



CITY OF DESERT HOT SPRINGS
SPECIAL MEETING OF THE
HEALTH AND WELLNESS FOUNDATION BOARD

AGENDA

JUNE 19, 2014 - 8:00 A.M.

**CITY COUNCIL CHAMBER
CARL MAY COMMUNITY CENTER
11711 West Drive, Desert Hot Springs, California**

NOTICE IS HEREBY GIVEN, as provided by Government Code Section 54956, that Chairman Martín Magaña has called a special meeting of the Desert Hot Springs Health and Wellness Foundation Board for the purpose stated below:

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

APPROVAL OF THE AGENDA

PUBLIC COMMENTS

At this time, pursuant to State law, any person may comment on an item, which is NOT on the agenda. PLEASE STATE YOUR NAME FOR THE RECORD.

Comments are limited to the first ten (10) speakers at three (3) minutes per speaker. All comments are to be directed to the Health and Wellness Foundation Board and shall be devoid of any personal attacks. Members of the public are expected to maintain a professional, courteous decorum during public comments.

DISCUSSIONS/PRESENTATIONS

- 1. Assignment of Use/Lease Agreement between the City and Boys & Girls Club of Coachella Valley, dated February 2, 2010, to the Borrego Community Health Foundation**

ADMINISTRATIVE CALENDAR

- 2. Assignment of Facilities Lease Agreement between the City and the Desert Hot Springs Health and Wellness Foundation, dated July 13, 2012, to the Borrego Community Health Foundation**

BOARD MEMBER COMMENTS

ADJOURN REGULAR MEETING

NOTICES

Title 2

In an effort to comply with the requirements of Title 2 of the Americans With Disabilities Act of 1990, the City of Desert Hot Springs requires that any person in need of any type of special equipment, assistance, or accommodation(s) in order to communicate at a City public meeting, must inform the City Clerk a minimum of 72 hours prior to the scheduled meeting to enable the City to make reasonable arrangements.

SB 343

In accordance with California Government Code Section 54957.5, any writing or document that is a public record, relates to an open session agenda item, and is distributed less than 72 hours prior to a regular meeting will be made available for public inspection in the Community Development Department at City Hall during normal business hours at 65950 Pierson Boulevard, Desert Hot Springs, CA 92240.

If, however, the document or writing is not distributed until the regular meeting to which it relates, then the document or writing will be made available to the public at the location of the meeting, as listed on this agenda at 11711 West Drive, Desert Hot Springs, CA 92240.

DECLARATION OF POSTING

I, Kristie Ramos, Deputy City Clerk, certify that the agenda was posted not less than 24 hours prior to the meeting.

Signature: _____

Date: _____

**ASSIGNMENT AND ASSUMPTION
AGREEMENT
BY AND BETWEEN
THE CITY OF DESERT HOT SPRINGS
THE BOYS & GIRLS CLUB OF THE COACHELLA VALLEY
AND
BORREGO COMMUNITY HEALTH FOUNDATION**

WHEREAS, the City of Desert Hot Springs ("City") and the Boys and Girls Club of Coachella Valley ("Boys & Girls Club") entered into a Use/Lease Agreement, known as the "Facilities Use Agreement," dated February 2, 2010, attached hereto as Exhibit A, regarding the use of certain real property upon which is situated the Desert Hot Springs Health and Wellness Center for the purpose of operation of a Boys & Girls Club or other similar function; and

WHEREAS, the City and the Boys & Girls Club entered into that certain First Amendment to Use/Lease Agreement, dated May 1, 2013 ("First Amendment"), attached hereto as Exhibit B; and

WHEREAS, the City desires to assign its rights and obligations under the Facilities Use Agreement and the First Amendment to Borrego Community Health Foundation ("Borrego"), a California non-profit _____ corporation; and

WHEREAS, Borrego has agreed to assume the rights and obligations of the City under the Facilities Use Agreement and the First Amendment.

NOW, THEREFORE, in consideration of the above facts and for the promises and mutual covenants contained herein, the receipt and adequacy of which are hereby acknowledged, the parties agree to the following:

Section 1. Assignment of Rights and Obligations.

The City of Desert Hot Springs hereby assigns all of its rights and obligations under the Facilities Use Agreement and First Amendment to the Borrego Community Health Foundation.

Section 2. Assumption of Rights and Obligations.

The Borrego Community Health Foundation hereby assumes all of the rights and obligations of the City of Desert Hot Springs under the Facilities Use Agreement and First Amendment.

Section 3. Acknowledgment and Acceptance.

The Boys and Girls Club of Coachella Valley hereby acknowledges and accepts the assignment of the rights and obligations by the City of Desert Hot Springs and the assumption of those rights and obligations by the Borrego Community Health Foundation.

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IN WITNESS WHEREOF, the City of Desert Hot Springs, the Borrego Community Health Foundation and the Boys and Girls Club of Coachella Valley have executed this Assignment and Assumption Agreement as of the date first written above.

CITY OF DESERT HOT SPRINGS

Signature
Adam Sanchez, Sr.

Print Name
Mayor

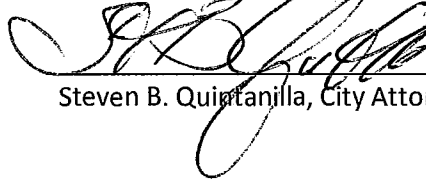
Title

ATTEST:



Jerryl Soriano, City Clerk

APPROVED AS TO FORM:



Steven B. Quintanilla, City Attorney

BORREGO COMMUNITY HEALTH FOUNDATION

Signature

Print Name

Title

BOYS AND GIRLS CLUB OF COCHELLA VALLEY

Signature

Print Name

Title

CITY OF DESERT HOT SPRINGS USE/LEASE AGREEMENT

THIS FACILITIES USE AGREEMENT ("Agreement") is entered into this 2nd day of February 2010, by and between the CITY OF DESERT HOT SPRINGS, a municipal corporation in the County of Riverside, State of California, ("City") and BOYS AND GIRLS CLUB OF COACHELLA VALLEY, a non-profit California corporation ("Boys & Girls Club"). City and Boys & Girls Club are sometimes referred herein individually as "Party" and collectively as "Parties."

RECITALS

A. City is fee owner of that certain real property commonly known as the Desert Hot Springs Health and Wellness Center which is currently under construction for the purpose of operation as a Boys and Girls Club or other similar function. (the "Property").

B. Boys & Girls Club of Coachella Valley anticipates operating a complete range of Boys and Girls Club programs within the City of Desert Hot Springs.

C. Boys & Girls Club desires to use the Property and the City is willing to allow Boys & Girls Club's use for the sole purpose of operating a Boys & Girls Club in the City.

NOW, THEREFORE, in consideration of the above facts and for the promises and mutual covenants contained herein, the receipt and adequacy of which are hereby acknowledged, the Parties agree to the following:

TERMS AND CONDITIONS

I. Effective Date; Term; Termination.

1.1 Effective Date. This Agreement shall become effective upon the issuance of a Certificate of Occupancy for the Property ("Effective Date").

1.2 Term. Upon the Effective Date, City hereby allows Boys & Girls Club to use the Property according to the terms and conditions set forth in this Agreement. The term of this Agreement ("Term"), shall commence on the Effective Date and shall end no later than the end of the calendar month of the tenth anniversary of the Effective Date.

1.3 Termination. Either Party may terminate this Agreement at any time and for any or no reason by giving thirty (30) days prior written notice. Notwithstanding the foregoing, this Agreement shall automatically terminate without any action or notice by either Party upon the end of the Term unless renewed.

2. Rent; Utilities; Other Fees.

2.1 Rent. Rental fee of \$1.00 per year shall be paid by Boys & Girls Club to City on the anniversary date of the Effective Date.

2.2 Utilities. City shall pay the appropriate suppliers for all water, gas, electricity, light, heat, power, and other utilities. Telephone, telefax, internet, cable television, or satellite television services used by Boys & Girls Club on the Property during the Term of this Agreement shall be paid by Boys & Girls Club. In addition Boys & Girls Club shall be responsible for any additions to existing utilities (such as telephone service) if requested.

2.3 City shall provide to Boys & Girls Club annual funding of at least Two Hundred Fifty Thousand Dollars (\$250,000.00) payable one half upon the Effective Date and the balance six (6) months following the Effective Date and for future years, one-half (1/2) at the anniversary of the Effective Date and the balance six (6) months later.

3. Use.

3.1 Permitted Use. The Property shall be used solely for the purpose of conducting activities of and for Boys & Girls Club. Boys & Girls Club shall not change the type of use of the Property without obtaining the prior written consent of the City, which may be withheld in its sole and absolute discretion. The foregoing notwithstanding, Boys & Girls Club in its possession, use and occupancy of the Property, agrees to observe and comply with all restrictions, laws and ordinances affecting the Property or occupancy thereof. Boys & Girls Club further agrees that no use shall be made of the Property which will cause cancellation of any insurance policy covering the Property.

3.2 Permits and Licenses. Boys & Girls Club shall keep any and all applicable permits and licenses required by the City or any federal, state or local authority in connection with the permitted use of the Property, in good standing at all times during the term of this Agreement.

4. Insurance.

4.1 Minimum Requirements. Boys & Girls Club shall, at its expense, procure and maintain insurance for the duration of this Agreement, acceptable to the City, against claims for injuries to persons or damages to the Property which may arise from or are in connection with this Agreement.

4.1.2 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (I) *General Liability*: Insurance Services Office

Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

4.1.3 Minimum Limits of Insurance. Boys & Girls Club shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California, if applicable. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

4.1.4 Endorsements. The insurance policies shall contain the following provisions:

(a) General Liability. The general liability policy shall be endorsed to state that (1) the City and its officials, officers, employees and agents shall be covered as additional insureds with respect to the performance of the Agreement by the Boys & Girls Club and its officials, officers, agents, representatives, employees or volunteers, including materials, parts or equipment furnished in connection with such services; and (2) the insurance coverage shall be primary insurance for the City and its officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the Boys & Girls Club's scheduled underlying coverage. Any insurance maintained by the City or its officials, officers, employees and agents shall be excess of the Boys & Girls Club's insurance and shall not be called upon to contribute with it in any way.

(b) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City and its officials, officers, employees and agents shall be covered as additional insureds with respect to the ownership, operation, maintenance, use loading or unloading of any auto owned, leased, hired or borrowed by the Boys & Girls Club or for which the Boys & Girls Club is responsible; and (2) the insurance coverage shall be primary insurance as respects the City and its officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the Boys & Girls Club's insurance and shall not be called upon to contribute with it in any way.

(c) Worker's Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City and its officials, officers, employees and agents for losses paid under the terms of the insurance policy which arise from work performed by the Boys & Girls Club.

(d) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced, or canceled without thirty (30) days prior written notice by first class mail has been given to the City. The City shall have the right during such notice period, in its sole discretion, to approve or disapprove any such change to each insurance policy required by this Agreement

4.1.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insured provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City or its officials, officers, employees and agents.

4.2 Verification of Coverage. Boys & Girls Club shall furnish City with original certificates of insurance effecting coverage and endorsements required by this Agreement on forms satisfactory to City. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by Boys & Girls Club if requested. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

4.3 Personal Property. Boys & Girls Club shall, at its sole cost and expense and at all times during the term of this Agreement, keep all personal property on the Property insured for its full replacement value by insurance companies authorized to do business in the State of California against loss or destruction by fire and the perils commonly covered under the standard extended coverage endorsement to fire insurance policies in the United States. No provision of this Agreement shall be construed to impose any obligation upon City to insure Boys & Girls Club's personal property.

4.4 Increases in Coverage. City may, from time to time, require Boys & Girls Club to obtain (at Boys & Girls Club's expense) increases in both the types and amounts of coverage provided by the insurances required to be maintained by Boys & Girls Club hereunder, upon City's determination that such increases are reasonably necessary to maintain the level of protection provided to City hereunder as of the Effective Date.

5. Cleanliness, Waste and Nuisance.

5.1 Boys & Girls Club shall keep the Property in a neat, clean and sanitary condition, free from waste or debris and shall neither commit, suffer nor permit any waste or nuisance in or about the Property nor store materials hazardous to health or safety, and shall not permit the use of the Property for any illegal purposes.

5.2 Boys & Girls Club agrees to keep Property in proper order and agrees to provide all cleaning of inside restrooms, office and entry ways as well as provide all supplies necessary to operate Boys & Girls Club programs during its use of Property.

6. Assignments; Subleases; Transfers

Boys & Girls Club shall not voluntarily or by operation of law assign, transfer, sublet, mortgage, or otherwise transfer or encumber all or any part of Boys & Girls Club's interest in this Agreement or the Property, without City's prior written consent, which consent may be withheld in its sole and absolute discretion. Any attempted action described above without the prior written consent of City shall be void and Boys & Girls Club shall be deemed in default of this Agreement. Any permitted assignments shall not relieve the assigning party from its liability under this Agreement.

7. Condition of Property.

Boys & Girls Club represents that Boys & Girls Club has inspected and examined the Property and accepts the Property in its present condition and agrees that City shall only make repairs or improvements to Property on an as needed basis.

8. Damage to Property; Abandonment.

Boys & Girls Club shall be responsible for all damages to the Property caused or permitted by the Boys & Girls Club or the guests, invitees, visitors, agents, employees and independent contractors of Boys & Girls Club. Boys & Girls Club shall not vacate or abandon the Property at any time during the Term of the Agreement.

9. Alterations and Improvements

Boys & Girls Club shall not, without the prior written consent of City, make any alterations, improvements or additions in, to or about the Property. Any such alterations, improvements or additions shall be subject to section 10.2.

10. Surrender of Leased Property; Improvements

10.1 Surrender. Upon the termination of the Agreement, Boys & Girls Club shall surrender the Property in good order and condition, ordinary wear and tear or condemnation excepted.

10.2 Improvements. All improvements on the Property at the expiration of the term or earlier termination of this Agreement shall, without compensation to Boys & Girls Club, then automatically and without any act of Boys & Girls Club or any third-party become City property. Boys & Girls Club shall surrender the improvements to City at the expiration of the term or earlier termination of this Agreement, free and clear of all liens and encumbrances, other than those, if any, permitted under this Agreement or otherwise created or consented to in writing by City. Boys & Girls Club agrees to execute, acknowledge, and deliver to City any instrument requested by City as necessary in City's opinion to convey or otherwise perfect City's right, title, and interest to the improvements and the Property.

