Should any provision of this Lease be held by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.

Section 15.8 Sole and Only Agreement: Amendment. This Lease and the Option Agreement constitute the sole and only agreements between Landlord and Tenant respecting said Premises, the leasing of said Premises to Tenant, the construction of the Project described in this Lease on said Premises, or the lease terms herein specified, and correctly set forth the obligations of Landlord and Tenant to each other as of their dates, and supersede any and all prior agreements or understandings whether written or oral. Any agreements or representations respecting said Premises, their leasing to Tenant by Landlord, or any other matter discussed in this Lease not expressly set forth in this instrument are null and void. Any and all amendments or modifications of this Lease shall be in writing and shall be dated and signed by the parties hereto.

Section 15.9 Time of Essence. Time is expressly declared to be the essence of this Lease.

Section 15.10 Memorandum of Lease for Recording. Substantially concurrently with the Effective Date, Landlord and Tenant shall execute, acknowledge and caused to be recorded a memorandum or "short form" of this Lease in the form attached hereto as Exhibit "D" (the "**Memorandum of Lease**").

Section 15.11 Gender, Single and Plural. Whenever the context herein so requires, the masculine gender includes the feminine or neuter and the singular includes the plural.

Section 15.12 Signs. Tenant will be entitled to place on the Premises such advertising signs as it deems necessary or proper for the development and marketing of the Premises so long as such signage is in compliance with all applicable laws, codes and regulations.

Section 15.13 Reasonable Consent. Wherever in this Lease, Landlord or Tenant is entitled to give its approval to review or give its consent the same shall not be unreasonably withheld unless expressly stated that consent or approval is in the sole discretion of said party. If a party fails to respond to any request for such approval within ten (10) business days after receipt of written request for such approval, the other party shall have the right to provide a

second written request for approval stating in bold letters that the party's failure to respond within a period of five (5) business days shall be deemed to be an approval. If such party's failure to respond continues for five (5) business days after receipt of a second written request for approval, the request for approval shall be deemed approved.

Section 15.14 Quiet Possession. So long as this Lease has not been terminated, Landlord covenants that Tenant shall and may peaceably and quietly have, hold and enjoy the Premises, and the whole thereof, for the full term of this Lease, without hindrance or interruption by Landlord or any other person or persons claiming by, through, or under Landlord.

Section 15.15 Estoppel Certificate. A party hereto ("**Certifying Party**") shall at any time upon no less than ten (10) days' prior written notice from the other party ("**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing (the "**Estoppel**") (i) certifying that this Lease is unmodified and in full force, or, if modified, stating the nature of such modifications and certifying that this Lease, as so modified, is in full force and the date to which the rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to the knowledge of the Certifying Party, any uncured defaults on the part of the Requesting Party hereunder, or specifying such defaults if any are claimed. The Estoppel shall also state the amount of rent then payable, the dates to which the rent and any other charges have been paid in advance and shall include such assurances of satisfaction of conditions or other factual matters provided for in the Lease or respecting the Premises as the party seeking the Estoppel may reasonably request, including, without limitation, those certifications reasonably required by a prospective or current Lender or equity investor. The Estoppel may be conclusively relied upon by any prospective assignee, subtenant, purchaser or encumbrancer of the interest of the Requesting Party in the Premises and by any auditor, creditor, commercial banker or investment banker of either party. Certifying Party's failure to deliver such statement within such time shall be conclusive upon the Certifying Party (i) that this Lease is in full force, without modification except as may be represented by the Requesting Party, (ii) that there are no uncured defaults in the Requesting Party's performance, and (iii) that not more than one month's rent has been paid in advance.

Section 15.16 Toxic Waste. Tenant shall not unlawfully discharge on the Premises, and shall use commercially reasonable efforts to protect against the unlawful discharge thereon by its tenants of, any substance which is known at the time of such discharge to be a toxic waste. As used herein, the term "toxic waste" shall include, but not be limited to, substances defined as "hazardous substances", "hazardous materials", or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; those substances defined as "hazardous wastes" in Section 25117 of the California Health and Safety Code or as "hazardous substances" in Section 25316 of the California Health and Safety Code; any similar substance as defined and used in any similar environmental control law applicable to the Premises; and in the regulations adopted or publications promulgated pursuant to said laws and any amendments thereto. Tenant shall indemnify, save and hold Landlord harmless from and against any and all loss, claim, liability or damages which Landlord may sustain or incur as a result of any failure by Tenant to perform its obligations set forth in this section during its ownership of the leasehold estate hereunder; provided however, that the foregoing indemnity

shall not apply to (a) any toxic waste existing on the Premises as of the Effective Date; or (b) any toxic waste released or authorized to be released on, under or about the Premises by Landlord.

Section 15.17 Attornment. In the event that Tenant defaults under this Lease, Landlord shall notify all subtenants (if any) of the default and said subtenants shall attorn to Landlord and perform all of their obligations under the subleases in favor of Landlord. As to each subtenant not in default at the time of notice, Landlord shall continue to recognize the estate of each such subtenant and shall not disturb the subtenancy of each such subtenant. The sublease shall continue with the same force and effect as if Landlord and subtenant had entered into a lease with the same provisions as in the sublease.

