



BOARD OF DIRECTORS AGENDA

REGULAR MEETING
of the
BOARD OF DIRECTORS
of the
SANTA BARBARA METROPOLITAN TRANSIT DISTRICT
A Public Agency
Tuesday, September 6, 2022
8:30 AM
John G. Britton Auditorium
550 Olive Street, Santa Barbara, CA 93101

1. **CALL TO ORDER**
2. **ROLL CALL OF THE BOARD MEMBERS**
Dave Davis (Chair), David Tabor (Vice Chair), Jen Lemberger (Secretary), Chuck McQuary (Director), Paula Perotte (Director), Arjun Sarkar (Director).
3. **REPORT REGARDING THE POSTING OF THE AGENDA**
4. **STATUS REPORT ON THE COVID-19 STATE OF EMERGENCY (ACTION MAY BE TAKEN - ATTACHMENTS)**
Staff will request that the Board reconsider the circumstances of the COVID-19 State of Emergency.

CONSENT CALENDAR

5. **APPROVAL OF PRIOR MINUTES - (ACTION MAY BE TAKEN)**
The Board of Directors will be asked to approve the draft minutes for the meeting of August 23, 2022.
6. **CASH REPORTS - (ACTION MAY BE TAKEN)**
The Board of Directors will be asked to review and approve the Cash Reports from August 6, 2022 through August 26, 2022.

THIS CONCLUDES THE CONSENT CALENDAR

7. **PUBLIC COMMENT**
Members of the public may address the Board of Directors on items within the jurisdiction of the Board that are not scheduled for public hearing. The time allotted per speaker will be at the discretion of the Board Chair. If you wish to address the Board under this item number, please complete and deliver to the MTD Board Clerk a "Request to Speak" form that includes both a description of the subject you wish to address and, if applicable, the agenda item number for which you would like to comment. Additional public comment will be allowed during each agenda item, including closed session items. Forms are available at www.sbmtd.gov and at MTD Administrative offices.

BOARD OF DIRECTORS AGENDA

8. RECESS TO CLOSED SESSION: REAL PROPERTY NEGOTIATIONS (GOVERNMENT CODE §54956.8) – (INFORMATIONAL)

Property: 4678 Calle Real / 149 North San Antonio Road.

Agency Negotiators: General Manager Jerry Estrada; District Outside Counsel, Graham Lyons.

Negotiating Parties: Con/Am Group.

Under Negotiation: Price and terms of payment.

9. RECESS TO CLOSED SESSION: CONFERENCE WITH LEGAL COUNSEL REGARDING ANTICIPATED LITIGATION - (ACTION MAY BE TAKEN)

The Board will meet in closed session with legal counsel for anticipated litigation (Significant Exposure to Litigation) pursuant to Government Code § 54956.9(d)(2). (e)(2) and e(3).

Number of cases (1) – Claim Received from Brittani Williams and minor child regarding a bus accident on February 5, 2022.

PUBLIC COMMENT RELATED TO CLOSED SESSION ITEM(S) WILL BE ALLOWED PRIOR TO RECESS

10. ADOPTION OF RESOLUTION TO ENTER OPTION AGREEMENT REGARDING MTD'S CALLE REAL PROPERTY (ACTION MAY BE TAKEN – ATTACHMENTS)

Staff asks that the Board of Directors receive the *ad hoc* committee's unanimous recommendation and through adoption of the attached Resolution, approve and execute the attached Option Agreement with ConAm RE Investments LLC ("ConAm").

11. FISCAL YEAR 2021-22 ANNUAL RIDERSHIP & CUSTOMER SERVICE REPORT – (INFORMATIONAL)

Staff will provide the Board of Directors a report regarding annual ridership and customer service statistics for FY 2021-22.

12. CONFLICT OF INTEREST CODE UPDATE – (ACTION MAY BE TAKEN – ATTACHMENT)

Staff and MTD's attorney request that the Board approve the recommended changes to the Conflict of Interest Code.

13. GENERAL MANAGER'S REPORT – (INFORMATIONAL)

The General Manager will report on any updates to district activities.

14. OTHER BUSINESS AND REPORTS – (INFORMATIONAL)

The Board will report on other related public transit issues and committee meetings.

15. ADJOURNMENT

AMERICANS WITH DISABILITIES ACT: If you need special assistance to participate in this meeting, please contact the MTD Administrative Office at 805.963.3364 at least **48 hours in advance** of the meeting to allow time for MTD to attempt a reasonable accommodation.



BOARD OF DIRECTORS REPORT

MEETING DATE:	SEPTEMBER 6, 2022	AGENDA ITEM: #4
DEPARTMENT:	ADMINISTRATION	
TYPE:	ACTION ITEM	
PREPARED BY:	JERRY ESTRADA	
REVIEWED BY:	GENERAL MANAGER	
SUBJECT:	STATUS REPORT ON THE COVID-19 STATE OF EMERGENCY	

RECOMENDATION:

Staff requests that the Board reconsider the circumstances of the COVID-19 State of Emergency:

1. Consider whether state or local officials continue to impose or recommend measures to promote social distancing;
2. Find that the MTD Board has reconsidered the circumstances of the state of emergency, and that State or local officials continue to impose or recommend measures to promote social distancing; and
3. Direct staff to continue to notice and hold hearings as remote hearings consistent with Government Code § 54953(e)(3).

DISCUSSION:

On January 5, 2022, Governor Gavin Newsom issued Executive Order N-1-22, which among other things set a date of April 1, 2022 for public agencies to transition back to public meetings held in full compliance with the Brown Act, including how remote participation is conducted. In September 2021, the California State Legislature passed, and the Governor signed, Assembly Bill 361 (Rivas, 2021) (AB 361), which amends the Government Code to allow Brown Act bodies to continue to meet remotely if certain elements are met. AB 361 took effect immediately, but does not supersede Executive Order N-1-22. It applies to all Brown Act boards, committees, and commissions.

On January 31, 2020, the Secretary of Health and Human Services (HHS) declared a public health emergency under section 319 of the Public Health Service Act (42 USC § 247d) in response to COVID-19. On March 13, 2020, the US President declared a national emergency concerning the COVID-19 pandemic, which has been extended until February 24, 2022. On March 4, 2020, Governor Newsom declared a state of emergency for conditions caused by COVID-19, which has been extended until March 31, 2022. On March 12, 2020, the Santa Barbara County Director of Emergency Services proclaimed a Local Emergency as a result of the COVID-19 and the Santa Barbara County Health Officer declared a Local Health Emergency, due to the imminent and proximate threat to public health from the introduction of COVID-19. Thereafter, on March 17,

BOARD OF DIRECTORS REPORT

2020, the Santa Barbara County Board of Supervisors ratified the Proclamation of a Local Emergency and the Declaration of a Local Health Emergency, which remain in effect.

As of February 15, 2022, Santa Barbara County Public Health Officials continue to recommend utilizing teleconferencing options for public meetings as an effective social distancing measure to facilitate participation in public affairs and encourage participants to protect themselves and others from the COVID-19 disease (attached). As of August 24, 2022, the COVID-19 community transmission level is categorized as “High” in Santa Barbara County by the Centers for Disease Control & Prevention (CDC). As of June 24, 2022, the Santa Barbara County Public Health Department reports a case rate of 29.39 per 100,000 and a 13.7% test positivity rate. The County Health Officer and the California Department of Public Health continue to recommend all individuals wear a face covering in public indoor settings.