11. Right of Entry; Inspection.

Boys & Girls Club shall permit City's or County's agents, employees and representatives to enter the Property at any time and upon without notice for the purpose of inspecting the Property.

12. Indemnification.

Boys & Girls Club shall defend, indemnify and hold City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of the Boys & Girls Club, its officials, officers, employees, agents, consultants, guests, visitors, contractors and subcontractors arising out of or in connection with this Agreement. If any action or proceeding is brought against City, its successors or assigns by reason of any claim, Boys & Girls Club, upon notice from City, shall defend the claim at Boys & Girl Club's sole expense with counsel satisfactory to City.

13. Anti-Discrimination.

Boys & Girls Club agrees that this Agreement is made and accepted on and subject to the conditions that there be no discrimination against or segregation of any persons or groups of person, on account of race, color, gender, sexual preference, age, handicap, marital status, religion, national origin or ancestry in the use, occupancy, tenure or enjoyment of the Property, nor shall Boys & Girls Club, or any person claiming under or through it, establish or permit any practice or practices of discrimination or segregation with reference to the Property.

14. Events of Default.

Either of the following occurrences shall constitute "Events of Default" under this Agreement:

14.1 Boys & Girls Club files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or is dissolved, or makes an assignment for the benefit of creditors; 14.2 Boys & Girls Club breaches any of the other agreements, terms, covenants, or conditions that the Agreement requires Boys & Girls Club to perform, and the breach continues for a period often (10) calendar days after notice by City to Boys & Girls Club.

15. Remedies.

If anyone (l) or more Events of Default set forth in Section 14 occurs and Boys & Girls Club has not cured in a reasonable time provided by the City, then the City may, at its election, terminate this Agreement and recover possession of the Property. Nothing contained herein shall limit City from pursuing, at any time, any remedy available to it at law or equity.

16. Miscellaneous.

16.1 No Waiver. No waiver or any condition or agreement in this Agreement by either City or Boys & Girls Club shall imply or constitute a further waiver by such Party of the same or any other condition or agreement.

16.2 Authority. Each of the persons executing this Agreement on behalf of Boys & Girls Club warrants to City that Agreement is a duly authorized and existing California non-profit corporation, that Boys & Girls Club is qualified to operate in the State of California, that Boys & Girls Club has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Boys & Girls Club is authorized to do so. Upon City's request, Boys & Girls Club shall provide evidence satisfactory to City confirming these representations.

16.3 Notices. Any notice, request, demand, consent, approval, or other communication required or permitted under this Agreement shall be written and shall be deemed to have been given when personally delivered, sent by overnight delivery, or sent by certified or registered mail, return receipt requested, addressed to:

City:

City of Desert Hot Springs
Rick Daniels, City Manager
65950 Pierson Boulevard
Desert Hot Springs, California 92240

Boys & Girls Club:

Boys & Girls Club of Coachella Valley
Jim Ducatte, Foundation Chief Executive Officer
42-600 Cook Street, Suite 120,
Palm Desert, California 92211

City or Boys & Girls Club may change its address for notification under this Agreement by giving the other Party ten (10) calendar days notice prior to the change.

16.4 Attorneys' Fees. In the event of the bringing of an action or suit by a Party hereto against another Party hereunder by reason of a breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other Party arising out of this Agreement, then in that event, the prevailing Party in such action or dispute, whether by final judgment, or out of court settlement shall be entitled to have and recover from the other Party all costs and expenses of suit, including actual attorneys' fees.

16.5 Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, City's successors and assigns. This Agreement shall inure to the benefit of, and shall be binding upon, the Boys & Girls Club's successors and assigns so long as the succession or assignment is permitted by Section 6.

16.6 Governing Law; Venue. This Agreement shall be governed by the laws of the State of California. Venue for any action filed with respect to the Agreement shall be in the courts of the County of Riverside and all Parties agree to submit to the jurisdiction of said courts.

16.7 Entire Agreement. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and constitutes the entire agreement between City and Boys & Girls Club as to the subject matter hereof. No subsequent agreement, representation, or promise made by either Party hereto, or by or to an employee, officer, agent or representative of either Party shall be of any effect unless it is in writing and executed by the party to be bound thereby.

16.8 No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties thereto, to any person or entity other than the Parties hereto.

16.9 Amendment to this Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties hereto.

16.10 Fees and Other Expenses. Except as otherwise provided herein, each of the Parties shall pay its own fees and expenses in connection with this Agreement.

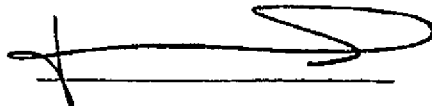
16.11 No Partnership or Joint Venture. Nothing in this Agreement shall be construed to render the City in any way or for any purpose a partner, joint venture, or associate in any relationship with Boys & Girls Club other than that of City and Boys & Girls Club, nor shall this Agreement be construed to authorize either to act as agent for the other.

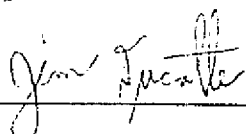
16.12 Severability. In the even anyone or more provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable, such provision(s) shall be severed from the Agreement but shall not affect any other provision of this Agreement.

IN WITNESS WHEREOF, City and Boys & Girls Club have executed this Agreement as of the date first written above.

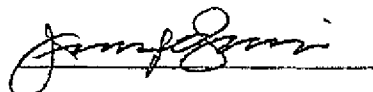
CITY OF DESERT HOT SPRINGS

BOYS & GIRLS CLUB OF COACHELLA VALLEY

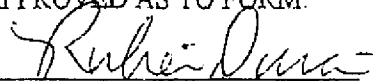
By: 
City Manager/ or Designee

By: 

ATTEST:



APPROVED AS TO FORM:


City Attorney

RMBUS\DERWIN\312507.1

**ASSIGNMENT AND ASSUMPTION AGREEMENT
BY AND BETWEEN
THE CITY OF DESERT HOT SPRINGS
THE DESERT HOT SPRINGS HEALTH & WELLNESS FOUNDATION
AND
BORREGO COMMUNITY HEALTH FOUNDATION**

WHEREAS, the City of Desert Hot Springs ("City") and the Desert Hot Springs Health and Wellness Foundation ("Foundation") entered into a Lease Agreement, known as the "Facility Lease Agreement", dated July 13, 2012, attached hereto as Exhibit A, regarding the use of certain real property upon which is situated the Desert Hot Springs Health and Wellness Foundation for the purpose of operation of a Health and Wellness Center or other similar function; and

WHEREAS, the City desires to assign its rights and obligations under the Facility Lease Agreement to Borrego Community Health Foundation ("Borrego"), a California non-profit corporation; and

WHEREAS, Borrego has agreed to assume the rights and obligations of the City under the Facility Lease Agreement; and

NOW, THEREFORE, in consideration of the above facts and for the promises and mutual covenants contained herein, the receipt and adequacy which is hereby acknowledged, the parties agree to the following:

Section 1. Assignment of Rights and Obligations – City of Desert Hot Springs

The City of Desert Hot Springs ("City") hereby assigns all of its rights and obligations under the Facility Lease Agreement to Borrego Community Health Foundation ("Borrego").

Section 2. Assumption of Rights and Obligations – Borrego Health Community Health Foundation

Borrego hereby assumes all of the rights and obligations of the City under the Facility Lease Agreement

Section 3. Acknowledgement and Acceptance.

The Desert Hot Springs Health and Wellness Foundation hereby acknowledges and accepts the assignment of the rights and obligations by the City and the assumption of those rights and obligations by Borrego.

Section 4. COUNTERPARTS

This Assignment may be executed in several counterparts, including by facsimile and electronic mail, each of which shall constitute one and the same instrument and shall become binding upon the Parties when at least one copy hereof shall have been signed by the Parties.

IN WITNESS WHEREOF, the Parties have executed this Assignment as of the date first written above.

THE CITY OF DESERT HOT SPRINGS

BORREGO COMMUNITY HEALTH
FOUNDATION

Adam Sanchez, Mayor

Signature

Name and Title

ATTEST:

Jerryl Soriano, CMC, City Clerk

THE DESERT HOT SPRINGS HEALTH
AND WELLNESS FOUNDATION

APPROVED AS TO FORM:

Signature

Steven B. Quintanilla, City Attorney

Name and Title

EXHIBIT A

FACILITY LEASE AGREEMENT

BY AND BETWEEN DESERT HOT SPRINGS HEALTH AND WELLNESS FOUNDATION AND

THE CITY OF DESERT HOT SPRINGS

FACILITY LEASE AGREEMENT

Between

DESERT HOT SPRINGS HEALTH AND WELLNESS FOUNDATION

and

CITY OF DESERT HOT SPRINGS

Dated as of July 13, 2012

BASIC FACILITY LEASE INFORMATION

Effective Date of Facility Lease: July 13, 2012

LANDLORD: Desert Hot Springs Health and Wellness Foundation
A California nonprofit public benefit corporation

Landlord's Address: 65-950 Pierson Blvd.
Desert Hot Springs, CA 92240

TENANT: City of Desert Hot Springs
a public body, corporate and politic

Tenant's Address: 65-950 Pierson Blvd.
Desert Hot Springs, CA 92240

Building: 11320 Cholla Drive, Desert Hot Springs, California.

Premises: Buildings and other improvements designed and constructed
for health care, community services and recreational purposes.

Gross Floor Area: Approximately 26,0000 square feet

Permitted Use: (i) A health and wellness center for the provision of health
care, dental, and other health and wellness services, (ii) a
Boys & Girls Club providing community services to children
and youth, and (iii) an aquatic center, providing a swimming
pool and adjunct services.

Commencement Date: November 1, 2012.

Term: Thirty (30) years, commencing as of the
Commencement Date, with options to extend through the
final date of termination of the Ground Lease.

Option to Extend: See Section 3.2.

Base Rent: See Section 5.1.

Security Deposit: None.

FACILITY LEASE AGREEMENT

This Facility Lease Agreement (this "**Facility Lease**") is made and entered into this 13th day of July, 2012, ("**Effective Date**") by and between DESERT HOT SPRINGS HEALTH AND WELLNESS FOUNDATION, a California nonprofit public benefit corporation ("**Landlord**"), and CITY OF DESERT HOT SPRINGS, a public body, corporate and politic ("**Tenant**"). Landlord and Tenant are hereinafter referred to individually as "party" and collectively as "parties".

RECITALS

A. Landlord is the owner and developer of the building (the "**Building**") being constructed near the intersection of Pierson Boulevard and Cholla Drive in Desert Hot Springs, California, commonly known as 511320 Cholla Drive.

B. Landlord acquired a leasehold interest in the land on which the Building is situated from the Tenant pursuant to a Ground Lease dated as of July 13, 2012 (the "**Ground Lease**").

C. The Building is currently being developed primarily for use as a health and wellness center.

D. As part of its obligations under the Ground Lease, Landlord and the Tenant agreed that Landlord would lease the Building to Tenant on the condition that Tenant use, or lease to subtenants to use, the space in the conduct of its operations as a health and wellness center. This Facility Lease is personal to Tenant and Tenant may not assign this Facility Lease or sublet the Premises in whole or in part except in strict accordance with the provisions of Section 12.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto enter into this Facility Lease on the terms and conditions set forth herein:

AGREEMENT

SECTION 1 FACILITY LEASED PREMISES

1.1 Facility Lease. Upon and subject to the terms, covenants and conditions hereinafter set forth, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the space identified in the Basic Facility Lease Information as the Premises (the "**Premises**") in the Building. The Premises are shown in **Exhibit A** attached hereto and incorporated herein by this reference. Prior to the execution of this Facility Lease, Tenant has reviewed and approved the location of the Premises and the Gross Floor Area specified in the Basic Facility Lease Information, which shall be conclusive and binding on the parties for purposes of this Facility Lease and not subject to re-measurement.

SECTION 2 OCCUPANCY AND USE

2.1 Permitted Uses. Tenant may use and occupy the Premises for the Permitted Uses specified in the Basic Facility Lease Information and for no other use or purpose.

2.2 Prohibitions. In addition to the restrictions upon the use of the Premises set forth in Section 2.1 and Section 6.1 of this Facility Lease, Tenant shall not use or allow the Premises to be used for any unlawful purpose, nor shall Tenant cause or maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer the commission of any waste in, on or about the Premises. Tenant understands that the Landlord has financed the Premises through a loan under the New Markets Tax Credit Program (Section 45D of the Internal Revenue Code) and that Tenant is subject to certain restrictions during the term of a loan under a Fund Loan Agreement dated as of July 13, 2012 between Desert Hot Springs Investment Fund, LLC and New Markets Community Capital X, LLC and LCD New Markets Fund XII, LLC. ("Lenders"). Tenant shall not use or permit the use of the Premises for any purposes prohibited in the Loan Agreement.

2.3 Continuous Occupancy. Tenant shall operate or require its subtenants to operate its or their business at the Premises, and shall continuously, actively and diligently use and occupy the entire Premises (other than such portions thereof as are reasonably required for storage) solely for the Permitted Uses hereunder throughout the Term (defined below), during normal business hours of operation, except as otherwise agreed in writing by Landlord. Tenant's failure to continuously occupy or cause to be occupied the Premises and operate its or their business therein as required by this Section 2.3 shall be an Event of Default hereunder. Tenant shall not vacate or abandon the Premises at any time during the Term.

SECTION 3 TERM AND POSSESSION.

3.1 Initial Term. Except as otherwise provided herein, the term of this Facility Lease (the "Initial Term") shall commence on the date the Premises are delivered to Tenant (the "Commencement Date"). If Landlord is delayed in delivering the Premises to Tenant for any reason, Landlord shall not be liable for any claims, damages or liabilities by reason thereof. Tenant's obligations under this Facility Lease shall commence upon the Commencement Date (except as expressly otherwise provided herein with respect to obligations arising earlier), including, without limitation, its obligation to pay Base Rent (as defined in Section 5.1). Landlord's obligations under this Facility Lease shall commence on the Effective Date.