Section 15.18 Further Assurances. Landlord and Tenant agree to cooperate in good faith with each other, and to execute and deliver such further documents and perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions contemplated under this Lease.

Section 15.19 Counterparts. This Lease may be executed in counterparts, each of which shall constitute an original, but all of which shall constitute one and the same instrument.

[***Signatures on following page.***]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective duly authorized officers, as of the Effective Date.

LANDLORD:

CAPISTRANO UNIFIED SCHOOL DISTRICT

By: _____
Print Name: _____
Title: _____

ATTEST: _____

_____
Clerk of the Board of Trustees

APPROVED AS TO FORM:

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

_____
Andreas C. Chialtas, legal counsel for District

TENANT:

TOLL BROS., INC., a Pennsylvania corporation

By: _____
Print Name: _____
Title: _____

EXHIBIT "A"

Description of Premises

EXHIBIT "B"

Description of the Project

EXHIBIT "C"

Rent Schedule

[To be prepared by Tenant and attached following exercise of the Option by Tenant pursuant to the Option Agreement.]

EXHIBIT "D"

Memorandum of Lease

RECORDING REQUESTED BY **AND WHEN RECORDED MAIL TO:** Toll Bros., Inc. 250 Gibraltar Road Horsham, PA 19044 Attn: Mark J. Warshauer, Esq., Senior Vice President and Counsel	

(Space above this line for Recorder's use)

MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease (this "**Memorandum**") is entered into as of _____, 20__, by and between CAPISTRANO UNIFIED SCHOOL DISTRICT, a public school district duly organized and validly existing under the Constitution and the laws of the State of California ("**Landlord**"), and TOLL BROS., INC., a Pennsylvania corporation ("**Tenant**"), with reference to the following facts:

RECITALS

A. Landlord and Tenant have entered into that certain unrecorded Ground Lease dated as of _____, 20__ (the "**Lease**"). All capitalized terms used herein without definition shall have the same meanings as assigned in the Lease.

B. Landlord and Tenant desire to provide notice that Tenant is leasing as of the Effective Date all that certain real property in the City of Dana Point, County of Orange, State of California more particularly described in Exhibit A attached hereto (the "**Premises**").

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, Landlord and Tenant hereby agree as follows:

1. Demise of Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, subject to the terms and conditions of the Lease. The Effective Date of the Lease occurred on _____, 20__, and the Term will end ninety-nine years after the Effective Date (the "**Lease Expiration Date**"), unless sooner terminated pursuant to the terms of the Lease.

2. Title to Improvements; Depreciation. Until the Lease Expiration Date or earlier termination of the Lease, title to any and all Improvements that Tenant may construct on the Premises, any and all fixtures that Tenant may install therein, and any and all Alterations that Tenant may make thereto shall be solely Tenant's property, Tenant's interest therein shall be as owner and not as tenant and Tenant alone shall be entitled to depreciate the same for tax purposes. On the Lease Expiration Date, title to any Improvements located on the Premises, any and all fixtures that Tenant may install therein and any Alterations thereto shall vest in and become the full and absolute property of Landlord.

3. Incorporation by Reference; No Modification of Lease. The terms and conditions of the Lease are incorporated herein by this reference. This Memorandum is prepared and recorded for the purpose of putting the public on notice of the Lease, and this Memorandum in no way modifies the terms and conditions of the Lease. In the event of any inconsistency between the terms and conditions of this Memorandum and the terms and conditions of the Lease, the terms and conditions of the Lease shall control.

4. Miscellaneous. This Memorandum shall be governed by and construed in accordance with the laws of the State of California. No addition to or modification of any term hereof shall be effective unless set forth in writing and signed by Landlord and Tenant. All of the provisions of this Memorandum shall inure to the benefit of and shall be binding upon the successors and assigns of Landlord and Tenant. This Memorandum may be executed in two or more counterparts and by different parties in different counterparts, all of which together shall constitute one and the same original.

[***Signatures on following page***.]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Memorandum as of the date first written above.

LANDLORD:

CAPISTRANO UNIFIED SCHOOL DISTRICT

By: _____
Print Name: _____
Title: _____

ATTEST: _____

_____
Clerk of the Board of Trustees

APPROVED AS TO FORM:

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

_____
Andreas C. Chialtas, legal counsel for District

TENANT:

TOLL BROS., INC., a Pennsylvania corporation

By: _____
Print Name: _____
Title: _____

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

STATE OF CALIFORNIA
COUNTY OF _____

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

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

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

WITNESS my hand and official seal.

_____ (Seal)
Signature

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

STATE OF CALIFORNIA
COUNTY OF _____

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

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

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

WITNESS my hand and official seal.

_____ (Seal)
Signature

EXHIBIT A

Legal Description of Premises

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF DANA POINT, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

1424128.1