ATTACHMENTS:

- Health Officials AB 361 Social Distance Recommendation
- State of California Executive Order N-1-22

ATTACHMENT A



Public Health Administration

300 North San Antonio Road ♦ Santa Barbara, CA 93110-1316
805/681-5100 ♦ FAX 805/681-5191

Van Do-Reynoso, MPH, PhD *Director*
Suzanne Jacobson, CPA *Chief Financial Officer*
Paige Batson, MA, PHN, RN *Deputy Director*
Darrin Eisenbarth *Deputy Director*
Dana Gamble, LCSW *Interim Deputy Director*
Polly Baldwin, MD, MPH *Medical Director*
Henning Ansorg, MD *Health Officer*

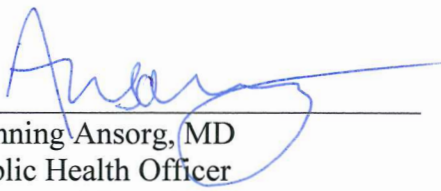
HEALTH OFFICIALS AB 361 SOCIAL DISTANCE RECOMMENDATION

Issued: September 28, 2021

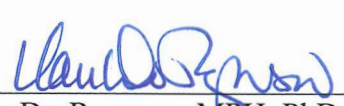
COVID-19 disease prevention measures, endorsed by the Centers for Disease Control and Prevention, include vaccinations, facial coverings, increased indoor ventilation, handwashing, and physical distancing (particularly indoors).

Since March 2020, local legislative bodies-such as commissions, committees, boards, and councils- have successfully held public meetings with teleconferencing as authorized by Executive Orders issued by the Governor. Using technology to allow for virtual participation in public meetings is a social distancing measure that may help control transmission of the SARS-CoV-2 virus. Public meetings bring together many individuals (both vaccinated and potentially unvaccinated), from multiple households, in a single indoor space for an extended time. For those at increased risk for infection, or subject to an isolation or quarantine order, teleconferencing allows for full participation in public meetings, while protecting themselves and others from the COVID-19 virus.

Utilizing teleconferencing options for public meetings is an effective and recommended social distancing measure to facilitate participation in public affairs and encourage participants to protect themselves and others from the COVID-19 disease. This recommendation is further intended to satisfy the requirement of the Brown Act (specifically Gov't Code Section 54953(e)(1)(A)), which allows local legislative bodies in the County of Santa Barbara to use certain available teleconferencing options set forth in the Brown Act.



Henning Ansorg, MD
Public Health Officer
County of Santa Barbara



Van Do-Reynoso, MPH, PhD
Public Health Director
County of Santa Barbara

**EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA**

EXECUTIVE ORDER N-1-22

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS on March 12, 2021, I issued Executive Order N-25-20, paragraph 11, and on March 17, 2020, I issued Executive Order N-29-20, paragraph 3, waiving certain requirements that public meetings of state bodies occur in-person; and

WHEREAS on June 11, 2021, I issued Executive Order N-08-21 to roll back certain provisions of my COVID-19-related Executive Orders and to clarify that other provisions remained necessary to help California respond to, recover from, and mitigate the impacts of the COVID-19 pandemic; and

WHEREAS paragraph 42 of Executive Order N-08-21 specified that the waiver of requirements that public meetings of state bodies occur in-person would be valid through September 30, 2021; and

WHEREAS on September 16, 2021, I signed into law Assembly Bill 361 (AB 361), which amended the Government Code and Education Code to provide additional flexibility for state bodies to conduct public meetings via teleconference through January 31, 2022; and

WHEREAS since Thanksgiving, the statewide seven-day average case rate has increased by 805% and the number of COVID-19 hospitalized patients has increased by 154%; and

WHEREAS this surge is being driven by the recent emergence of the Omicron variant, which has recently been estimated to account for approximately 70% of cases sequenced nationally; and

WHEREAS early data suggest that the Omicron variant is more transmissible than the Delta variant; and

WHEREAS requiring large numbers of individuals to gather, and potentially travel long distances, for in-person public meetings could potentially, and unnecessarily, expose numerous people to COVID-19, further contribute to the ongoing surge in cases caused by the Omicron variant, compound disruptions to our economy, and undermine public health measures during the current State of Emergency; and

WHEREAS when the Legislature considered AB 361 this past fall, the Omicron variant had not emerged, and the virus had not demonstrated the ability to evade immunity; and

WHEREAS in light of the present surge in cases due to the Omicron variant, and to protect the public health and safety, it is necessary to temporarily extend the flexibilities for state bodies to conduct teleconferences under AB 361 beyond January 31, 2022, to provide state bodies the option of conducting public meetings remotely to reduce the risk of in-person exposure to members of the staff body, staff, and members of the public; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with the statutes specified in this Order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, and in particular, Government Code sections 8567, 8571, and 8627 do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. The sunset dates in Education Code section 89305.6, subdivision (g), and Government Code section 11133, subdivision (g), are suspended until March 31, 2022.
2. This Order shall expire at 11:59 p.m. on April 1, 2022.

I FURTHER DIRECT that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 5th day of January 2022.



GAVIN NEWSOM
Governor of California

ATTEST:

SHIRLEY WEBER, PH.D.
Secretary of State



BOARD OF DIRECTORS DRAFT MINUTES

SPECIAL MEETING
of the
BOARD OF DIRECTORS
of the
SANTA BARBARA METROPOLITAN TRANSIT DISTRICT
A Public Agency
Monday, August 23, 2022
8:30 AM
John G. Britton Auditorium
550 Olive Street, Santa Barbara, CA 93101

1. CALL TO ORDER

Chair Dave Davis called the meeting to order at 8:30 AM.

2. ROLL CALL OF THE BOARD MEMBERS

Chair Davis reported that all members were present except Director Perotte.

3. REPORT REGARDING POSTING OF AGENDA

Lilly Gomez, Interim Clerk of the Board and Marketing and Community Relations Coordinator reported that the agenda was posted on Thursday, August 18, 2022, at MTD's Administrative office, mailed and emailed to those on the agenda list, and posted on MTD's website.

4. STATUS REPORT ON THE COVID-19 STATE OF EMERGENCY (ACTION MAY BE TAKEN - ATTACHMENTS)

The Board reconsidered the circumstances of the COVID-19 State of Emergency.

Director McQuary moved to approve staff's recommendation to continue to allow noticing and holding remote hearings, consistent with Government Code § 54953(e)(3). Secretary Lemberger seconded the motion. Chair Davis held a roll call vote and the consent calendar was approved unanimously.

CONSENT CALENDAR

5. APPROVAL OF PRIOR MINUTES - (ATTACHMENT - ACTION MAY BE TAKEN)

The Board of Directors was asked to approve the draft minutes for the meeting of August 1, 2022

6. CASH REPORT - (ATTACHMENT - ACTION MAY BE TAKEN)

The Board of Directors will be asked to review and approve the Cash Reports from July 23, 2022 through August 5, 2022.

Vice Chair Tabor moved to approve the consent calendar. Director McQuary seconded the motion. Chair Davis held a roll call vote and the consent calendar was approved unanimously.

THIS CONCLUDES THE CONSENT CALENDAR

7. PUBLIC COMMENT

No public comments were made.

8. OTHER BUSINESS AND REPORTS (ACTION MAY BE TAKEN)

General Manager Jerry Estrada requested two volunteers from the Board of Directors to participate in an Ad Hoc committee assisting management with recommendations related to unrepresented employees compensation and job classifications.

Secretary Lemberger and Vice Chair Tabor Volunteered.

9. RECESS TO CLOSED SESSION: REAL PROPERTY NEGOTIATIONS (GOVERNMENT CODE §54956.8) (ACTION MAY BE TAKEN)

Property: 4678 Calle Real / 149 North San Antonio Road.

Agency Negotiators: General Manager Jerry Estrada; District Outside Counsel, Graham Lyons.

Negotiating Parties: Con/Am Group.

Under Negotiation: Price and terms of payment.

No public comments regarding the Closed Session item were made prior to recess.

Chair Davis recessed the Board to Closed Session at 8:33 AM.

The Board reconvened from Closed Session at 9:20 AM. Chair Davis reported that no action had been taken on this item.

10. ADJOURNMENT

The meeting was adjourned at 9:21 AM.