3.2 Extension of Term.

3.2.1 Option to Extend. Subject to applicable law and the provisions of Section 3.2.2, and provided that no Event of Default (as defined in Section 22.1) for which notice has been given exists on the date on which Tenant gives its notice of exercise, Tenant may give written notice within one hundred and eighty (180) days of the Extended Term (defined below) to extend the term of this Facility Lease for additional successive ten (10) year terms, through and including the final termination date of the Ground Lease (each extension being referred to herein as an "Extended Term"). The Extended Term shall automatically commence on the day immediately following the last day of the Initial Term. The Initial Term and the Extended Term are collectively referred to herein as the "Term." Tenant shall have no further option, right or obligation to extend the Term or otherwise remain in the Premises after the last day of the Extended Term. From and after commencement of the Extended Term, all of the other terms, covenants and conditions of the Facility Lease shall apply, provided, however, that Tenant shall have no option or right to further extend the Term beyond the Extended Term.

3.2.2 Extension Personal to Tenant. The Extended Term or Extended Terms granted in this Section 3.2 shall be effective only if, and for so long as, Tenant remains:

(A) A public body, corporate and politic;

(B) The Tenant under this Facility Lease; and

(C) In occupancy of the entire Premises, and the right to any such Extended Term shall not be assignable or otherwise transferable by or from Tenant to any other entity or person.

Tenant hereby acknowledges and agrees that such Extended Term would not have been granted by Landlord in the absence of the restrictions and limitations set forth in this Section 3.2.2 and that it is the further intention of the parties that such option be void and of no force or effect upon the occurrence of any attempt to assign or transfer such option.

3.2.3 Base Rent During Extended Term. The Base Rent for the first 10 year Extended Term (2042 to 2051) is set forth in the Rent Schedule attached hereto as Exhibit B and the Base Rent for subsequent Extended Terms shall be established at fair market value, as agreed by the parties in good faith prior to commencement of each such Extended Term.

SECTION 4 DELIVERY OF POSSESSION

4.1 Condition of the Premises. Subject to the provisions of Section 4.2, Landlord shall deliver possession of the Premises to Tenant in its "as-is, where-is condition, with all faults" on the Commencement Date. Tenant acknowledges that Landlord has not made any representation or warranty, express or implied, with respect to the condition of the Premises, or the suitability or fitness of the Premises for the conduct of Tenant's Permitted Uses or for any other purposes. Tenant represents and warrants that, prior to the Commencement Date, Tenant shall have conducted a thorough and diligent inspection and investigation, either independently or through agents of Tenant's own choosing, of the Premises and the suitability of the Premises for Tenant's intended use, that Tenant is fully aware of the needs of its operations and shall have determined, based solely on its own investigation, that the Premises are suitable for its operations and intended use. In no event shall Landlord be liable for any defect in the Premises or for any limitations on the use of the Premises, except as expressly and specifically set forth in this Facility Lease. If Tenant believes that a defect exists in the Premises and wishes to enforce contractor warranties in respect thereof, Tenant shall give Landlord written notice thereof. Upon Tenant's written request to Landlord, Landlord shall assign to Tenant the right to enforce such warranties pursuant to a form of assignment that provides for Landlord to retain the right to enforce warranties directly.

4.2 Landlord's Work. Prior to the Commencement Date and as a condition of Tenant taking possession of the Premises, Landlord shall have completed all of the work in and about the Premises and the Building required of it under this Facility Lease and shall not be required to perform any work or undertake or install any improvement in or about the Premises or the Building for the account or on behalf of Tenant.

4.3 Tenant's Work. Any improvements which Tenant desires to make to the Premises prior to the commencement of its business operations therein shall require Landlord's prior written consent pursuant to the provisions of, and shall be performed by Tenant as Alterations in accordance with the requirements of, SECTION 7, provided, however, that Landlord shall not unreasonably withhold or condition its consent to the making of any such initial tenant improvements that:

4.3.1 Do not affect the structure of the Building;

4.3.2 Do not materially affect the electrical, plumbing, HVAC, security or other systems of the Building;

4.3.3 Are not visible from the exterior of the Premises (other than from the interior of the Building or through existing windows or doors in the Premises) and do not otherwise affect the exterior appearance of the Building;

4.3.4 Are consistent with Tenant's Permitted Uses hereunder;

4.3.5 Do not require any application to a political jurisdiction for rezoning, general plan amendment, variance, conditional use permit or architectural review approval;

4.3.6 Will not interfere with the use and occupancy of any other portion of the Project by any other tenants or their invitees, or by any other party with the right to use any portion of the Project; and

4.3.7 Do not adversely affect the value or marketability of Landlord's reversionary interest upon termination or expiration of this Facility Lease.

Tenant shall be responsible for obtaining all governmental approvals, permits and licenses required for such work and for Tenant's use and occupancy of the Premises, including without limitation a certificate of occupancy or its equivalent and shall provide Landlord with a copy of all such approvals, permits, licenses and certificates. Additionally, Tenant agrees that if any work must be undertaken within the Premises in order for Landlord or any other tenant in the Building to be able to obtain a certificate of occupancy or its equivalent for any other portion of the Building (such as, by way of example only, life safety work), Tenant will, promptly upon its receipt of written notice from Landlord identifying such work, commence such work and thereafter diligently pursue the same to completion (such work in any event to be completed within thirty (30) days after Landlord's written notice), all such work to be performed at Tenant's sole cost and expense. If Tenant fails to promptly commence, pursue and complete all such work identified in Landlord's written notice, Landlord shall have the right to enter the Premises without further notice to Tenant and perform such work at the expense of Tenant, and all costs and expenses incurred by Landlord in performing such work, together with interest thereon at the rate specified in Section 5.4 from the date incurred by Landlord until paid in full by Tenant, shall be paid by Tenant to Landlord within thirty (30) days after submission of a bill or statement therefor. Promptly following written request from Tenant, Landlord shall cooperate with Tenant, at no additional cost or expense to Landlord, in obtaining any such governmental approvals, permits and licenses.

SECTION 5 RENT; ADDITIONAL CHARGES FOR EXPENSES AND TAXES.

5.1 Amount of Base Rent. Commencing as of the Commencement Date and continuing thereafter until the expiration of the initial Term (the "**Expiration Date**") or earlier termination of this Facility Lease, Tenant shall pay to Landlord on an annual basis base rent (the "**Base Rent**") for the Premises in the amounts set forth in Exhibit B attached hereto. Base Rent shall be paid in advance on or before the first (1st) day of January of each calendar year, in lawful money of the United States, without abatement, deduction, claim, offset, prior notice or demand except as otherwise specifically provided in this Facility Lease. Tenant shall pay to Landlord the first year's Base Rent on the Effective Date of this Facility Lease. In the event that this Facility Lease does not commence on January 1, the Base Rent for the initial Facility Lease year shall be prorated accordingly.

5.2 Additional Rent.

5.2.1 Additional Rent. Tenant shall pay to Landlord (or, where specified in this Lease, to third parties) all charges and other amounts whatsoever as provided in this Lease at the place where the Base Rent is payable, and Landlord shall have the same remedies for a default in the payment of such sums as for a default in the payment of Base Rent. As used herein, the term "**Additional Rent**" shall mean all monetary obligations of Tenant hereunder other than the obligation for the payment of Base Rent, and the term "**Rent**" shall mean all Base Rent plus all Additional Rent.

5.2.2 Definitions. For purposes of this Section 5.1, the following terms shall have the meanings hereinafter set forth:

(A) "**Real Estate Taxes**" shall mean all taxes, assessments and charges levied upon or with respect to the Project or any personal property of Landlord used in the operation thereof, or Landlord's interest in the Project or such personal property. Real Estate Taxes shall include, without limitation, all general real property taxes and general and special assessments, charges, fees or assessments for transit, housing, police, fire or other governmental services or purported benefits to the Project, service payments in lieu of taxes, and any tax, fee or excise on the act of entering into this Lease, or any other lease of space in the Project, or on the use or occupancy of the Project or any part thereof, or on the rent payable under any lease or in connection with the business of renting space in the Project, or in connection with the sale or transfer of the Project, that are now or hereafter levied or assessed against Landlord by the United States of America, the State of California, or any political subdivision, public corporation, district or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Estate Taxes, whether or not now customary or in the contemplation of the parties on the date of this Lease. Real Estate Taxes shall not include franchise, inheritance or capital stock taxes, or income taxes measured by the net income of Landlord from all sources unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Real Estate Tax. Real Estate Taxes shall also include reasonable legal fees, costs and disbursements incurred in connection with proceedings to contest, determine or reduce Real Estate Taxes; provided that such fees, costs and disbursements do not exceed the actual savings in Real Estate Taxes over the Term of this Facility Lease. If any assessments are levied on the Project, Tenant shall have no obligation to pay more than that amount of annual installments of principal and interest that would become due during the Lease Term had Landlord elected to pay the assessment in installment payments, even if Landlord pays the assessment in full.

(B) "**Tax Year**" shall mean each twelve (12) consecutive month period commencing January 1st of the calendar year during which the Commencement Date of this Facility Lease occurs.

(C) "**Expenses**" shall mean the following costs and expenses paid or incurred by Landlord in connection with the management, operation, maintenance and repair of the Project:

(1) The cost of such insurance on the Project as Landlord, in its sole and absolute discretion, elects to obtain including, without limitation, insurance premiums and any deductible amounts paid by Landlord;

(2) Fees, charges and other costs, consulting fees, legal fees, accounting fees, and fees of all independent contractors engaged by Landlord directly related to the operation of the Project;

(3) Compensation (including employment taxes and fringe benefits) of all on-site and off-site employees of Landlord or its agent at the rank of property manager or below who perform duties in connection with the operation, maintenance and repair of the Project, such compensation to be appropriately allocated for persons who also perform duties unrelated to the Project;

(4) An office in the Building for the management of the retail and commercial portion of the Project, including, without limitation, expenses of furnishing and equipping such office and the rental value of any space occupied for such purposes; and

(5) The cost of any capital improvements made to the Project after the Commencement Date:

(a) As a labor saving device or to effect other economies in the operation or maintenance of the Project (from which a reasonable person would anticipate that savings would actually result);

(b) To repair or replace capital items which are no longer capable of providing the services required of them (other than in connection with a casualty to which SECTION 23 applies); or

(c) That are made to the Project after the date of this Lease and are required under any Laws (as defined in Section 6.1) (excluding, however, any capital improvements required by Laws that are the responsibility of Tenant under SECTION 6, which shall be paid directly by Tenant pursuant to SECTION 6, or which are the responsibility of another tenant pursuant to the provisions of the lease to such other tenant), where such capital improvements were not required under any such Laws to be completed with respect to the Building prior to the date the Lease was executed or which requirement was triggered by any event occurring after the date of this Lease. With respect to any capital improvements described in clause (e) above, the cost of such capital improvements incurred during any calendar year shall be amortized over the useful life of the capital item in question as determined in accordance with generally accepted accounting principles, together with interest on the unamortized balance at the greater of (x) the rate paid by Landlord on funds borrowed for the purpose of constructing such capital improvements; or (y) ten percent (10%) per annum. Expenses for any calendar year during which average occupancy of the Building is less than one hundred percent (100%) shall be calculated based upon the Expenses that would have been incurred if the Building had an average occupancy of one hundred percent (100%) during the entire calendar year.

(6) Notwithstanding anything to the contrary herein contained, Expenses shall not include:

(a) Any rent payable pursuant to any ground lease, and debt service (including, but without limitation, interest and principal) required to be made on any Mortgage (as defined in Section 19.1) other than financing charges imposed in connection with funds borrowed by Landlord for the purpose of making capital improvements which are allowed hereunder to be included in Expenses;

(b) The cost of special services, goods or materials provided to any tenant;

- (c) Depreciation;
- (d) Costs occasioned by Landlord's fraud or willful misconduct under applicable laws;
- (e) Costs for which Landlord has received reimbursement from others;
- (f) Advertising or promotional costs;
- (g) Leasing commissions;
- (h) The cost of tenant improvements and concessions in connection with preparing space for any Building tenant or in connection with a renewal or expansion;
- (i) Other leasing costs;
- (j) Legal and accounting fees arising in connection with negotiations or disputes with other tenants, prospective purchasers, lenders or other third parties;
- (k) Wages, salaries and benefits paid to any party above Building Manager;
- (l) Costs reimbursed from insurance, warranty or condemnation proceeds or which are reimbursable by any tenant;
- (m) Fines or penalties including penalties or interest payable as a result of Landlord's failure to timely pay Real Estate Taxes or Expenses;
- (n) Costs for services, supplies or repairs paid to any entity related to Landlord in excess of costs which would have been payable in an arm's length transaction; (oo) costs of operating, maintaining and/or repairing the loading dock;
- (o) Costs relating exclusively to the residential units within the Building; or (qq) costs relating exclusively to the retail units within the Building.

All costs and expenses shall be determined in accordance with generally accepted accounting principles which shall be consistently applied (with accruals appropriate to Landlord's business).

5.2.3 Additional Rent for Real Estate Taxes and Expenses.

(A) Tenant shall pay Landlord as "Additional Rent" during each year commencing on the Commencement Date and ending on the Expiration Date (prorated for any partial calendar year during the Lease Term),

- (1) Expenses; and

(2) Real Estate Taxes for the then current tax year. Expenses and Real Estate Taxes shall be separately calculated.

(B) With reasonable promptness after Landlord has received the annual tax bills for any Tax Year, Landlord shall furnish Tenant with a statement which shall include a copy of the tax bill (herein called "**Landlord's Tax Statement**") setting forth the amount of Real Estate Taxes for such Tax Year for such Tax Year. Tenant shall pay to Landlord, in two equal installments on or before March 10 and November 10 of each year, one-half (1/2) of Real Estate Taxes for such Tax Year. Additionally, if Landlord receives any supplemental or other tax bills for Real Estate Taxes separate from the annual tax bill for a Tax Year, Landlord shall furnish Tenant with a statement which shall include a copy of the tax bill (herein called "**Landlord's Tax Statement**") setting forth the amount of such supplemental or other Real Estate Taxes, and Tenant shall pay to Landlord the amount thereof no later than thirty (30) days before the date on which Landlord is required to pay such Real Estate Taxes to the taxing authority.