Santa Barbara Metropolitan Transit District
Cash Report
Board Meeting of September 6, 2022
For the Period August 6, 2022 through August 26, 2022

MONEY MARKET

Beginning Balance August 6, 2022 **\$3,820,255.50**

Passenger Fares	125,550.31
Accounts Receivable	15,832.90
Miscellaneous Income	591.34
Total Deposits	141,974.55

Bank & Credit Card Fees	27.27
Miscellaneous Transfers	(12,585.34)
401(k)/Pension Transfer	(60,071.53)
Payroll Taxes	(295,763.98)
Payroll	(664,662.89)
Accounts Payable	(1,107,956.50)
Total Disbursements	(2,141,012.97)

Ending Balance **\$1,821,217.08**

CASH INVESTMENTS

LAIF Account	\$5,902,708.48
Money Market Account	1,821,217.08

Total Cash Balance **\$7,723,925.56**

SELF INSURED LIABILITY ACCOUNTS

WC / Liability Reserves	(\$4,759,470.85)
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Working Capital **\$2,964,454.71**

Santa Barbara Metropolitan Transit District
Cash Receipts of Accounts Receivable

Date	Company	Description	Amount
8/11/2022	County of Santa Barbara	Passes/Token Sales	780.00
8/16/2022	Idea Engineering, Inc.	Advertising on Buses	1,572.30
8/22/2022	Moonlight Graphics/Mktg	Advertising on Buses	5,364.00
8/24/2022	Wells Marketing, LLC	Advertising on Buses	1,731.60
8/24/2022	Wells Marketing, LLC	Advertising on Buses	225.00
8/24/2022	Wells Marketing, LLC	Advertising on Buses	1,328.40
8/26/2022	Montecito Bank & Trust	Advertising on Buses	2,722.00
8/26/2022	True Media LLC/Cottage Health	Advertising on Buses	1,054.80
8/26/2022	True Media LLC/Cottage Health	Advertising on Buses	1,054.80
Total Accounts Receivable Paid During Period			\$15,832.90

Santa Barbara Metropolitan Transit District
Accounts Payable

Check #	Date	Company	Description	Amount	Voids
130131	8/12/2022	ABC BUS COMPANIES INC	BUS PARTS	1,100.39	
130132	8/12/2022	ALBERTO CALVILLO	RETIREE HEALTH REIMURSEMENT	116.91	
130133	8/12/2022	AMERICAN MOVING PARTS, LLC	BUS PARTS	150.94	
130134	8/12/2022	HENRY ANDREWS	RETIREE HEALTH REIMBURSEMENT	285.00	
130135	8/12/2022	MARIO R. BEAS	HR CONSULTANT	6,360.00	
130136	8/12/2022	JAMES BRACKETT	RETIREE HEALTH REIMBURSEMENT	178.00	
130137	8/12/2022	KARL BRETZ	RETIREE HEALTH REIMBURSEMENT	254.50	
130138	8/12/2022	BUNNIN CHEVROLET CADILLAC	SERVICE VEHICLE MAINTENANCE	928.42	
130139	8/12/2022	ARTHUR BURNS	RETIREE HEALTH REIMBURSEMENT	239.00	
130140	8/12/2022	ROBERT BURNHAM	RETIREE HEALTH REIMBURSEMENT	285.00	
130141	8/12/2022	BYD COACH & BUS LLC	BUS PARTS	460.73	
130142	8/12/2022	MIKE CARDONA	RETIREE HEALTH REIMBURSEMENT	490.00	
130143	8/12/2022	COASTAL VIEW NEWS DBA	EMPLOYMENT ADS	644.00	
130144	8/12/2022	CHK AMERICA INC.	SCHEDULE INFO & SYSTEM MAP	2,865.56	
130145	8/12/2022	COMPLETE COACH WORKS	FLEET RENEWAL CAMPAIGN	23,902.58	V
130146	8/12/2022	COX COMMUNICATIONS, CORP.	INTERNET & CABLE TV	538.72	
130147	8/12/2022	CUMMINS SALES & SERVICE dba	BUS PARTS & REPAIRS	65,985.97	
130148	8/12/2022	NANCY CURTIS	RETIREE HEALTH REIMBURSEMENT	222.86	
130149	8/12/2022	CROSSLINE SUPPLY LLC	BUS PARTS	424.13	
130150	8/12/2022	DAVE BANG ASSOCIATES, INC.	BUS BENCHES, TRASH RECEPTACLES	8,654.04	
130151	8/12/2022	EDWARDS CONSTRUCTION GROU	CHARGE READY BRIDGE	36,277.17	
130152	8/12/2022	EDM TECHNOLOGY, INC	BUS PASS PRINTING	12,500.00	
130153	8/12/2022	ESP LOCKSMITH DBA	B&G REPAIRS & SUPPLIES	110.00	
130154	8/12/2022	FEDEX dba	FREIGHT CHARGES	96.17	
130155	8/12/2022	GIBBS INTERNATIONAL INC	BUS PARTS	722.58	
130156	8/12/2022	GILLIG LLC	BUS PARTS	4,580.42	
130157	8/12/2022	GARY GLEASON	RETIREE HEALTH REIMBURSEMENT	247.95	
130158	8/12/2022	GLOBAL EQUIPMENT COMPANY	B&G REPAIRS & SUPPLIES	84.71	
130159	8/12/2022	GOLETA WATER DISTRICT	UTILITIES	209.86	
130160	8/12/2022	JILL GRISHAM	RETIREE HEALTH REIMBURSEMENT	285.00	
130161	8/12/2022	GUARDIAN-APPLETON (DENTAL I	DENTAL INSURANCE	4,009.67	
130162	8/12/2022	GUARDIAN-APPLETON (LIFE INS)	LIFE INSURANCE	981.84	
130163	8/12/2022	ALI HABIBI	RETIREE HEALTH REIMBURSEMENT	285.00	
130164	8/12/2022	RICHARD HARRIGAN	RETIREE HEALTH REIMBURSEMENT	122.00	
130165	8/12/2022	ROBERT HARTMAN, JR.	RETIREE HEALTH REIMBURSEMENT	276.98	
130166	8/12/2022	HOME IMPROVEMENT CTR.	SHOP/B&G SUPPLIES	33.04	
130167	8/12/2022	IMPULSE ADVANCED COMMUNIC	INTERNET	400.00	
130168	8/12/2022	INTELLICORP RECORD INC.	PRE-EMPLOYMENT CHECK	21.80	

Check #	Date	Company	Description	Amount	Voids
130169	8/12/2022	DONALD JACKSON	RETIREE HEALTH REIMBURSEMENT	356.00	
130170	8/12/2022	LOUIS JONES	RETIREE HEALTH REIMBURSEMENT	89.00	
130171	8/12/2022	LANSPEED DBA	IT SERVICES	2,853.15	
130172	8/12/2022	MC CORMIX CORP. (OIL)	LUBRICANTS	136.80	
130173	8/12/2022	MC CORMIX CORP. (GAS)	FUEL-SERVICE VEHICLES	2,159.82	
130174	8/12/2022	MCMASTER-CARR SUPPLY CO.	SHOP/B&G SUPPLIES	332.24	
130175	8/12/2022	MOUNTAIN SPRING WATER	SHOP & OFFICE SUPPLIES	1,017.60	
130176	8/12/2022	WILLIAM MORRIS	RETIREE HEALTH REIMBURSEMENT	230.80	
130177	8/12/2022	NATIONAL TESTING NETWORK, I	DRIVER TRAINING	405.00	
130178	8/12/2022	NEWEGG BUSINESS, INC	IT EQUIPMENT & SUPPLIES	1,745.98	
130179	8/12/2022	NFI PARTS DBA	BUS PARTS	194.39	
130180	8/12/2022	PREVOST CAR (US) INC.	BUS/SERVICE VEHICLE PARTS	2,549.22	
130181	8/12/2022	O'REILLY AUTO PARTS DBA	BUS/SERVICE VEHICLE PARTS	467.16	
130182	8/12/2022	CARLOS ORNELAS	RETIREE HEALTH REIMBURSEMENT	300.00	
130183	8/12/2022	PETTY CASH - MANNY CASTANON	MISC. PURCHASES	158.07	
130184	8/12/2022	CAREY POINDEXTER	RETIREE HEALTH REIMBURSEMENT	285.00	
130185	8/12/2022	AL ROMERO SR.	RETIREE HEALTH REIMBURSEMENT	89.00	
130186	8/12/2022	ROBERT HALF	TEMPORARY LABOR	2,628.00	
130187	8/12/2022	SAFETY-KLEEN CORPORATION	SHOP SUPPLIES	499.64	
130188	8/12/2022	SANSUM CLINIC	MEDICAL EXAMS	135.00	
130189	8/12/2022	SB COUNTY FEDERAL CREDIT UNI	PAYROLL DEDUCTION	260.00	
130190	8/12/2022	SPECIAL DISTRICT RISK MGMT	HEALTH INSURANCE	58,002.39	
130191	8/12/2022	SEIFERT GRAPHICS, INC.	BUS PARTS	129.00	
130192	8/12/2022	SET SOLUTIONS, INC.	IT SERVICES	3,330.48	
130193	8/12/2022	SM TIRE, CORP.	BUS TIRE MOUNTING	907.99	
130194	8/12/2022	ROBIN SORIA	RETIREE HEALTH REIMBURSEMENT	570.00	
130195	8/12/2022	STANTEC ARCHITECTURE INC.	FACILITIES A&E SERVICES	13,101.71	
130196	8/12/2022	TEAMSTERS MISC SECURITY TRU	UNION MEDICAL INSURANCE	183,679.00	
130197	8/12/2022	TEAMSTERS PENSION TRUST	UNION PENSION	82,925.40	
130198	8/12/2022	TEAMSTERS UNION LOCAL NO. 18	UNION DUES	8,809.04	
130199	8/12/2022	TAC ENERGY LLC	RENEWABLE DIESEL	76,375.37	
130200	8/12/2022	J.C.M. AND ASSOCIATES INC.	UNIFORMS	99.74	
130201	8/12/2022	VALLEY POWER SYSTEMS, INC.	BUS PARTS	351.44	
130202	8/12/2022	JOHN J. VASQUEZ	RETIREE HEALTH REIMBURSEMENT	231.44	
130203	8/12/2022	VEHICLE MAINTENANCE PROGRA	BUS PARTS	78.84	
130204	8/12/2022	ALEXANDER YOUNG	RETIREE HEALTH REIMBURSEMENT	237.85	
130205	8/18/2022	ABC BUS COMPANIES INC	BUS PARTS	592.15	
130206	8/18/2022	AMERICAN MOVING PARTS, LLC	BUS PARTS	1,145.42	
130207	8/18/2022	APTA	MEMBERSHIP DUES	26,000.00	
130208	8/18/2022	ASBURY ENVIRONMENTAL SERVI	WASTE OIL RECYCLER	95.00	
130209	8/18/2022	BROWN & BROWN INSURANCE SE	CYBER LIABILITY INSURANCE	16,647.00	

Check #	Date	Company	Description	Amount	Voids
130210	8/18/2022	BYD COACH & BUS LLC	BUS PARTS	1,291.58	
130211	8/18/2022	BYD MOTORS LLC	CAPITAL LEASE PAYMENT	31,625.22	
130212	8/18/2022	CENTRAL COAST TANK TESTING	TANK TESTS	1,005.00	
130213	8/18/2022	CROCKER REFRIGERATION & AIR	HVAC MAINTENANCE	1,915.92	
130214	8/18/2022	CUMMINS SALES & SERVICE dba	BUS PARTS & REPAIRS	64,330.44	
130215	8/18/2022	DAVID DAVIS JR.	DIRECTOR FEES	120.00	
130216	8/18/2022	EASY LIFT TRANSPORTATION, IN	MONTHLY ADA SUBSIDY	88,399.00	
130217	8/18/2022	EVERSHADE LLC DBA	STEAM CLEANING TC/EXPRESS ZONE	2,900.00	
130218	8/18/2022	FRONTIER CALIFORNIA INC.	TELEPHONE SERVICE	2,031.18	
130219	8/18/2022	GIBBS INTERNATIONAL INC	BUS PARTS	1,198.27	
130220	8/18/2022	GILLIG LLC	BUS PARTS	4,035.21	
130221	8/18/2022	GOGETTERS, LLC DBA	COURIER SERVICES	110.00	
130222	8/18/2022	GOLD COAST TRANSPORT REFRIG	BUS A/C MAINTENANCE	424.39	
130223	8/18/2022	HOME IMPROVEMENT CTR.	SHOP/B&G SUPPLIES	63.68	
130224	8/18/2022	JAVIER JIMENEZ	RETIREE HEALTH REIMBURSEMENT	267.00	
130225	8/18/2022	JOY EQUIPMENT PROTECTION, IN	SERVICING FIRE EXTINGUISHERS	125.00	
130226	8/18/2022	JENNIFER LEMBERGER	DIRECTOR FEES	60.00	
130227	8/18/2022	MARBORG INDUSTRIES (INC)	UTILITIES & RENTAL FEES	235.50	
130228	8/18/2022	MC CORMIX CORP. (OIL)	LUBRICANTS	2,981.89	
130229	8/18/2022	MCMASTER-CARR SUPPLY CO.	SHOP/B&G SUPPLIES	283.66	
130230	8/18/2022	CHUCK MCQUARY	DIRECTOR FEES	120.00	
130231	8/18/2022	MISSION LINEN SUPPLY, INC	UNIFORM & LINEN SERVICE	1,104.06	
130232	8/18/2022	MOHAWK MFG. AND SUPPLY CO.	BUS PARTS	381.21	
130233	8/18/2022	NFI PARTS DBA	BUS PARTS	326.15	
130234	8/18/2022	PREVOST CAR (US) INC.	BUS/SERVICE VEHICLE PARTS	459.71	
130235	8/18/2022	PAULA A. PEROTTE	DIRECTOR FEES	120.00	
130236	8/18/2022	THE PITNEY BOWES BANK INC	POSTAGE CREDIT LINE	735.47	
130237	8/18/2022	LINDE GAS & EQUIPMENT INC	SHOP SUPPLIES	434.76	
130238	8/18/2022	PREMIER WIRELESS SOLUTIONS, I	IT EQUIPMENT	3,410.10	
130239	8/18/2022	ROBERT HALF	TEMPORARY LABOR	1,460.00	
130240	8/18/2022	SARKAR, ARJUN	DIRECTOR FEES	60.00	
130241	8/18/2022	SANTA BARBARA NEWSPRESS D	PUBLIC NOTICE/SCHEDULE GUIDES	90.00	
130242	8/18/2022	SET SOLUTIONS, INC.	IT SERVICES	1,835.17	
130243	8/18/2022	SMARDAN-HATCHER CO., INC	B&G REPAIRS & SUPPLIES	52.91	
130244	8/18/2022	STAPLES CONTRACT & COMMERC	OFFICE SUPPLIES	555.71	
130245	8/18/2022	SB CITY OF-REFUSE/WATER	UTILITIES	451.59	
130246	8/18/2022	SB COUNTY-AUDITOR/CONTROLL	LAFCO BUDGET PRO RATA SHARE	6,260.00	
130247	8/18/2022	T&H COMPRESSOR REPAIR CO, IN	COMPRESSOR REPAIRS	660.00	
130248	8/18/2022	DAVID T. TABOR	DIRECTOR FEES	120.00	
130249	8/18/2022	TAC ENERGY LLC	RENEWABLE DIESEL	38,435.36	
130250	8/18/2022	VALLEY POWER SYSTEMS, INC.	BUS PARTS	2,234.23	