(C) Commencing on the Commencement Date and continuing on the first day of every month thereafter, Tenant shall pay Landlord, as Additional Rent, one-twelfth (1/12th) of the amount specified by Landlord as being Landlord's estimate of Expenses for the applicable calendar year. If Landlord thereafter estimates that Expenses for such year will vary from Landlord's prior estimate, Landlord may, by notice to Tenant, revise the estimate for such year (and Additional Rent for Expenses shall thereafter be payable based on the revised estimate).

(D) As soon as reasonably practicable, but not more than one hundred twenty (120) days, after the end of the first calendar year and each calendar year thereafter, Landlord shall furnish Tenant a statement with respect to such year, showing Expenses and Additional Rent for Expenses for the year, and the total payments made by Tenant with respect thereto (a "**Year-End Statement**"). If Tenant's Additional Rent for Expenses as finally determined for the year exceeds the total estimated payments made by Tenant on account thereof, Tenant shall pay to Landlord the deficiency within fifteen (15) days after the receipt of the Year-End Statement, and if the total estimated payments made by Tenant on account thereof exceed Tenant's Additional Rent for Expenses as finally determined for the year, such excess shall be credited toward the next installment of Additional Rent due from Tenant to Landlord hereunder. If it has been determined that Tenant has overpaid Additional Rent for Expenses during the last year of the Lease Term, then Landlord shall reimburse Tenant for such overage on or before the thirtieth (30th) day following the Expiration Date.

(E) If, for any reason Real Estate Taxes for any year during the Term are reduced, refunded or otherwise changed, Tenant's Additional Rent for Real Estate Taxes shall be adjusted accordingly. The obligations of Landlord to refund any overpayment of Additional Rent for Real Estate Taxes and of Tenant to pay any Additional Rent for Real Estate Taxes not previously paid shall survive the expiration of the Term.

(F) To the extent any item of Real Estate Taxes or Expenses is payable by Landlord in advance of the period to which it is applicable (e.g. insurance and tax escrows required by any Mortgagee (as defined in SECTION 19), or to the extent that prepayment is customary for the service or matter, Landlord may:

(1) Include such items in Landlord's estimate for periods prior to the date such item is to be paid by Landlord; and

(2) To the extent Landlord has not collected the full amount of such item prior to the date such item is to be paid by Landlord, Landlord may include the balance of such full amount in a revised monthly estimate for Additional Rent for Real Estate Taxes or Expenses. If the Commencement Date or Expiration Date shall occur on a date other than the first day January, Real Estate Taxes and Expenses for the calendar year in which the Commencement Date occurs shall be prorated.

(G) Within ninety (90) days after receipt of any Year-End Statement from Landlord, Tenant shall have the right to examine Landlord's books and records relating to such Year-End Statement, or cause an independent audit thereof to be conducted by a nationally-recognized accounting firm which is not compensated on a contingency fee basis, to be selected by Tenant and subject to the reasonable approval of Landlord. If the audit conclusively proves that Tenant has overpaid either Expenses or Real Estate Taxes, then Landlord shall promptly reimburse Tenant for such overage, and if such overage exceeds five percent (5%) of the actual amount of Expenses or Real Estate Taxes paid by Landlord for the calendar year covered by such audit, then Landlord shall bear the cost of such audit, up to a maximum cost of Five Thousand Dollars (\$5,000.00). If Tenant fails to object to any such Year-End Statement or request an independent audit thereof within such ninety (90) day period, such Year-End Statement shall be final and shall not be subject to any audit, challenge or adjustment, except that Landlord may deliver to Tenant an amended Year-End Statement in the event that additional Expenses or Real Estate Taxes are thereafter found to be properly attributable to the calendar year in question. All of the information obtained through any audit by Tenant and any compromise, settlement or adjustment reached between Landlord and Tenant relative to the results of such audit shall be held in strict confidence by the Tenant, to the extent permitted by law.

5.3 Late Charges. Tenant recognizes that late payment of any Rent will result in administrative expenses to Landlord, the extent of which additional expense is extremely difficult and economically impractical to ascertain. Tenant therefore agrees that if any Rent remain unpaid ten (10) days after such amount is due, the amount of such unpaid Rent shall be increased, without notice or demand, by a late charge to be paid to Landlord by Tenant in an amount equal to five percent (5%) of the amount of the delinquent Rent.

5.4 Interest on Overdue Amounts. In addition to any late charge which may be due pursuant to Section 5.3, any outstanding Rent, late charges and other outstanding amounts which are payable by Tenant shall accrue interest at an annualized rate of the lesser of:

5.4.1 The greater of (A) fifteen percent (15%) or (B) the Federal Reserve Discount Rate plus five hundred (500) basis points, or

5.4.2 The maximum rate permitted by law (the "Agreed Interest Rate"), until paid to Landlord.

Tenant agrees that such amount is a reasonable estimate of loss of the time value of the money which is unpaid to be suffered by Landlord as a result of such late payment by Tenant and may be charged by Landlord to defray such loss. The provisions of this Section in no way relieve Tenant of the obligation to pay Rent or Additional Rent on or before the date on which they are due, nor do the terms of this Section in any way affect Landlord's remedies pursuant to SECTION 22 in the event any Rent or other amounts which are payable by Tenant are not paid when due.

SECTION 6 COMPLIANCE WITH LAWS.

6.1 Tenant's Compliance Obligations. Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any present and future laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Project, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the parties hereto (collectively, "Laws"), and Tenant shall promptly, at its sole expense, maintain the Premises, any Alterations (as defined in SECTION 7) permitted hereunder and Tenant's use and operations thereon in strict compliance at all times with all Laws. Laws shall include, without limitation, all Laws relating to health and safety, including posting and delivery of notices required by such Laws with respect to the Premises, disabled accessibility (including, without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq.), Hazardous Substances (as defined in Section 36.1), and all present and future life safety, fire, sprinkler, seismic retrofit, building code and municipal code requirements; provided however, that Tenant's obligation to comply with Laws relating to Hazardous Substances is subject to the terms and conditions of SECTION 36. Any alterations that are Tenant's responsibility pursuant to this SECTION 6 shall be made in accordance with SECTION 7. The parties acknowledge and agree that Tenant's obligation to comply with all Laws as provided in this Section (subject to the limitations contained herein) is a material part of the bargained-for consideration under this Facility Lease. Tenant's obligations under this Section and under Sections 7.2 and 7.4 shall include, without limitation, the responsibility of Tenant to make substantial repairs and alterations to the Premises to the extent provided above, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Facility Lease, the length of the then remaining Term of this Facility Lease, the relative benefit of the repairs to Tenant or Landlord, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, and the likelihood that the parties contemplated the particular Law involved.

6.2 Insurance Requirements. Tenant shall not do or permit anything to be done in or about the Premises or bring or keep anything therein which will in any way increase the rate of any insurance upon the Project or any of its contents (unless Tenant agrees to pay for such increase) or cause a cancellation of any insurance on the Project or otherwise violate any requirements, guidelines, conditions, rules or orders with respect to such insurance. Tenant shall at its sole cost and expense promptly comply with the requirements of the Insurance Services Office ("ISO"), board of fire underwriters, or other similar body now or hereafter constituted relating to or affecting Tenant's use or occupancy of the Project (other than in situations where compliance involves repair, maintenance or replacement of items that Landlord is expressly required to repair, maintain or replace under this Facility Lease).

6.3 No Limitation on Obligations. The provisions of this SECTION 6 shall in no way limit Tenant's maintenance, repair and replacement obligations under SECTION 8 or Tenant's obligation to pay Expenses under Section 5.1. The judgment of any court of competent jurisdiction or the admission of Tenant in an action against Tenant, whether Landlord is a party thereto or not, that Tenant has so violated any such Law shall be conclusive of such violation as between Landlord and Tenant.

SECTION 7 ALTERATIONS

7.1 No Alterations Without Consent. Any alterations, additions or improvements (the "Alterations") which Tenant proposes to make in, on or to the Premises or any part thereof shall be governed by the provisions of this SECTION 7. Tenant shall be entitled to make alterations ("Minor Alterations") without Landlord's consent so long as such alterations do not violate any of the four conditions set forth below (in the definition of Major Alterations) and do not exceed a cost of \$25,000 in

any calendar year. Tenant shall not make or suffer to be made any additional alterations, additions or improvements, that exceed the dollar limitations set forth above or:

7.1.1 Materially affect the structure of the Building or its electrical, plumbing, HVAC or other systems;

7.1.2 Are visible from the exterior of the Premises;

7.1.3 Are not consistent with Tenant's permitted use hereunder; or

7.1.4 Are not commonly considered typical for customary office use and/or and research and development use ("Major Alterations") without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed (except in the case of Tenant's initial improvements (which shall be governed by the provisions of Section 4.3). Failure of Landlord to give its approval or disapproval of any Major Alterations within twenty (20) days after receipt of Tenant's written request for approval shall constitute disapproval by Landlord of such Major Alterations.

Any Alterations in, on or to the Premises, except for Tenant's trade fixtures, movable furniture and equipment, shall be the property of Tenant during the Term and shall become Landlord's property at the end of the Term without compensation to Tenant.

7.2 Requirements. Tenant's request for approval of any proposed Major Alterations shall be accompanied by a full set of complete plans and specifications for such proposed Major Alterations for Landlord's review. All Minor Alterations, and all Major Alterations consented to by Landlord, shall be completed by Tenant at Tenant's sole cost and expense:

7.2.1 With due diligence, in a good and workmanlike manner;

7.2.2 In compliance with plans and specifications approved by Landlord;

7.2.3 In compliance with the construction rules and regulations promulgated by Landlord from time to time;

7.2.4 In accordance with all applicable Laws (including all work, whether structural or non-structural, inside or outside the Premises, required to comply fully with all applicable Laws and necessitated by Tenant's work); and

7.2.5 Subject to all conditions which Landlord may in Landlord's discretion impose. Such conditions may include requirements for Tenant to:

(A) Provide payment or performance bonds or additional insurance (from Tenant or Tenant's contractors, subcontractors or design professionals); and

(B) Use contractors or subcontractors designated by Landlord (provided that Tenant shall have the right to require that Landlord designate more than a single contractor if the contractor designated by Landlord charges materially more than would be consistent with the charges of similar contractors in the marketplace).

7.2.6 No demolition work, core drilling, nailing or other work which could cause noise or vibration to be heard or felt outside of the Premises shall be performed before the hour of 9:00 a.m. or after the hour of 5:00 p.m. on any day of the week. With respect to any Alterations that affect the structure of the Building or its electrical, plumbing, HVAC, security or other systems, at Landlord's option the Alterations shall be made by Landlord, or by a contractor specified by Landlord, for Tenant's account and Tenant shall reimburse Landlord for the commercially reasonable cost thereof (including a reasonable charge for Landlord's overhead), within twenty (20) days after receipt of a statement from Landlord therefore.

7.3 Removal. Tenant shall remove have no obligation to remove any Alterations at the expiration or termination of the Term.

7.4 Payment of Cost of Alterations.

7.4.1 Payment by Tenant. Tenant shall pay all costs arising in connection with the making of any Alteration, whether or not the Alteration may have been required to have been made at some later time.

7.4.2 Landlord's Review. Tenant shall pay Landlord upon demand the reasonable out-of-pocket costs incurred by Landlord in connection with the review by Landlord and Landlord's consultants of any Alterations made or proposed by Tenant.

7.5 Responsibility of Landlord with Respect to Alterations. Landlord's review or supervision of, or consent to, any Alterations shall not obligate Landlord to repair, maintain, insure or otherwise assume any responsibility or liability with respect to any such Alteration. In addition, notwithstanding Landlord's review, supervision or consent, Tenant, and not Landlord, shall be responsible for compliance of the Alterations, and plans and specifications therefor, with all applicable Laws, and Landlord shall not be responsible for any omissions or errors therein.

SECTION 8 REPAIR AND MAINTENANCE

8.1 Landlord's Obligation. Except to the extent otherwise provided in this Facility Lease (including without limitation in Sections 8.2 and SECTION 23), Landlord shall be responsible for the maintenance, repair and replacement of the exterior of the Building, exterior walls and windows, subsurface conditions and structural portions of the Building, and the HVAC, mechanical, electrical and life-safety systems, excepting those portions of such systems which are within the Premises for which Tenant has responsibility hereunder; and Landlord shall have no other duties or obligations with respect to the maintenance, repair and/or replacement of the Project. Landlord shall perform its maintenance, repair and replacement duties in such manner and to such extent as Landlord deems appropriate in its sole and absolute discretion. The costs incurred by Landlord in connection with such repair, maintenance, repair and replacement obligations shall be included in Expenses.

8.2 Tenant's Obligations. Tenant shall maintain and repair, at Tenant's sole cost and expense, all portions of the Premises (including, without limitation, all electrical and mechanical systems located within the Premises or serving the Premises exclusively, the interior walls, floor coverings, ceiling (ceiling tiles and grid), fire extinguishers, outlets and fixtures, any appliances (including dishwashers, hot water heaters and garbage disposals) in the Premises) and any tenant improvements and/or Alterations installed by or on behalf of Tenant within the Premises, in good working order and first-class condition.

8.3 Costs. The purpose of Sections 8.1 and 8.2 is to define the obligations of Landlord and Tenant to perform various repair and maintenance functions; the allocation of the costs therefor are covered under Section 5.1 and this Section 8.3. In addition to any other costs to be borne by Tenant under this Facility Lease, Tenant shall bear the full cost of repairs and maintenance, interior or exterior, structural or otherwise, to preserve the Premises and the Building in good working order and first-class condition, arising out of (i) the existence, installation, use or operation by Tenant of any tenant improvements and/or Alterations, or any of Tenant's trade fixtures or personal property; (ii) the moving of Tenant's property or fixtures in or out of the Building or Project or in and about the Premises; or (iii) except to the extent any claims arising from any of the foregoing are reimbursed by insurance carried by Landlord, are covered by the waiver of subrogation in SECTION 14 or are otherwise provided for in SECTION 23, the acts, omissions or negligence of Tenant, or any of its servants, employees, contractors, agents, subtenants, visitors, or licensees (collectively, "Tenant Parties"), or the use or occupancy or manner of use or occupancy of the Premises by any Tenant Party.