Check #	Date	Company	Description	Amount	Voids
130251	8/18/2022	VERIZON WIRELESS	WIRELESS PHONES & AIM CELLULAR	1,376.64	
130252	8/18/2022	WAXIE SANITARY SUPPLY DBA	JANITORIAL SUPPLIES	1,939.26	
130253	8/26/2022	ABC BUS COMPANIES INC	BUS PARTS	1,597.99	
130254	8/26/2022	BICKMORE ACTUARIAL DBA	WC ACTUARIAL REVIEW	2,250.00	
130255	8/26/2022	COMPLETE COACH WORKS	FLEET RENEWAL CAMPAIGN	23,902.58	
130256	8/26/2022	CINTAS CORPORATION	FIRST AID SUPPLIES	312.18	
130257	8/26/2022	CUMMINS SALES & SERVICE dba	BUS PARTS & REPAIRS	3,539.73	
130258	8/26/2022	CROSSLINE SUPPLY LLC	BUS PARTS	957.00	
130259	8/26/2022	DENMUN OFFICE SOLUTIONS DB	IT CONTRACT SERVICES	6,630.00	
130260	8/26/2022	EVERSHADE LLC DBA	STEAM CLEANING TC/EXPRESS ZONE	1,100.00	
130261	8/26/2022	FEDEX dba	FREIGHT CHARGES	32.98	
130262	8/26/2022	GENFARE LLC	FAREBOX REPAIRS & PARTS	1,334.66	
130263	8/26/2022	GIBBS INTERNATIONAL INC	BUS PARTS	852.25	
130264	8/26/2022	GILLIG LLC	BUS PARTS	2,023.52	
130265	8/26/2022	GOODYEAR TIRE & RUBBER CO	BUS TIRE LEASE	508.99	
130266	8/26/2022	LAWRENCE GOMOLL	CERTIFICATION REIMBURSEMENT	84.00	
130267	8/26/2022	GRAINGER, INC.	SHOP/B&G SUPPLIES	159.08	
130268	8/26/2022	GRAYBAR ELECTRIC COMPANY, I	REPAIRS & SUPPLIES T1 BLDG/GRDS	359.01	
130269	8/26/2022	HI-LINE ELECTRIC COMPANY, INC	BUS PARTS	382.93	
130270	8/26/2022	LAWSON PRODUCTS INC	SHOP SUPPLIES	1,712.81	
130271	8/26/2022	LA CUMBRE FEED, INC.	SOFT WATER SYSTEM SUPPLIES	448.78	
130272	8/26/2022	MC CORMIX CORP. (OIL)	LUBRICANTS	1,500.95	
130273	8/26/2022	MC CORMIX CORP. (GAS)	FUEL-SERVICE VEHICLES	1,712.16	
130274	8/26/2022	MURPHY ELECTRIC MAINTENANC	ELECTRICAL REPAIRS/INSTALLATION	112.00	
130275	8/26/2022	NATIONAL DRIVE	PAYROLL DEDUCTION	22.00	
130276	8/26/2022	NATIONAL INTERSTATE INS INC.	LIABILITY INSURANCE	62,204.03	
130277	8/26/2022	NEOPART TRANSIT LLC	BUS PARTS	515.52	
130278	8/26/2022	O'REILLY AUTO PARTS DBA	BUS/SERVICE VEHICLE PARTS	48.84	
130279	8/26/2022	PITNEY BOWES, INC	POSTAGE SUPPLIES	36.96	
130280	8/26/2022	SB COUNTY FEDERAL CREDIT UNI	PAYROLL DEDUCTION	260.00	
130281	8/26/2022	SANTA BARBARA NEWSPRESS D	PUBLIC NOTICE/SCHEDULE GUIDES	13,540.51	
130282	8/26/2022	SANTA MARIA SUN	EMPLOYMENT ADS	612.00	
130283	8/26/2022	SILVAS OIL CO., INC.	LUBRICANTS	1,344.97	
130284	8/26/2022	SMART & FINAL	OFFICE/MEETING SUPPLIES	284.75	
130285	8/26/2022	SO. CAL. EDISON CO.	UTILITIES	10,739.05	
130286	8/26/2022	SOCALGAS	UTILITIES	175.69	
130287	8/26/2022	STANTEC CONSULTING SERVICES	CONSULTING SERVICES	13,244.93	
130288	8/26/2022	STEWART'S DE-ROOTING & PLUM	PLUMBING REPAIRS	380.00	
130289	8/26/2022	SB CITY OF-REFUSE/WATER	UTILITIES	2,804.60	
130290	8/26/2022	TEAMSTERS UNION LOCAL NO. 18	UNION DUES	274.00	
130291	8/26/2022	TAC ENERGY LLC	RENEWABLE DIESEL	38,371.32	

Check #	Date	Company	Description	Amount	Voids
130292	8/26/2022	UNITED WAY OF SB	PAYROLL DEDUCTION	35.00	
130293	8/26/2022	J.C.M. AND ASSOCIATES INC.	UNIFORMS	1,424.60	
130294	8/26/2022	U.S. BANK CORP. PAYMENT SYST	CREDIT CARD PURCHASES	1,685.72	
130295	8/26/2022	VEHICLE MAINTENANCE PROGRA	BUS PARTS	702.35	
130296	8/26/2022	WAGER COMPANY DBA	EQUIPMENT REPAIR	41.30	
130297	8/26/2022	YACO SCHOLARSHIP FUND	PAYROLL DEDUCTION	40.00	
				1,131,859.08	
Current Cash Report Voided Checks:				23,902.58	
Prior Cash Report Voided Checks:				0.00	
Grand Total:				\$1,107,956.50	



BOARD OF DIRECTORS REPORT

MEETING DATE: SEPTEMBER 6, 2022

AGENDA ITEM: #10

DEPARTMENT: PROCUREMENT

TYPE: ACTION ITEM

PREPARED BY: JERRY ESTRADA

Signature

REVIEWED BY: GENERAL MANAGER

Signature

SUBJECT: ADOPTION OF RESOLUTION TO ENTER OPTION AGREEMENT REGARDING MTD'S CALLE REAL PROPERTY

RECOMMENDATION:

Staff asks that the Board of Directors receive the *ad hoc* committee's unanimous recommendation and through adoption of the attached Resolution, approve and execute the attached Option Agreement with ConAm RE Investments LLC ("ConAm").

DISCUSSION:

Property History

MTD owns four legal parcels totaling approximately 18.93 acres in the unincorporated area of Santa Barbara County ("Property"). MTD purchased the Property in 1985 with the intent to one day develop a bus terminal; however, MTD acquired another site for that purpose and the Property became available for alternative uses. Through a series of planning efforts by the County of Santa Barbara and with the support of MTD, the Property is designated by the County as one of two primary housing opportunity sites in the Eastern Goleta Valley Community Plan and is zoned as follows: 10.2 acres (DR-20), 6.8 acres (DR-0.2) and the approximately 1.93 acre western-most parcel is zoned DR-20.

California Public Utilities Code Section 99420 authorizes MTD to enter into agreements with private developers for the "joint development" of real property. The purpose of the joint development may be for residential use that fosters transit use or the integration of land use and transportation. "Joint development" includes the joint planning of property related to transit facilities operated by MTD. The proposed Option facilitates the joint planning of a transit-oriented development project adjacent to MTD's Service Line #7. The Option Agreement facilitates a potential joint development of the Property by MTD and ConAm. The proposed development would be a transit-oriented, multifamily rental housing project adjacent to MTD's Service Line #7 that provides additional ridership for MTD's existing service lines and allows MTD the opportunity to expand existing service throughout its service area.

MTD's participation in the joint development would be limited to the joint planning of the project. Through the RFQ/RFP process discussed below, MTD and ConAm agreed on the type of residential development, the approximate number of units, the required level of affordability, and the required amenities so the development will integrate MTD's existing Service Line #7, as well as the ability to access other MTD lines. ConAm would be responsible for the entitlement, construction, operation, and maintenance of the project. MTD will not provide financing for the project or participate in the construction, operation, or maintenance of the project.

Formation of *Ad Hoc* Committee

After much deliberation and study, the MTD Board of Directors determined that the highest and best use of the Property was as a transit-oriented residential housing project. Given the Property's designation as a priority housing site, a multi-family residential housing project aligns with the County's planning designation and MTD's desire to increase ridership in the Eastern Goleta Valley. The Property's location in Eastern Goleta Valley between Isla Vista, the City of Goleta, and the City of Santa Barbara makes it an optimal site to increase and foster new MTD services and activate many of the existing lines through unincorporated Santa Barbara County.

The MTD Board of Directors formed an *ad hoc* committee for the specific and limited purpose of reviewing development proposals for the Property and recommending to the Board a development team for the joint development of the Property. Since its formation by the Board, the *ad hoc* committee directed the solicitation of development proposals for the Property and retained a team of consultants to assist in the review of development proposals. The *ad hoc* committee completed its solicitation of proposals through a public RFQ/RFP process and conducted a series of interviews with each development team in conjunction with the *ad hoc* committee's consultants. The *ad hoc* committee then recommended that the Board enter an Exclusive Negotiating Agreement ("ENA") with ConAm to allow the parties to negotiate the terms and conditions of an option agreement and ground lease agreement. The following is a summary of the RFP/RFQ process and MTD's selection of ConAM.

RFQ Process

On August 17, 2020, MTD issued a Combined Request for Qualifications/Request for Proposals (RFQ/RFP) to identify a potential development team to jointly develop and construct a transit-oriented residential project at the Property to provide housing consistent with the County's Eastern Goleta Valley Community Plan and MTD's purpose as a public transit district. The RFQ/RFP called for proposals to develop and operate a transit-oriented multifamily project that would increase MTD ridership and provide an opportunity for MTD to expand its services throughout its service area.

MTD received three submittals to the RFQ/RFP. Based on a review of the three RFQ submittals, the *ad hoc* committee determined that all three development teams were responsive to the RFQ requirements, and therefore, each submittal was reviewed in the RFP phase.

RFP Process

At the conclusion of the RFQ review phase, the *ad hoc* committee and its consultants reviewed each team's development proposal for the Property. After the *ad hoc* committee and its consultants' initial review, each development team was asked a series of follow up questions related to their respective development proposals. After each development team had the opportunity to respond to the *ad hoc* committee and its consultants' follow up questions, the teams

were invited to participate in in-person (via Zoom) interviews with the *ad hoc* committee and its consultants. Each team presented its proposal and answered questions from the *ad hoc* committee.

Based on the extensive RFQ and RFP process, the *ad hoc* committee recommended to the MTD Board of Directors that the Board authorize its general manager to enter an Exclusive Negotiating Agreement (“ENA”) with ConAm.

MTD’s evaluation of the three responding developers can be found in MTD’s Staff Report dated December 22, 2020.

After execution of the ENA, MTD and ConAm negotiated the terms and conditions of the Option Agreement and Ground Lease Agreement, which are before the Board for its review and approval.

The Project

Based on the project parameters set by MTD in the RFQ/RFP, ConAm has proposed a transit-oriented development project with approximately 333 residential rental units with not less than 15% of the total units affordable to very-low, low-, and moderate-income households. The affordable units would be income-restricted through recorded long-term covenants and integrated throughout the overall project site. The project would include onsite amenities for the residents and an after-school learning center. The project would be adjacent to MTD’s Service Line #7 and provide new transit riders, as well as the opportunity for MTD to expand its operations throughout its service area. Additional information regarding the project can be found in MTD’s Staff Report dated December 22, 2020.

The project must be reviewed and approved by the County of Santa Barbara and other government agencies with jurisdiction over the property. During the permitting process and the required environmental review, the size, scope, and scale of the project may change. As discussed below, the Option and Ground Lease provide for such changes in the project.

Option Agreement

An “option to ground lease agreement” is a written agreement between two parties specifying a period in which the “optionee” is provided the exclusive opportunity to enter a long-term ground lease, subject to certain terms and conditions. Here, the Option will allow ConAm time to investigate the Calle Real property, process the necessary entitlements, complete the required environmental review, and secure the financing to develop the project contemplated by the parties. Because the Option allows for the possibility of the parties entering a long-term ground lease (“Ground Lease”), the Option includes as an exhibit the form long-term ground lease that would be entered into if ConAm exercises the Option. If ConAm does not meet the terms and conditions of the Option or elects not to exercise the option, the Option would terminate, and the Ground Lease would not be entered into by the parties. If ConAm does not exercise the Option pursuant to the terms and conditions of the Option, MTD may select another development team to enter negotiations.

The Option provides ConAm thirty months to exercise its option to enter the Ground Lease. During the first eighteen months of the Option term, ConAm will (i) complete its due diligence of the property; (ii) prepare and submit to the County an application for the project; and (iii) receive an application completeness determination from the County. Before it can exercise the Option, ConAm must obtain all discretionary approvals and provide evidence that it has secured sufficient

financial resources to develop the project. ConAm can extend the term of the Option through additional payments.

The Option cannot be exercised unless ConAm receives all discretionary approvals from the applicable government agencies, including compliance with the California Environmental Quality Act, which is a condition precedent to ConAm exercising the Option. The Option does not allow or authorize any development of the property but instead provides ConAm a period of time to decide whether it wants to develop the property, and if it does, time to gain all permits and complete all CEQA review. If ConAm is unable to obtain the necessary entitlements or does not complete the required CEQA review, it cannot exercise the option.

Because the project has not been reviewed or approved by the County, the project is subject to revision. The Option allows for revisions to the project but requires certain components do not change so the project meets MTD's stated goals for the property. For example, the number of units may change but the project must provide no less than 15% of the total number of units as affordable, income-restricted units integrated throughout the project and facilitate access to MTD's transit line #7 on Calle Real.

During the Option, ConAm will pay MTD \$25,000 per calendar quarter, plus up to an additional \$30,000 per calendar quarter if ConAm requests one or more extensions of the Option term.

Ground Lease

From a financial perspective, MTD's stated goal for developing the Property is to achieve a long-term financial return while minimizing risk. MTD considered an outright sale of the Property or a long-term ground lease to a third party. An outright sale of the Property could minimize risk to MTD, although the sale price would be subject to the current market value of the Property (which could require MTD to "time the market" for the optimal sale price) but would not achieve MTD's stated goal of achieving a long-term, sustainable return. Similarly, a joint venture or partnership with a private development team could result in a long-term return to MTD; however, MTD would likely be required to take on significant financial risk as a "partner" in the development and operation of the project and such an arrangement may raise legal issues such as payment of prevailing wage and restrictions on public/private partnerships. A non-subordinated ground lease allows MTD to receive a long-term return through the receipt of lease payments over 99 years, while minimizing risk to MTD as it is not a financial partner or investor in the project. Therefore, the *ad hoc* committee believes a non-subordinated long-term ground lease is the best form of agreement to achieve MTD's stated goals for the Property.

For a non-subordinated ground lease to be financially superior to an outright sale of the property, the lease payments over time need to exceed the estimated monthly income that would be generated by interest if the land sale value were placed in a comparable, secure, guaranteed investment, such as a series of 30-year Treasury bonds (the 30-year US Treasury rate as of June 22, 2022 was 3.25%). The recent appraisal of the property (July, 2022) indicates a valuation of \$22,280,000. Therefore, a return of 3.25% requires an annual payment of \$724,100, or more. The negotiated ground lease payment is the greater of 10% of gross collected income (percentage rent) or \$950,000 (base rent), following lease-up and stabilization, exceeding this measure. With the alternate rent of 10% of gross collected income, MTD is more protected against inflationary periods (Treasury bond rates remain constant while held, protecting against periods of low rates or deflation, but giving no protection during higher inflation). Base rent is expected to increase over the course of the lease term, which is intended to protect MTD during times of decreased rent rates in the residential rental market.