8.4 Reserved.

8.5 No Liability. Except to the extent provided under SECTION 23, there shall be no abatement of Rent with respect to, and Landlord shall not be liable for any injury to or interference with Tenant's business arising from, any repairs, maintenance, alterations or improvements in or to any portion of the Project, including the Premises, or in or to the fixtures, appurtenances and equipment therein.

SECTION 9 LIENS

9.1 Except as provided herein, Tenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by Tenant. In the event that Tenant shall not, within ten (10) days after the imposition of any such lien, cause the same to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith shall be payable to Landlord by Tenant on demand with interest at the Agreed Interest Rate. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law, or which Landlord shall deem proper, for the protection of Landlord, the Premises, the Project, and any other party having an interest therein, from mechanics' and materialmen's liens. Tenant shall give notice to Landlord at least twenty (20) days' prior notice of commencement of any construction on the Premises.

SECTION 10 FACILITY LEASEHOLD ENCUMBRANCES

10.1 Tenant shall have no right to encumber Tenant's interest under this Lease or the leasehold estate created thereby.

SECTION 11 RESERVED

SECTION 12 ASSIGNMENT AND SUBLETTING

12.1 Restriction on Assignment and Subletting.

12.1.1 Landlord's Consent Required. This Facility Lease and all of Tenant's rights hereunder are personal to Tenant. Except as set forth herein, Tenant shall not directly or indirectly,

voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of the Premises or Tenant's leasehold estate hereunder (collectively, "Assignment"), or permit the Premises to be occupied by anyone other than Tenant or sublet the Premises or any portion thereof (collectively, "Sublease"), without Landlord's prior written consent, which consent may be given, withheld or conditioned by Landlord in its sole and absolute discretion. If Landlord consents to the Sublease or Assignment, Tenant may thereafter enter into a valid Sublease or Assignment upon the terms and conditions set forth in this Section 12 and such additional terms and conditions as may be set forth in the written consent of Landlord.

12.1.2 Limitation. Notwithstanding the provisions of Section 12.1.1, the consent of Landlord shall not be required with respect to any Sublease to a nonprofit organization or governmental agency which, under the terms of such Sublease, will carry on only activities on the Premises that further the purposes set forth herein. Although the consent of Landlord shall not be required for an Assignment or Sublease described in this Section 12.1.2, the other terms and conditions set forth in this Section 12 shall apply to any such Assignment or Sublease.

12.1.3 Use Restrictions. In the event of any assignment or sublease, the use restrictions set forth in Section 2.2 shall continue to apply.

12.2 Notice to Landlord. If Tenant desires at any time to enter into an Assignment of this Facility Lease or a Sublease of the Premises or any portion thereof, it shall give written notice to Landlord of its desire to enter into an Assignment or Sublease, which notice shall contain (i) the name of the proposed assignee, subtenant or occupant; (ii) the name of the proposed assignee's, subtenant's, or occupant's business to be carried on in the Premises; (iii) the terms and provisions of the proposed Assignment or Sublease; (iv) evidence that the proposed assignee, subtenant or occupant is an Internal Revenue Code Section 501(c)(3) non-profit organization or a public agency, and (v) such financial information as Landlord may reasonably request concerning the proposed assignee, subtenant or occupant.

12.3 Landlord's Response. At any time within thirty (30) days after Landlord's receipt of all the information specified in Section 12, Landlord may by written notice to Tenant elect to (i) consent to the Sublease or Assignment or (ii) disapprove the Sublease or Assignment. Failure by Landlord to either consent to or disapprove a proposed Assignment or Sublease within the twenty (20) day time period specified above shall be deemed to be Landlord's disapproval thereof.

12.3.1 If Landlord consents to the Facility Lease or Assignment within said twenty (20) day period, Tenant may within one hundred twenty (120) days after Landlord's consent, enter into such Assignment or Facility Lease of the Premises or portion thereof upon the terms and conditions set forth in the notice furnished by Tenant to Landlord pursuant to Section 12.

12.4 No Release. No consent by Landlord to any Assignment or Sublease by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Facility Lease, whether arising before or after the Assignment or Sublease. The consent by Landlord to any Assignment or Sublease shall not relieve Tenant from the obligation to obtain Landlord's express written consent to any other Assignment or Sublease. Any Assignment or Sublease that is not in compliance with this Section 12 shall be void and, at the option of Landlord, shall constitute an Event of Default by Tenant under this Facility Lease. The acceptance of Rent by Landlord from a proposed assignee or sublessee shall not constitute the consent to such Assignment or Sublease by Landlord.

12.5 Reorganization. The following shall be deemed an Assignment: (i) any dissolution, merger, consolidation, or other reorganization of Tenant or (ii) a change in Tenant from non-profit status to for-profit status.

12.6 Assumption. No Facility Lease shall be binding on Landlord unless and until Landlord shall agree in writing following termination of this Facility Lease to recognize the sublessee and such sublessee agrees in writing to attorn to Landlord on the terms and conditions of the Facility Lease (including the obligations under this Facility Lease to the extent that they relate to the portion of the Premises Facility Leased), and any Facility Lease entered into by Tenant hereunder shall include an obligation by the sublessee to so attorn to Landlord if Landlord, in Landlord's sole discretion, elects to recognize such Facility Lease upon any termination of this Facility Lease.

SECTION 13 INSURANCE AND INDEMNIFICATION

13.1 Compliance with Insurance Requirements. Tenant shall not do or permit anything to be done in or about the Premises or bring or keep anything therein, resulting in a cancellation of any insurance policy covering the Premises or any portion of the Project, or otherwise violate any requirements, guidelines, conditions, rules or orders with respect to such insurance. Tenant shall, at his expense, promptly comply with all requirements of any insurer pertaining to the use of the Premises. If any such insurance rates shall be increased by reason of the use or occupancy of, or act or omission by, any Tenant Party, Tenant shall pay the amount of such increase upon demand.

13.2 Landlord's Insurance. Landlord may carry such insurance (including without limitation fire and extended coverage, public liability, earthquake and terrorism insurance) in such amount and with such carriers with respect to the Project as Landlord may elect in its sole and absolute discretion. The costs of any insurance which Landlord so elects to obtain shall be included in Expenses.

13.3 Tenant's Insurance. Tenant shall procure at its cost and expense and keep in effect during the Term the following insurance:

13.3.1 Liability Insurance. Commercial general liability insurance, including contractual liability coverage, with respect to the Premises and with a minimum combined single limit of liability of Three Million Dollars (\$3,000,000) with respect to both the Property and the CHS Building. Such insurance shall name Landlord and its agents, employees, officers, directors, members, owners, representatives, contractors and Mortgagees (collectively, including Landlord, the "**Landlord Parties**") as additional insureds, shall specifically include the liability assumed hereunder by Tenant, and is intended to be primary insurance, and not excess over or contributory with any insurance in force for or on behalf of Landlord. The limits of said insurance shall not, however, limit the liability of Tenant hereunder, and Tenant is responsible for ensuring that the amount of liability insurance carried by Tenant is sufficient for Tenant's purposes.

13.3.2 Property Insurance. "All risk" property insurance (including, without limitation, boiler and machinery (if applicable); sprinkler damage, vandalism and malicious mischief) on any Alterations installed in the Premises by or on behalf of Tenant, all leasehold improvements installed in the Premises by Tenant at its expense, on the plate or tempered glass which is part of the Premises and all of Tenant's personal property, such insurance to include a building ordinance provision (as to those tenant improvements and Alterations for which such a provision will apply). Such insurance shall be an amount equal to full replacement cost of the aggregate of the foregoing and shall provide coverage comparable to the coverage in the standard ISO All Risk form, when such form is supplemented with the coverages

required above, and shall name Landlord as a loss payee. Tenant acknowledges and agrees that insurance coverage carried by Landlord will not cover Tenant's property within the Premises and that Tenant shall be responsible, at Tenant's sole cost and expense, for providing insurance coverage for Tenant's movable equipment, furnishings, trade fixtures and other personal property in or upon the Premises and for any Alterations and tenant improvements made by Tenant, in the event of damage or loss thereto from any cause whatsoever.

13.3.3 Other Insurance. Worker's compensation insurance and such other insurance as may be required by law.

13.3.4 All insurance policies required under this Section 13.3 shall be issued by carriers each with a Best's Insurance Reports policy holder's rating of not less than A and a financial size category of not less than Class VIII and shall provide that such policy shall not be cancelable or subject to reduction of coverage except after thirty (30) days' prior written notice to Landlord. Tenant shall deliver policies of such insurance or certificates thereof to Landlord on or before the Commencement Date, and thereafter at any time and from time-to-time within ten (10) business days after written request from Landlord. If Tenant shall fail to procure and keep such insurance in full force and effect during the Term, or to deliver such policies or certificates within said time frame, Landlord may, at its option, procure same for the account of Tenant, and the cost thereof shall be paid to Landlord as Additional Charges within five (5) business days after delivery to Tenant of bills therefor. The provisions of this Section 13.3 shall survive the expiration or termination of this Facility Lease with respect to any claims or liability occurring prior to such expiration or termination.

13.4 Landlord Not Liable. Landlord shall not be liable to Tenant, and Tenant hereby waives all claims against the Landlord Parties for any injury or damage to any person or property in or about the Premises or the Project by or from any cause whatsoever (other than the intentional misconduct of Landlord), and without limiting the generality of the foregoing, whether caused by water leakage of any character from the roof, walls, or other portion of the Premises or the Building, or caused by gas, fire, oil, electricity, or any cause whatsoever, in, on, or about the Premises, the Building or any part thereof (other than that caused by the intentional misconduct of Landlord). Tenant acknowledges that any casualty insurance carried by Landlord will not cover loss of income to Tenant or damage to the alterations in the Premises installed by Tenant or Tenant's personal property located within the Premises.

13.4.1 Additionally, Tenant shall indemnify, defend and hold harmless the Landlord Parties from and against any and all claims or liability for any injury or damage to any person or property whatsoever (except to the extent caused by the intentional misconduct of Landlord):

- (A) Occurring in or on the Premises;
- (B) Occurring in, on, or about any other portion of the Project; or
- (C) Arising from any breach of this Facility Lease by Tenant.

13.4.2 Tenant further agrees to indemnify, defend and hold harmless the Landlord Parties from and against any and all claims, losses, or liabilities (including damage to Landlord's property) arising from

- (A) Any breach of this Facility Lease by Tenant and/or

(B) The conduct of any work or business of Tenant in or about the Project, including, but not limited to any release, discharge, storage or use of any hazardous substance, hazardous waste, toxic substance, oil, explosives, asbestos, or similar material. Nothing in this Section 13.4 is intended to nor shall it be deemed to override the provisions of SECTION 14.

13.5 No Limit on Liability. The limits of insurance required by this Facility Lease, or as carried by Tenant, shall not limit the liability of Tenant nor relieve Tenant of any obligation hereunder. Any deductibles selected by Tenant shall be the sole responsibility of Tenant.

SECTION 14 WAIVER OF SUBROGATION.

14.1 Notwithstanding anything to the contrary in this Facility Lease, to the extent that this waiver does not invalidate or impair their respective insurance policies, the parties hereto release each other and their respective agents, employees, successors, contractors, subcontractors, assignees and subtenants from all liability for injury to any person or damage to any property that is caused by or results from a risk:

14.1.1 Which is actually insured against, to the extent of receipt of payment under such policy (unless the failure to receive payment under any such policy results from a failure of the insured party to comply with or observe the terms and conditions of the insurance policy covering such liability, in which event, such release shall not be so limited), or

14.1.2 Which is required to be insured against under this Facility Lease, without regard to the negligence or willful misconduct of the entity so released.

SECTION 15 SERVICES AND UTILITIES

15.1 Repairs. Landlord shall provide the maintenance and repairs described in Section 8.1, except for damage occasioned by the acts or omissions of Tenant Parties or for which Tenant is responsible pursuant to Section 8.3, in which case, such damage shall be repaired by Landlord at Tenant's expense, and except for Tenant's maintenance and repair responsibilities with respect to Building systems exclusively serving the Premises pursuant to Section 8.2.

15.2 Services. Tenant shall arrange to obtain all utilities and utilities services directly from the supplier and such utilities and services shall be metered or billed separately from billing to Landlord or other tenants of Landlord. To the extent Tenant requires water, electricity, heat, air conditioning or other services in portions of the Premises which are not metered separately from other tenants of the Project and in amounts in excess of amounts delivered to such other tenants of the Project as reasonably determined by Landlord, Tenant shall pay to Landlord a reasonable charge for such excess amounts as determined by Landlord. Landlord shall make available to Tenant reasonable documentation supporting its charges for such excess services.

15.3 Excess Load. Tenant will not, without the written consent of Landlord, which consent shall not be unreasonably withheld or delayed, use any apparatus or device in the Premises which, when used, puts an excessive load on the Building or its structure or systems, including, without limitation, during any period of time Landlord is providing any services pursuant to Section 15.2 any excess lighting or any machines using electricity in excess of the amount for which the Building is designed, which will in any way materially increase the amount of gas, electricity or water usually furnished or supplied for use of the Premises as general office space; nor connect with electric current, except through existing

electrical outlets in the Premises, or water pipes or gas outlets, any apparatus or device for the purposes of using gas, electrical current or water. If Tenant shall require water or electrical current or any other resource in excess of that usually furnished or supplied for use of the Premises as general office space, Tenant shall first obtain the consent of Landlord, to the use thereof, and Landlord may cause a special meter to be installed in the Premises so as to measure the amount of water, electric current or other resource consumed for any such other use. The cost of any such meters and of installation, maintenance and repair thereof shall be paid for by Tenant, and Tenant agrees to pay Landlord promptly upon demand by Landlord for all such water, electric current or other resource consumed, as shown by said meters, at the rates charged by the local public utility furnishing the same, plus any additional expense incurred in keeping account of the water, electric current or other resource so consumed.

15.4 Trash Removal. Tenant shall provide and pay for its own janitorial and trash removal service with respect to the Premises, and any persons or entities providing such service shall be subject to the rules promulgated by Landlord from time to time with respect thereto. Tenant shall insure that all janitorial and/or trash removal services used by it with respect to the Premises maintain harmonious labor relations with other janitorial and trash removal service providers and other contractors working at the Building.