Discussions with appraisers and other brokers familiar with similar long-term ground leases indicate that it is common for normal lease payments to start either at Certificate of Occupancy, or more common, upon occupancy, since there is no income stream to the lessee until that time. Occasionally, there are “token” payments during these periods. The terms of the ground lease to ConAm provide substantial income during these pre-stabilization periods, which exceeds industry norms.

MTD’s Role in the Project

The project is a “joint development” between MTD and ConAm; however, MTD’s role is limited to ensuring the project fosters transit use and integrates the allowed land uses at the property with MTD’s adjacent transportation resources. The addition of over 300 residential apartments adjacent to Line #7 will increase ridership in the Eastern Goleta Valley and provide MTD the opportunity to expand its services throughout its service area. MTD worked in coordination with the County of Santa Barbara to designate the property as a “priority housing site” so that the property could provide MTD the opportunity to integrate a new housing project with its existing service lines. This way residents at the new project will have the ability to use MTD transit right next to them. MTD has required the project provide no less than 15% of the total units as affordable. This far exceeds the amount of affordable housing that would be required under applicable state and local laws. MTD believes a mix of affordability levels will provide MTD the best opportunity to increase transit services and ridership in the area.

MTD has set the general parameters for the proposed project through the RFQ/RFP to ensure the project provides housing at a variety of affordability levels and ensures easy access to Line #7. The project will bring new transit users to the property, which will allow MTD to increase its existing service lines and consider developing new lines in the area.

RECOMMENDATION:

To approve the Option to Ground Lease Agreement.

ATTACHMENT:

Resolution No. 2022-
Option to Ground Lease

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4881-8923-6005, v. 1

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RESOLUTION
of the
BOARD OF DIRECTORS
of the
SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

IN THE MATTER OF APPROVING THE FORM
OF AND AUTHORIZING THE EXECUTION OF
AN OPTION AGREEMENT FOR CALLE REAL
PROPERTY

RESOLUTION NO. 2022-03

WHEREAS, Santa Barbara Metropolitan Transit District, a public agency duly organized and existing under and by virtue of the laws of the State of California (the "ENTITY"), has determined that it is in the best interest and to the advantage of the ENTITY to pursue the possible joint development of that certain real property owned by the ENTITY located at 149 North San Antonio Road and 4678 Calle Real in the County of Santa Barbara comprised of four legal parcels totaling approximately 18.93 acres (the "Property");

WHEREAS, California Public Utilities Code Section 99420 authorizes ENTITY to enter into agreements with private parties for the joint development of real property for purposes of residential uses that foster transit use or the integration of land use and transportation;

WHEREAS, ENTITY issued a Combined Request for Qualifications/Request for Proposals ("RFQ/RFP") to identify a potential development team to develop, construct and operate a transit-oriented residential project at the Property, as further described in the Option Agreement (the "Project"); and

WHEREAS, at the conclusion of the RFQ/RFP, ConAm Re Investments, LLC ("ConAm") was selected by the ENTITY's Board of Directors to enter into negotiations for an option agreement for the Property; and

WHEREAS, ENTITY finds that ConAm is qualified to enter into an Option Agreement for the Property, which provides ConAm the opportunity to pursue and secure the necessary entitlements, including without limitation all necessary environmental review required by the California Environmental Quality Act ("CEQA"), of the Project; and

WHEREAS, the Option Agreement does not commit ENTITY to the Project and is expressly conditioned on compliance with CEQA and does not bind ENTITY to a definite course of action prior to CEQA compliance; and

WHEREAS, it is in the best interest and to the advantage of the ENTITY to enter into the attached Option Agreement in order to further pursue the possible joint development of the Project on the Property; and

WHEREAS, all acts, conditions and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection

with the consummation of the transactions authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the ENTITY is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such transactions for the purpose, in the manner and upon the terms herein provided.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE ENTITY AS FOLLOWS:

Section 1. **Findings**. The ENTITY's Board of Directors hereby specifically finds and determines that the actions authorized hereby relate to the public affairs of the ENTITY and are authorized by the applicable laws and regulations governing the ENTITY.

Section 2. **Option Agreement**. The Option Agreement, to be executed and entered into by and between the ENTITY and ConAm Re Investments, LLC, in the form presented at this meeting and on file with the ENTITY's Secretary, is hereby approved. The ENTITY's Board of Directors and/or Authorized Officers ("The Authorized Officers") are hereby authorized and directed, for and in the name and on behalf of the ENTITY, to execute and deliver to ConAm Re Investments, LLC the Option Agreement.

Section 3. **Other Actions**. The Authorized Officers of the ENTITY are each hereby authorized and directed to execute and deliver any and all documents which are necessary in order to consummate the transactions authorized hereby and all such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

Section 5. **Effective Date**. This resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED by the Board of Directors of the Santa Barbara Metropolitan Transit District this 6th day of September, 2022 by the following vote:

AYES: _____

NAYS: _____

ABSENT: _____

Chair, Board of Directors

ATTEST:

Secretary, Board of Directors
4886-3793-0790, v. 1

OPTION AGREEMENT
(4678 Calle Real/149 North San Antonio Road)

THIS OPTION AGREEMENT (“**Agreement**”) is made and entered into as of the 6th day of September, 2022 (“**Effective Date**”), by and between SANTA BARBARA METROPOLITAN TRANSIT DISTRICT, (“**Optionor**” or “**MTD**”) and CONAM RE INVESTMENTS LLC, a Delaware limited liability company (“**Optionee**”).

R E C I T A L S

A. MTD owns fee title to certain real property in Santa Barbara County, California, commonly known as 4678 Calle Real/149 North San Antonio Road (APN 059-140-004; 059-140-005; 059-140-006; 067-230-026), consisting of four legal parcels, as more particularly described in Exhibit A attached hereto (the “**Premises**”).

B. MTD is a public transit district formed pursuant to California Public Utilities Code §§ 95000 *et seq.*.

C. California Public Utilities Code § 96090 governs MTD’s power to hold and dispose of real property and allows MTD to lease or otherwise dispose of any real property when in its judgment it is in MTD’s best interest to do so.

D. California Public Utilities Code §99420 authorizes MTD to enter into agreements for the joint development of property or rights of MTD for any purpose necessary for, incidental to, or convenient for, the full exercise of the powers granted to MTD. For purposes of § 99420, “joint development” includes the joint planning of land functionally related to transit facilities of MTD the purpose of which is to foster transit use, enhance transit service, or foster the integration of land use and transportation.

E. The Premises is adjacent to MTD Service Line 7, which provides transit service to Goleta Old Town, Santa Barbara Transit Center, La Cumbre, Fairview, and County Health facilities. MTD desires for the Premises to be developed with a transit-oriented residential development that will create new transit users with convenient access to existing MTD transit services and provide MTD the opportunity to expand its services to the surrounding areas in the future. Such a residential development would foster transit use and the integration of land use and transportation services by placing a new residential community immediately adjacent to MTD transit facilities. Development of the Premises would allow MTD enhance transit services provided to the Premises and the greater Eastern Goleta Valley and unincorporated area of Santa Barbara County.

F. MTD conducted a thorough search for qualified residential developers to develop the Premises in accordance with MTD’s stated goal, including the preparation of a Request for Qualification/Request for Proposal, dated August 17, 2020 (“**RFP/RFQ**”). The RFP/RFQ set

forth MTD's stated plan for the joint development of the Premises. Optionee was one of several potential developers to respond to the RFP/RFQ.