15.5 No Liability. Landlord shall not be in default hereunder, nor be deemed to have evicted Tenant, nor be liable for any damages directly or indirectly resulting from, nor shall Rent be abated by reason of:

15.5.1 The installation, use or interruption of use of any equipment in connection with the foregoing utilities and services;

15.5.2 Failure to furnish or delay in furnishing any services to be provided by Landlord when such failure or delay is caused by acts of God or the elements, acts of the government, labor disturbances of any character, shortages of material labor, or any other conditions or causes beyond the reasonable control of Landlord, or by the making of repairs or improvements to the Premises or to the Building; or

15.5.3 The limitation, curtailment, rationing or restriction on use of water, electricity, gas or any other form of energy, or any other service or utility whatsoever serving the Premises, the Building or the Project.

Any other provision of this Facility Lease to the contrary notwithstanding, Landlord shall not be liable to Tenant for any loss of profits, loss of business or other consequential damages of any kind. Furthermore, Landlord shall be entitled to cooperate with the mandatory requirements of national, state or local governmental agencies or utilities suppliers in connection with reducing energy or other resources consumption. If the Premises become unsuitable for Tenant's use as a consequence of cessation of gas and electric utilities or other services provided to the Premises resulting from a casualty covered by Landlord's insurance, then Tenant's Rent shall abate during the period of time in which Tenant cannot occupy the Premises for Tenant's use, but only to the extent of rental loss insurance proceeds received by Landlord. Landlord shall use reasonable diligence to make such repairs as may be required to lines, cables, wires, pipes, equipment or machinery within the Project to provide restoration of the services Landlord is responsible for providing under this SECTION 15 and, where the cessation or interruption of such services has occurred due to circumstances or conditions beyond Project boundaries, to cause the same to be restored, by diligent application or request to the provider thereof. In no event shall any

Mortgagee (as defined in SECTION 19) be or become liable for any default of Landlord under this SECTION 15.

SECTION 16 RESERVED

SECTION 17 TENANT'S CERTIFICATES.

17.1 Tenant shall have ten (10) business days following the written request of Landlord or any Mortgagee to execute and deliver to Landlord any documents, including estoppel certificates, in the form prepared by Landlord:

17.1.1 Certifying that this Facility Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification and certifying that this Facility Lease, as so modified, is in full force and effect and the date to which the Rent and other charges are paid in advance, if any; and

17.1.2 Acknowledging that there are no uncured defaults on the part of Landlord, or, if there are uncured defaults on the part of Landlord, stating the nature of such uncured defaults

17.1.3 Certifying that Tenant has no defenses or offsets then outstanding against any of its obligations under this Facility Lease, or stating those claimed by Tenant; and

17.1.4 Certifying any other matters pertaining to the status of this Facility Lease or performance of obligations thereunder by Landlord or Tenant as to which Tenant has actual knowledge and as may be reasonably required either by a purchaser of the Premises or a Mortgagee making a loan to Landlord to be secured by the Premises or Project.

Tenant's failure to deliver an estoppel certificate within ten (10) business days after delivery of Landlord's written request therefor shall be conclusive upon Tenant that (A) this Facility Lease is in full force and effect, without modification except as may be represented by Landlord, (B) there are no uncured defaults in Landlord's performance, (C) Tenant has no defenses or right of offset against its obligations hereunder, and (D) no Rent has been paid in advance.

SECTION 18 HOLDING OVER

18.1 If Tenant holds possession of any portion of the Premises after expiration or termination of the Term of this Facility Lease with respect to that portion of the Premises without the written consent of Landlord, then absent express agreement of Landlord, such holding over shall be a tenancy at sufferance and not for any periodic or fixed term. Tenant shall pay monthly rental hereunder at a rate equal to the fair market rental value for the Premises, as reasonably determined by Landlord, together with such other amounts as may become due hereunder, and otherwise all of the terms and conditions of this Facility Lease shall continue to apply, excluding any options or rights of Tenant to renew or extend this Facility Lease or expand the Premises hereunder. Nothing herein shall be construed as a consent in advance by Landlord to any holding over by Tenant or to any specific terms or conditions of any holding over, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord when and as required hereunder. Any holding over with the written consent of Landlord shall, except as otherwise specified in such consent, thereafter constitute a lease from month to month but otherwise subject to all of the terms and conditions of this Facility Lease, excluding any options or rights of Tenant to renew or extend this Facility Lease or expand the Premises hereunder. Rent shall be pro-rated and be paid on a monthly basis, on the first day of each month.

SECTION 19 SUBORDINATION

19.1 Subordination of Facility Lease. Without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, this Facility Lease shall be subject and subordinate at all times to:

19.1.1 The Ground Lease or any other ground leases or underlying leases which may now exist or hereafter be executed affecting the Building or the land upon which the Building is situated or both; and

19.1.2 To the lien of any mortgage or deed of trust now or hereafter encumbering Landlord's interest in the Project and to any modifications, renewals, supplements, consolidations and replacements thereof (any such lien being herein defined as a "Mortgage" and the holder of any Mortgage being a "Mortgagee").

19.1.3 Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated any such ground leases or underlying leases or any such liens to this Facility Lease. In the event that any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall, notwithstanding any subordination, attorn to and become the Tenant of the successor in interest to Landlord at the option of such successor in interest. Tenant covenants and agrees to execute and deliver, within twenty (20) days after Landlord's written request, any additional documents, in commercially reasonable form, evidencing the priority or subordination of this Facility Lease with respect to any such ground leases or underlying leases or the lien of any Mortgage.

19.2 Attornment. Tenant agrees to attorn to any Mortgagee.

19.3 Non-Disturbance. Landlord shall obtain from any Mortgagee having a lien against the Project as of the date of this Facility Lease a non-disturbance agreement which provides that, notwithstanding any judicial or non-judicial foreclosure of the lien of such Mortgagee's Mortgage, Tenant shall be entitled to continue in possession of the Premises on the terms and conditions of this Facility Lease if and for so long as Tenant fully performs all of its obligations hereunder. In no event shall such commercially reasonable efforts be deemed to require that Landlord pay any fee or other amount in exchange for such agreement.

19.4 Encumbrances by Tenant. Tenant shall not encumber in any manner the Premises or the Project, or any portion of or interest in any of the foregoing. In addition, Tenant shall not encumber this Facility Lease or assign or pledge assignment of the same as security for any debt, without first obtaining the written consent of Landlord, which Landlord may give or withhold in its sole discretion.

SECTION 20 RESERVED.

SECTION 21 RE-ENTRY BY LANDLORD.

21.1 Landlord reserves and shall at all reasonable times, upon reasonable prior notice (except in the case of an emergency), and subject to Tenant's reasonable security precautions and the right of Tenant to accompany Landlord at all times, have the right to re-enter the Premises to inspect the same, to supply any service which Landlord is required to provide to Tenant or the Premises hereunder, to show

the Premises to prospective purchasers, Mortgagees or (during the last nine (9) months of the Term) tenants, to post notices of nonresponsibility or as otherwise required or allowed by this Facility Lease or by law, and to alter, improve or repair the Premises and any portion of the Building and may for that purpose erect, use, and maintain scaffolding, pipes, conduits, and other necessary structures in and through the Premises where reasonably required by the character of the work to be performed. Landlord shall use commercially reasonable efforts during re-entry to not unreasonably interfere with Tenant's use of the Premises or its business conducted therein. Landlord shall not, however, be liable in any manner for any inconvenience, disturbance, loss of business, nuisance or other damage arising from Landlord's entry and acts pursuant to this Section and Tenant shall not be entitled to an abatement or reduction of Rent if Landlord exercises any rights reserved in this Section. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults and safes, or special security areas (designated by Tenant from time to time, in its absolute discretion, by written notice to Landlord in advance of the installation or creation of any such vaults, safes or special security areas), and Landlord shall have the right to use any and all means which Landlord may deem necessary or proper to open said doors in an emergency, in order to obtain entry to any portion of the Premises, and any entry to the Premises, or portion thereof obtained by Landlord by any of said means, or otherwise, shall not under any emergency circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portions thereof.

SECTION 22 DEFAULT

22.1 Tenant Default. A breach of this Facility Lease by Tenant shall exist if any of the following events (hereinafter referred to as "**Event of Default**") shall occur:

22.1.1 Default in the payment when due of any installment of rent or other payment required to be made by Tenant hereunder, where such default shall not have been cured within five (5) business days after written notice of such default is given to Tenant;

22.1.2 Tenant's failure to perform any term, covenant or condition contained in this Facility Lease other than the payment of Rent and excluding the defaults described in clauses (c) through (k) below, where such failure shall have continued for thirty (30) days after written notice of such failure is given to Tenant; provided, however, that where such failure could not be reasonably cured within the thirty (30) day period, the cure period shall be extended for an additional sixty (60) days if Tenant commences to cure within thirty (30) days from Landlord's notice and continues to prosecute diligently the curing thereof to its completion;

22.1.3 Tenant shall have sublet or assigned the Premises or any portion thereof without Landlord's prior written consent pursuant to Section 0;

22.1.4 Tenant's breach or violation of any of the provisions of SECTION 36;

22.1.5 Tenant shall have failed to comply with the provisions of SECTION 9 and SECTION 27;

22.1.6 Tenant's vacating or abandonment of the Premises, following Tenant's initial occupancy thereof, for a period exceeding thirty (30) days;

22.1.7 Tenant's assignment of its assets for the benefit of its creditors;

22.1.8 The sequestration of, attachment of, or execution on, any substantial part of the property of Tenant or on any property essential to the conduct of Tenant's business, shall have occurred and Tenant shall have failed to obtain a return or release of such property within forty-five (45) days thereafter, or prior to sale pursuant to such sequestration, attachment or levy, whichever is earlier;

22.1.9 Tenant shall commence any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seek appointment of a receiver, trustee, custodian, or other similar official for it or for all or any substantial part of its property; or

22.1.10 Any case, proceeding or other action against Tenant shall be commenced seeking to have an order for relief entered against it as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, and such case, proceeding or other action that:

(A) Results in the entry of an order for relief against it which is not fully stayed within seven (7) business days after the entry thereof; or

(B) Remains undismissed for a period of forty-five (45) days.

22.2 Remedies for Tenant Default. Upon the occurrence of an Event of Default of this Facility Lease by Tenant, Landlord shall have the following rights and remedies in addition to any other rights or remedies available to Landlord at law or in equity:

22.2.1 Landlord may terminate this Facility Lease and Tenant's right to possession of the Premises and recover unpaid Rent and other amounts which had been earned at the time of termination. Landlord may continue this Facility Lease in effect and to enforce all of its rights and remedies under this Facility Lease, including the right to recover Rent as it becomes due, for so long as Landlord does not terminate Tenant's right to possession; provided, however, if Landlord elects to exercise its remedies described in this Section 22.2.1 and Landlord does not terminate this Facility Lease, and if Tenant requests Landlord's consent to an assignment of this Facility Lease or a further Facility Lease of the Premises at such time as there exists an uncured Event of Default, Landlord shall not unreasonably withhold its consent to such assignment or Facility Lease. Acts of maintenance or preservation, efforts to relet the Premises or the appointment of a receiver upon Landlord's initiative to protect its interest under this Facility Lease shall not constitute a termination of Tenant's rights to possession.

22.2.2 The rights to cure Tenant's default, at Tenant's expense, as provided in SECTION 26.

22.2.3 The right to terminate this Facility Lease by giving notice to Tenant in accordance with applicable law.

22.2.4 If Landlord elects to terminate this Facility Lease, the right and power to enter the Premises and remove therefrom all persons and property, to store such property in a public warehouse or elsewhere at the cost of and for the account of Tenant, and to sell such property and apply such proceeds therefrom pursuant to applicable California law.

22.3 *Reserved.*

22.4 Landlord Default.

22.4.1 Landlord shall have a period of thirty (30) days from the date of written notice from Tenant (a copy of which shall be provided concurrently to each Lender) within which to cure any default by Landlord under this Facility Lease; provided, however, that with respect to any default that cannot reasonably be cured within thirty (30) days, the default shall not be deemed to be uncured if Landlord commences to cure within thirty (30) days from Tenant's notice and continues to prosecute diligently the curing thereof. Tenant agrees to give any Mortgagee, by registered or certified mail, a copy of any Notice of Default served upon the Landlord, provided that prior to such notice Tenant has been notified in writing (by way of Notice of Assignment of Rents and Leases, or otherwise) of the address of such Mortgagee. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in this Facility Lease, then the Mortgagee shall have an additional thirty (30) days (provided that Tenant notifies Mortgagee concurrently with Tenant's notice to Landlord at the beginning of Landlord's thirty (30) day period; otherwise Mortgagee shall have sixty (60) days from the date on which it is noticed) within which to cure such default or if such default cannot be cured within that time, then the cure period shall be extended for such additional time as may be necessary to cure such default if within such applicable period Mortgagee has commenced and continues to prosecute diligently the cure of such default (including, but not limited to, commencement of foreclosure proceedings, if necessary to effect such cure).

22.4.2 If any default hereunder by Landlord is not cured within the applicable cure period, Tenant's exclusive remedies shall be an action for specific performance or action for actual damages. Any other provision of this Facility Lease to the contrary notwithstanding, however, Landlord shall not be liable to Tenant for any loss of profits, loss of business or other consequential damages of any kind. **TENANT HEREBY WAIVES THE BENEFIT OF ANY LAWS GRANTING IT (I) THE RIGHT TO PERFORM LANDLORD'S OBLIGATION, OR (II) THE RIGHT TO TERMINATE THIS FACILITY LEASE OR WITHHOLD RENT ON ACCOUNT OF ANY LANDLORD DEFAULT. TENANT HEREBY FURTHER AGREES TO LOOK SOLELY TO LANDLORD'S INTEREST IN THE PROJECT FOR THE RECOVERY OF ANY JUDGMENT FROM LANDLORD.** Landlord, or if Landlord is a partnership, its partners whether general or limited, or if Landlord is a corporation, its directors, officers or shareholders, or if Landlord is a limited liability company, its members or managers, shall never be personally liable for any such judgment. Any lien obtained to enforce such judgment and any levy of execution thereon shall be subject and subordinate to any Mortgage (excluding any Mortgage which was created as part of an effort to defraud creditors, i.e., a fraudulent conveyance); provided, however that any such judgment and any such levy of execution thereon shall not be subject or subordinated to any Mortgage that shall have been created or recorded in the Official Records of Riverside County, California after the date of the judgment giving rise to such lien.

SECTION 23 DAMAGE AND DESTRUCTION

23.1 Repair or Termination.

FACILITY LEASE AGREEMENT

23.1.1 If (A) the Premises are damaged by fire or other insured casualty without any material damage to the Building beyond the boundaries of the Premises and (B) sufficient insurance proceeds are available to repair the damage to the Premises resulting from such casualty, Landlord shall repair the Premises as promptly as reasonably practicable and this Facility Lease shall remain in full force and effect.

23.1.2 If (A) the Premises are damaged by fire or other insured casualty without any material damage to the Building beyond the boundaries of the Premises and (B) the available insurance proceeds are insufficient to repair the damage to the Premises resulting from such casualty, or if the Premises are damaged by any uninsured casualty without any material damage to the Building beyond the boundaries of the Premises, Landlord shall notify Tenant, within thirty (30) days after the date of such damage, that there are or will be inadequate insurance proceeds available to complete the repair and of Landlord's good faith estimate of the amount of funds from sources other than insurance proceeds which will be required to complete such repairs ("**Estimated Required Additional Funds**").

(A) Such notice shall also advise Tenant whether Landlord intends to complete the repairs despite the lack or insufficiency of insurance proceeds. If Landlord's notice to Tenant states that Landlord does not intend on repairing the damage to the Premises, Tenant shall have thirty (30) days after the date of Landlord's notice within which to give Landlord written notice either that Tenant: (1) desires to terminate the Facility Lease (the "**Termination Option**"), or (2) that it will pay for the cost of repair to the Premises to the extent such cost is not covered by available insurance proceeds (the "**Reconstruction Option**"). If Tenant elects the Termination Option or fails to select between the Termination Option or the Reconstruction Option within thirty (30) days after the date of Landlord's notice, this Facility Lease shall terminate thirty (30) days after the date of Tenant's notice to Landlord or thirty (30) days after the last date on which Tenant could have selected between the two options unless Landlord notifies Tenant (prior to the expiration of the last of said thirty (30) day periods) that it will repair the damage. If Tenant elects the Reconstruction Option, Tenant's notice electing such option shall be accompanied by funds equal to the Estimated Required Additional Funds. If the circumstances described in this Section 23.1.2 are present but this Facility Lease is not terminated pursuant to the provisions of this Section 23.1.2, Landlord shall repair the Premises as promptly as reasonably practicable and this Facility Lease shall remain in full force and effect. If Landlord repairs the Premises pursuant to the Reconstruction Option, then within thirty (30) days after the completion of the repairs to the Premises, Landlord shall provide Tenant written notice as to whether the cost of the repairs were less than, equal to or more than the Estimated Required Additional Funds, which notice shall be accompanied by reasonable documentation supporting Landlord's calculation. If the actual cost of the repairs were less than the Estimated Required Additional Funds, such notice from Landlord to Tenant shall be accompanied by a refund of the difference; and if the actual cost of the repairs were greater than the Estimated Required Additional Funds, Tenant shall pay the difference to Landlord within thirty (30) days after the date of such notice from Landlord to Tenant.

23.1.3 If (A) the Premises and the Building are damaged by fire or other insured casualty to an extent that is less than twenty-five percent (25%) of the insurable replacement value of the Building, including the Premises, and (B) if sufficient insurance proceeds are available therefor, and (C) if Landlord reasonably estimates that the Premises can be restored and reopened for the Permitted Uses within one hundred twenty (120) days after the issuance of all permits necessary for the repair and restoration, Landlord shall repair the Premises as promptly as reasonably practicable and this Facility Lease shall remain in full force and effect.

23.1.4 If neither Section 23.1.1, 23.1.2 nor Section 23.1.3 apply, then Landlord shall have the right to terminate this Facility Lease by written notice given to Tenant within sixty (60) days after the date of such damage, such termination to be effective as of a date to be specified in such notice, which date shall not be less than thirty (30) nor more than sixty (60) days after the date of the notice. If Landlord does not elect to terminate this Facility Lease, Landlord shall repair the Premises (not including tenant improvements or Alterations or furniture, fixtures and equipment of Tenant) as promptly as reasonably practicable and this Facility Lease shall remain in full force and effect.

23.1.5 If ten percent (10%) or more in value or in floor area of the Building or the retail and office-use areas in the Building is damaged by a casualty not covered by insurance required to be carried hereunder, then Landlord shall have the option either (A) to repair such damage, this Facility Lease continuing in full force and effect, subject to rent abatement pursuant to Section 23.3, or (B) to give notice to Tenant at any time within sixty (60) days after such damage, terminating this Facility Lease as of a date to be specified in such notice, which date shall not be less than thirty (30) nor more than sixty (60) days after the giving of such notice.

23.2 Effect of Termination. If this Facility Lease is terminated pursuant to this SECTION 23, all interest of Tenant in the Premises shall terminate on the date of termination, all Rent and other amounts or charges required to be paid by Tenant under the terms of this Facility Lease shall be paid up to the date of such termination, and Landlord shall refund to Tenant any Rent or other amounts or charges theretofore paid for any period of time following such termination date.

23.3 Rent Abatement. If the Premises are damaged due to a casualty to which this SECTION 23 applies and this Facility Lease is not terminated (or for the period prior to termination when this Facility Lease remains in full force and effect), the Rent shall be abated proportionately with the degree to which the Tenant's possession of and conduct of business within the Premises is impaired, commencing from the date of damage and continuing during the period of repair and restoration (or termination if this Facility Lease is terminated) but only to the extent that rent abatement or business interruption insurance proceeds are paid to Landlord in the amount of such abatement. Tenant shall continue the operation of Tenant's business in the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management. Tenant shall not be entitled to any compensation or damages from Landlord for loss of use of the whole or any part of the Premises or Tenant's personal property, or damage to Tenant's personal property, or for any inconvenience or annoyance occasioned by any repair or restoration. This Section 23.2 shall not apply to any damage to the Premises caused by the willful misconduct or failure to act of Tenant or any Tenant Party.

23.4 Waiver of Rights. Tenant shall have no right to terminate this Facility Lease as a result of damage to the Premises or the Building, except as specifically set forth in this Facility Lease. Tenant specifically waives the benefits of any statute or law providing that a lease shall terminate or may be terminated if the Premises are materially damaged or destroyed.

SECTION 24 EMINENT DOMAIN.

24.1 If more than thirty percent (30%) of the area of the Premises shall be taken or appropriated under the power of eminent domain or conveyed in lieu thereof, Tenant shall have the right to terminate this Facility Lease at its option. If any part of the Building shall be taken or appropriated under power of eminent domain or conveyed in lieu thereof and such taking is so extensive that it renders the remaining portion of the Building unsuitable for the use being made of the Building on the date immediately preceding such taking, Landlord may terminate this Facility Lease at its option. In either of such events, Landlord shall receive (and Tenant shall assign to Landlord upon demand from Landlord)

any income, rent, award or any interest therein which may be paid in connection with the exercise of such power of eminent domain, and Tenant shall have no claim against Landlord or the condemning authority for any part of sum paid by virtue of such proceedings, whether or not attributable to the value of the unexpired term of this Facility Lease except that Tenant shall be entitled to petition the condemning authority for the following:

24.1.1 The then unamortized cost of any Alterations or tenant improvements paid for by Tenant from its own funds (as opposed to any allowance provided by Landlord);

24.1.2 The value of Tenant's trade fixtures;

24.1.3 Tenant's relocation costs; and

24.1.4 Tenant's goodwill, loss of business and business interruption.

If a part of the Premises shall be so taken or appropriated or conveyed and neither party hereto shall elect to terminate this Facility Lease and the Premises have been damaged as a consequence of such partial taking or appropriation or conveyance, Landlord shall restore the Premises continuing under this Facility Lease at Landlord's cost and expense; provided, however, that Landlord shall not be required to repair or restore any injury or damage to the property of Tenant or to make any repairs or restoration of any Alterations installed on the Premises by or at the expense of Tenant. Thereafter, the Rent to be paid under this Facility Lease for the remainder of the Term shall be proportionately reduced, such that thereafter the amounts to be paid by Tenant shall be in the ratio that they are of the portion of the Premises not so taken bears to the total area of the Premises prior to such taking. Notwithstanding anything to the contrary contained in this SECTION 24, if the temporary use or occupancy of any part of the Premises shall be taken or appropriated under power of eminent domain during the Term, this Facility Lease shall be and remain unaffected by such taking or appropriation and Tenant shall continue to pay in full all Rent payable hereunder by Tenant during the Term; in the event of any such temporary appropriation or taking, Tenant shall be entitled to receive that portion of any award which represents compensation for the use or occupancy of the Premises during the Term, and Landlord shall be entitled to receive that portion of any award which represents the cost of restoration of the Premises and the use and occupancy of the Premises after the end of the Term. If such temporary taking is for a period longer than one hundred eighty (180) days and unreasonably interferes with Tenant's use of the Premises, then Tenant shall have the right to terminate this Facility Lease. Landlord and Tenant understand and agree that the provisions of this SECTION 24 are intended to govern fully the rights and obligations of the parties in the event of a Taking of all or any portion of the Premises.

SECTION 25 SALE BY LANDLORD

25.1 If Landlord sells or otherwise conveys its interest in the Premises and Landlord's successor assumes in writing all of Landlord's obligations under this Facility Lease arising or accruing after the date of the conveyance, Landlord shall be relieved of its obligations under this Facility Lease accruing from and after the date of sale or conveyance, whereupon Tenant shall attorn to such successor.

SECTION 26 RIGHT OF LANDLORD TO PERFORM

26.1 All covenants and agreements to be performed by Tenant under any of the terms of this Facility Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of Rent. If Tenant shall default in the payment of any sum of money, other than Rent, required to be paid

by it hereunder or shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue for thirty (30) days after notice thereof by Landlord as provided in SECTION 22, or such shorter or longer cure period as may be provided herein (except in the event of emergency, when no cure period shall be required), Landlord may, but shall not be obligated so to do, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such act on Tenant's part to be made or performed as provided in this Facility Lease. All sums so paid by Landlord and all necessary incidental costs, together with interest thereon at the Agreed Interest Rate, from the date of such payment by Landlord, shall be payable to Landlord on demand.

SECTION 27 SURRENDER OF PREMISES

27.1 Surrender. At the end of the Term or any renewal thereof or other sooner termination of this Facility Lease, Tenant will peaceably deliver to Landlord possession of the Premises, together with all improvements or additions upon or belonging to Landlord, by whomsoever made, broom-clean and in the same condition as received, or first installed, subject to the provisions of this Section and SECTION 7, SECTION 23 and SECTION 24. Tenant may, upon the termination of this Facility Lease, remove all movable trade fixtures, furniture and equipment belonging to Tenant, at Tenant's sole cost, provided that Tenant repairs any damage caused by such removal. Property not so removed shall be deemed abandoned by Tenant, and title to the same shall thereupon pass to Landlord. Upon such expiration or sooner termination of the Term, Tenant shall upon demand by Landlord, at Landlord's election either: (A) at Tenant's sole cost and expense, forthwith and with all due diligence (a) remove any telephone and other cabling installed in the Building by Tenant, (B) remove any Alterations made by or for the account of Tenant designated by Landlord to be removed pursuant to SECTION 7, and (C) restore the Premises to its original condition as of the Commencement Date, subject to the foregoing; or pay Landlord the reasonable estimated cost thereof.

27.2 No Merger. The voluntary or other surrender of this Facility Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing Facility Leases or subtenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such Facility Leases or subtenancies.

SECTION 28 WAIVER.

28.1 If either Landlord or Tenant waives the performance of any term, covenant or condition contained in this Facility Lease, such waiver shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein. Furthermore, the acceptance of Rent by Landlord shall not constitute a waiver of any preceding breach by Tenant of any term, covenant or condition of this Facility Lease, regardless of Landlord's knowledge of such preceding breach at the time Landlord accepted such Rent. Failure by Landlord or Tenant to enforce any of the terms, covenants or conditions of this Facility Lease for any length of time shall not be deemed to waive or to decrease the right of Landlord to insist thereafter upon strict performance thereof. Waiver by Landlord or Tenant of any term, covenant or condition contained in this Facility Lease may only be made by a written document signed by the waiving party.

SECTION 29 NOTICES

29.1 General. Except as otherwise expressly provided in this Facility Lease, any bills, statements, notices, demands, requests or other communications given or required to be given under this Facility Lease shall be effective only if rendered or given in writing, sent by certified mail, return receipt

requested, reputable overnight carrier, facsimile or delivered personally, (A) to Tenant at the address given on the Basic Facility Lease Information; or (B) to Landlord at Landlord's address set forth in the Basic Facility Lease Information. Either Landlord or Tenant may change its address for notices by written notice to the other given in accordance with the provisions of this Section. Any such bill, statement, notice, demand, request or other communication shall be deemed to have been rendered or given on the date the return receipt indicates delivery of (or refusal of delivery) if sent by certified mail, the day upon which recipient accepts and signs for delivery from a reputable overnight carrier, or on the date a reputable overnight carrier indicates refusal of delivery, or upon the date personal delivery is made or upon the date that a copy of the notice is transmitted by facsimile, if a machine generated copy of confirmation of receipt is retained by the sender and if a copy of the notice is promptly mailed by certified mail, return receipt requested.

29.2 Notices to Mortgagees. If Tenant is notified in writing of the identity and address of any Mortgagee or ground or underlying lessor, Tenant shall give to such Mortgagee or ground or underlying lessor notice of any default by Landlord under the terms of this Facility Lease in writing sent by registered or certified mail, and such Mortgagee or ground or underlying lessor shall be given the opportunity to cure such default prior to Tenant exercising any remedy available to it.

SECTION 30 TAXES.

30.1 Personal Property Taxes. At least ten (10) days prior to delinquency Tenant shall pay all taxes levied or assessed upon Tenant's equipment, furniture, fixtures and other personal property located in or about the Premises. If the assessed value of Landlord's property is increased by the inclusion therein of a value placed upon Tenant's equipment, furniture, fixtures or other personal property, Tenant shall pay to Landlord, upon written demand, the taxes so levied against Landlord, or the proportion thereof resulting from said increase in assessment.

30.2 Real Property Tax Exemption. Landlord and Tenant may be entitled to obtain a real property tax exemption for the Premises pursuant to the provisions of California Revenue and Taxation Code Section 214 *et seq.* Landlord and Tenant shall seek to obtain such an exemption provided that all applications, appraisals, documents, correspondence, writings and communications made or submitted Tenant or any officer, director, shareholder, member, employee, agent, contractor, consultant or representative of Tenant to the office of the Riverside County Tax Assessor and/or any other governmental authority, agency, department or representative (whether appointed or elected) thereof with respect thereto shall be submitted, transmitted or made through Landlord and that Tenant shall provide Landlord with a copy of any such all materials received from the office of the Riverside County Tax Assessor and/or any other governmental authority, agency, department or representative thereof with respect thereto promptly upon receipt thereof. Tenant shall be entitled to receive the economic benefit of any such exemption which it obtains with respect to the Premises after Landlord's request to obtain a reduction in the reassessment of the Project which occurred in connection with Landlord's construction of the Project is fully and finally determined.

SECTION 31 SUCCESSORS AND ASSIGNS.

31.1 Subject to the provisions of Section 12, the terms, covenants and conditions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective legal and personal representatives, successors and assigns.

SECTION 32 ATTORNEY'S FEES.

FACILITY LEASE AGREEMENT

32.1 If Tenant or Landlord brings any action for any relief against the other, declaratory or otherwise, arising out of this Facility Lease, including any suit by Landlord for the recovery of Rent or possession of the Premises, and whether such action sounds in tort or in contract, the losing party shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not the action is prosecuted to judgment.

SECTION 33 LIGHT AND AIR. Tenant covenants and agrees that no diminution of light, air or view by any structure which may hereafter be erected (whether or not by Landlord) shall entitle Tenant to any reduction of rent under this Facility Lease, result in any liability of Landlord to Tenant, or in any other way affect this Facility Lease or Tenant's obligations hereunder.

SECTION 34 AUTHORITY; FINANCIAL INFORMATION.

34.1 Tenant. Each of the persons executing this Facility Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing charter city, that Tenant has and is qualified to do business in California, that the Tenant has full right and authority to enter into this Facility Lease, and that each of the persons signing on behalf of the Tenant were authorized to do so and by their signatures bind Tenant. Upon Landlord's request, Tenant shall provide Landlord with evidence reasonably satisfactory to Landlord confirming the foregoing covenants and warranties. Tenant hereby further covenants and warrants to Landlord that all financial information and other descriptive information regarding Tenant, which has been or shall be furnished to Landlord, is accurate and complete at the time of delivery to Landlord.

34.2 Landlord. Each of the persons executing this Facility Lease on behalf of Landlord does hereby covenant and warrant that Landlord is a duly authorized and existing limited liability company, that Landlord has and is qualified to do business in California, that the Landlord has full right and authority to enter into this Facility Lease, and that each of the persons signing on behalf of the corporation were authorized to do so and by their signatures bind Landlord. Upon Tenant's request, Landlord shall provide Tenant with evidence reasonably satisfactory to Tenant confirming the foregoing covenants and warranties.

SECTION 35 REAL ESTATE BROKERS.

35.1 Each party represents that it has not had dealings with any real estate broker, finder or other person with respect to this Facility Lease in any manner. Each party shall hold harmless the other party from all damages resulting from any claims that may be asserted against the other party by any other broker, finder or other person with whom the other party has or purportedly has dealt.

SECTION 36 HAZARDOUS SUBSTANCE LIABILITY.

36.1 Definition of Hazardous Substances. For the purpose of this Facility Lease, "Hazardous Substances" shall mean any oil, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which (A) pose a hazard to the Project or to persons on or about the Project or (B) cause the Project to be in violation of any Hazardous Materials Laws; (C) asbestos in any form, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls, or radon gas; (D) chemical, material or substance defined as or included in the definition of

"hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," or "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Section 5101, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, et seq.; ORS Chapters 465 and 466; (D) other chemical, material or substance, exposure to which is then prohibited, limited or regulated by any governmental authority; and, (E) petroleum hydrocarbons.

36.2 Tenant Indemnity. Tenant releases Landlord from any liability for, waives all claims against Landlord and shall indemnify, defend and hold harmless Landlord, its employees, partners, agents, subsidiaries and affiliate organizations against any and all claims, suits, losses, costs (including costs of investigation, clean up, monitoring, restoration and reasonably attorney fees), damages or liabilities, whether foreseeable or unforeseeable, by reason of property damage (including diminution in the value of the property of Landlord), personal injury or death arising from or related to Hazardous Substances released, manufactured, discharged, disposed, used or stored on, in, or under the Project or Premises by Tenant or its employees, agents, sublessees, assignees or contractors. The provisions of this Tenant Indemnity regarding Hazardous Substances shall survive the termination of the Facility Lease.

Tenant Covenant. Tenant represents, warrants and covenants to Landlord that except for very immaterial amounts of toxic materials incidental to its operations (e.g. copier toner, photographic chemicals), which Tenant shall use only in compliance with all applicable Laws, Tenant will not use, store or dispose of any Hazardous Substances in, on, under or about the Premises or Project.

SECTION 37 DISPUTE RESOLUTION.

37.1 Continued Performance. Unless this Facility Lease is terminated, neither party shall suspend performance of its obligation hereunder pending the resolution of a dispute.

37.2 Negotiation/Mediation. The parties shall attempt to resolve all disputes by negotiation and voluntary mediation. The parties shall share equally in all common costs of mediation.

37.3 Litigation/Arbitration.

37.3.1 Enforcement. The judgment or the award rendered in any arbitration initiated and conducted in accordance with this Section 37 may be entered into in any court of competent jurisdiction and shall be final and binding upon the parties. To the extent any alleged Default of Tenant is permitted to be, and is, properly submitted to arbitration pursuant to this Section 37, any period of time otherwise afforded to Tenant under this Facility Lease for the cure of such Default shall be automatically extended by the period during which such arbitration is conducted.

SECTION 38 MISCELLANEOUS.

38.1 Exhibits. The Exhibits, together with all attachments to such exhibits, referred to in this Facility Lease and attached hereto are incorporated herein by this reference.

38.2 Amendments. This Facility Lease may not be altered, changed or amended, except by an instrument in writing signed by both parties.

38.3 Severability. If any term or provision of this Facility Lease, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Facility Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Facility Lease shall be valid and shall be enforceable to the extent permitted by law.

38.4 No Option. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or an option for lease, and it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

38.5 Integration and Interpretation. The language in all parts of this Facility Lease shall in all cases be construed as a whole and in accordance with its fair meaning and not restricted for or against any party, regardless of which party may have drafted the provision in question, it being agreed that this is a negotiated agreement. The captions of the various Sections of this Facility Lease are for convenience only and do not necessarily define, limit, describe, or construe the contents of such Sections. Whenever required by the context, the singular shall include the plural, and vice versa, and the masculine gender shall include the feminine and neuter genders, or vice versa.

38.6 Quitclaim. Upon expiration or earlier termination of this Facility Lease, Tenant shall, immediately upon request of Landlord, execute, acknowledge and deliver to Landlord a recordable deed quitclaiming to Landlord all interest of Tenant in the Premises, the Building and this Facility Lease.

38.7 Survival. The covenants and obligations contained in this Facility Lease that are intended by their terms to operate without regard to the Term shall survive the expiration or earlier termination of this Facility Lease. No provision of this Facility Lease providing for termination in certain events shall be construed as a limitation or restriction of the rights or remedies of either party at law or in equity unless expressly otherwise provided herein.

38.8 Jury Waiver. To the maximum extent permitted by law, each of Tenant and Landlord hereby expressly waives any right to trial by jury of any action, cause of action, claim, demand, or proceeding arising under or with respect to this Facility Lease, or in any way connected with, related to, or incidental to the dealings of Landlord and Tenant with respect to this Facility Lease, in each case whether now existing or hereafter arising, and whether sounding in contract, tort, or otherwise. To the maximum extent permitted by law, each of Tenant and Landlord hereby agrees that any such action, cause of action, claim, demand or proceeding shall be decided by a court trial without a jury and that Tenant or Landlord may file a copy of this Facility Lease with any court or other tribunal as written evidence of the consent of each of Tenant and Landlord to the waiver of its right to trial by jury.

38.9 Force Majeure. Except as otherwise expressly provided in this Facility Lease, should the performance of any act required by this Facility Lease to be performed by either Landlord or Tenant be prevented or delayed by reason of any act of God, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations, 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 as required by this Facility Lease or 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.

38.10 Anti-Terrorism. Each party hereto represents and warrants to the other that such party is not, and is not acting, directly or indirectly, for or on behalf of any person or entity, named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224), and that such party is not engaged in this transaction, directly or indirectly, on behalf of, and is not facilitating this transaction, directly or indirectly, on behalf of, any such person or entity. Each party hereby agrees to defend, indemnify and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the foregoing representations and warranties.

38.11 Successors. This Facility Lease (subject to the provisions as to transfers) shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

38.12 No Joint Venture. This Facility Lease shall not be construed to create a partnership, joint venture or similar relationship or arrangement between Landlord and Tenant hereunder.

38.13 Applicable Law. All rights and remedies of Landlord and Tenant under this Facility Lease shall be construed and enforced according to the laws of the State of California. To the maximum extent permitted by law, the parties agree that all actions or proceedings arising in connection with this Facility Lease shall be tried and determined only in the State courts located in Riverside County, State of California or the United States District Court for the Central District of California. To the maximum extent permitted by law, each party hereby expressly waives any right it may have to assert the doctrine of forum non conveniens or to object to venue to the extent any proceeding is brought in accordance with this Section.

38.14 Time Of The Essence. Time is of the essence of each and every covenant herein contained.

38.15 Counterparts. This Facility Lease may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement, and the signature of any party in counterpart shall be deemed as a signature to and may be appended to any other counterpart.

IN WITNESS WHEREOF, the parties have executed this Facility Lease as of the date and year first above written.

LANDLORD:

**DESERT HOT SPRINGS HEALTH AND
WELLNESS FOUNDATION**

By: 

Name: _____

Title: _____

[SIGNATURES CONTINUE ON THE NEXT PAGE]

TENANT:

CITY OF DESERT HOT SPRINGS

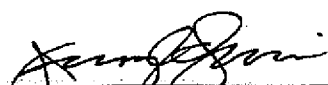
a public body, corporate and politic

By: 

Name: Yvonne Parks

Title: Mayor

ATTEST:


Name: Jerry Soriano

Title: Deputy City Clerk

APPROVED AS TO FORM:


Name: Ruben Duran

Title: City Attorney

EXHIBIT A**Property Description**

Approximately 26,000 square feet of buildings and other improvements designed and constructed for health care, community services and recreational purposes on land legally described as follows:

Legal Description

Real property in the City of Desert Hot Springs, County of Riverside, State of California, described as follows:

PARCEL 1 AS SHOWN ON CERTIFICATE OF PARCEL MERGER NO. 01-09, AS EVIDENCED BY DOCUMENT RECORDED MAY 15, 2009 AS INSTRUMENT NO. 2009-246028 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 2 TOGETHER WITH PARCEL 3 OF PARCEL MAP NO. 21531 AS SHOWN BY MAP ON FILE IN BOOK 138, AT PAGES 3 AND 4 OF PARCEL MAPS, RIVERSIDE COUNTY RECORDS, BEING IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 25 TOWNSHIP 2 SOUTH, RANGE 4 EAST, S.B.M.

APN: 664-190-043-9

EXHIBIT B**Rent Schedule***Due before 1/1 each yr*

YEAR	RENT ACCRUED	DEFERRED	RENT PAYABLE
2012	\$33,333.00	\$(16,000.00)	\$17,333.00
2013	\$200,000.00	\$(96,000.00)	\$104,000.00
2014	\$200,000.00	\$(96,000.00)	\$104,000.00
2015	\$200,000.00	\$(96,000.00)	\$104,000.00
2016	\$200,000.00	\$(96,000.00)	\$104,000.00
2017	\$200,000.00	\$(96,000.00)	\$104,000.00
2018	\$200,000.00	\$(96,000.00)	\$104,000.00
2019	\$200,000.00	\$(96,000.00)	\$104,000.00
2020	\$471,238.00	\$688,000.00	\$1,159,238.00
2021	\$471,238.00		\$471,238.00
2022	\$471,238.00		\$471,238.00
2023	\$471,238.00		\$471,238.00
2024	\$471,238.00		\$471,238.00
2025	\$546,294.00		\$546,294.00
2026	\$546,294.00		\$546,294.00
2027	\$546,294.00		\$546,294.00
2028	\$546,294.00		\$546,294.00
2029	\$546,294.00		\$546,294.00
2030	\$633,304.00		\$633,304.00
2031	\$633,304.00		\$633,304.00
2032	\$633,304.00		\$633,304.00
2033	\$633,304.00		\$633,304.00
2034	\$633,304.00		\$633,304.00
2035	\$734,173.00		\$734,173.00
2036	\$734,173.00		\$734,173.00
2037	\$734,173.00		\$734,173.00
2038	\$734,173.00		\$734,173.00
2039	\$734,173.00		\$734,173.00
2040	\$851,108.00		\$851,108.00
2041	\$851,108.00		\$851,108.00
2042	\$851,108.00		\$851,108.00

2043	\$851,108.00	\$851,108.00
2044	\$851,108.00	\$851,108.00
2045	\$986,668.00	\$986,668.00
2046	\$986,668.00	\$986,668.00
2047	\$986,668.00	\$986,668.00
2048	\$986,668.00	\$986,668.00
2049	\$986,668.00	\$986,668.00
2050	\$1,143,818.00	\$1,143,818.00
2051	\$571,909.00	\$571,909.00

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