G. MTD conducted a thorough review of each developer responding to the RFP/RFQ, including review by staff and third-party consultants, determination of the fair market price for the conveyance of long-term lease rights to the Premises upon exercise of the Option and interviews with each developer and its team.

H. Based on the RFP/RFQ process, Optionee was selected by MTD to enter into exclusive negotiations for the possible joint development of a transit-oriented residential development project at the Premises at fair market value, which will not be paid for in whole or in part out of public funds.

I. Optionee and MTD desire to jointly develop the Premises with a transit-oriented, residential community that provides approximately three hundred and thirty-three (333) rental housing units at varying income levels, including without limitation no less than 15% of the total number of units constructed on the Premises affordable to very-low, low- and moderate-income households and subject to long-term affordability restrictions, and household sizes adjacent to MTD transit facilities, along with additional community benefits such as expanded trails, pedestrian access to MTD's transit lines from the surrounding community and an after-school program space within the residential community ("**Project**"). The parties understand the Project is subject to review and approval by the County of Santa Barbara and other government agencies and may be amended or revised as a result of the review and approval process.

J. MTD and Optionee desire to enter into this Agreement pursuant to which MTD grants to Optionee an option to enter into a long-term ground lease of the Premises for the specific purpose of jointly developing the Project, subject to the terms and conditions set forth in this Agreement.

A G R E E M E N T

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Optionor and Optionee agree as follows:

1. **Grant of Option.** MTD hereby grants to Optionee an exclusive option (the "**Option**") to lease the Premises from MTD. If exercised in strict accordance with the terms hereof, the lease of the Premises shall be on the terms and conditions specified in a ground lease agreement in the form attached to this Agreement as Exhibit B (the "**Ground Lease Agreement**").

2. **Inspection Period; Option Term.**

(a) Optionee shall have three (3) months from October 10, 2022 (the "**Inspection Period**") to review and investigate the Premises, during which the Option Fee shall be deferred. If Optionee notifies Optionor in writing prior to the expiration of

the Inspection Period that Optionee disapproves its inspections, then this Agreement and the Option shall terminate and no Option Fee shall be payable. If Optionee does not terminate this Agreement by delivery of such notice (or Optionee notifies Optionor in writing that Optionee waives the right to terminate this Agreement pursuant to this Section), the Agreement shall continue in full force and effect and the Option Term shall commence upon expiration of the Inspection Period.

(b) The Option shall be exercisable by Optionee during the period (the **"Option Term"**), which shall be thirty (30) months from October 10, 2022. Within the first fifteen (15) months following the expiration of the Inspection Period, Optionee shall prepare and submit to the County of Santa Barbara an application for the Project and have received from the County of Santa Barbara an "Application Completeness" determination. If Optionee fails to receive the "Application Completeness" determination within the time period set forth above, Optionee shall pay to Optionor in addition to the Option Payment, \$5,000.00 per quarter until such time as Optionee receives the "Application Completeness" determination. Provided that during the Option Term Optionee has in good faith diligently processed the discretionary approvals with the County of Santa Barbara and any other relevant governmental agency with jurisdiction over the Project but has not received all discretionary approvals for the Project, the Option Term shall be extended six (6) months (the **"First Option Extension"**). For purposes of this Agreement, "discretionary approvals" means approval by the County of Santa Barbara of a general plan amendment (if required), a rezone of some or all of the Premises (if required), a development plan and approval of the required environmental review document mandated by the California Environmental Quality Act, including expiration of all applicable appeal periods. Provided that during the First Option Extension Optionee has in good faith processed the discretionary approvals and has completed at least one (1) public hearing with the County of Santa Barbara Planning Commission, but has yet to receive all discretionary approvals, the Option Term shall be extended an additional six (6) months (the **"Second Option Extension"**). Provided that the discretionary approvals have been obtained, but Optionee has not yet obtained building permits and any other ministerial approvals required to commence construction of the Project, the Option Term shall be extended an additional six (6) months (the **"Third Option Extension"**). Notwithstanding the foregoing, if (I) any administrative, legal or equitable action, appeal and or other proceeding instituted by any person, entity or organization that is not a party to this Agreement challenging the validity of this Agreement, the Ground Lease Agreement or any discretionary approval, or the sufficiency of any environmental review under CEQA (the **"Third Party Challenge"**) is filed, (II) any Pending Litigation (as defined in Section 3 below) exists, or (III) Optionee is delayed or prevented from satisfying any Conditions due to Force Majeure (as defined in the Ground Lease Agreement), then the Option Term shall be tolled for the period of time from the date of the filing of such Third Party Challenge or Pending Litigation until the conclusion of such administrative action or dismissal of such litigation or entry of final judgement or resolution of such appeal in a manner that permits the development and construction of the Project to proceed (or for the period of delay due to Force Majeure), provided such tolling period does not exceed three (3) years. In the event of delay due to Force Majeure, Optionor and Optionee shall discuss and attempt to agree on

the length of time of any entitled delay pursuant to this Section 2(b). If they are unable to agree within thirty (30) days after the event or occurrence giving rise to Optionee's claim to an entitlement to tolling due to Force Majeure under this Section 2(b), the matter shall be arbitrated as set forth in Article 16 of the Ground Lease Agreement, the provisions of which Article are incorporated herein by reference.

3. **Conditions to Exercise of Option.** The Option shall be exercisable by Optionee, in its sole discretion, only upon strict satisfaction prior to expiration or earlier termination of the Option Term of the following conditions precedent (collectively, "**Conditions**"): (i) Optionee shall have obtained all discretionary approvals, including approval of any environmental review under the California Environmental Quality Act, required to construct and operate the Project from all government agencies with jurisdiction over the Project or the Premises and all appeal periods to challenge said approvals have expired and, if any appeals have been filed contesting the approvals, such appeals shall have been resolved in a manner that permits the development and construction of the Project to proceed; (ii) there is no pending litigation filed against the Optionor or the Optionee whose express purpose or reasonably possible result is to stop, hinder or delay the development and construction of the Project, or to overturn or materially alter the discretionary approvals, including without limitation any document prepared to comply with the California Environmental Quality Act ("**Pending Litigation**"); (iii) Optionee shall notify Optionor in writing of its exercise of the Option (the "**Option Exercise Notice**") and shall accompany the Option Exercise Notice with a copy of the Ground Lease Agreement executed by the Optionee; and (iv) Optionee shall have provided evidence that Optionee has secured sufficient financial resources to complete the development of the Project, pursuant to the terms and conditions of the Ground Lease Agreement.

Provided that Optionee properly exercises the Option in strict satisfaction of this Agreement and the foregoing Conditions, Optionor shall execute and deliver the Ground Lease Agreement following Optionee's proper and timely exercise of the Option. The Effective Date of the Ground Lease Agreement shall be the date it is executed and delivered by Optionor, which date shall be inserted into page 1 of the Ground Lease Agreement concurrent with Optionor's execution and delivery thereof.

4. **Option Fee.** In consideration of Optionor's grant of the Option to Optionee, Optionee shall pay to Optionor during the Option Term the sum of Twenty-Five Thousand Dollars (\$25,000.00) per calendar quarter, plus an additional \$5,000 per calendar quarter during the First Option Extension, plus an additional \$10,000 per calendar quarter during the Second Option Extension, plus an additional \$15,000 per calendar quarter during the Third Extension Option (collectively, the "**Option Payment**"). The Option Payment shall be non-refundable to Optionor, except in the event of a material, uncured breach of this Agreement by MTD. The Option Payment shall be prorated for any portion of a calendar quarter during the Option Term, the First Option Extension, the Second Option Extension, and the Third Option Extension.

5. **Memorandum of Option.** This Agreement may not be recorded. However, concurrently with the execution of this Agreement, Optionor and Optionee shall execute in recordable form a Memorandum of this Agreement in substantially the form attached hereto as Exhibit C, and Optionee, at its cost and expense, may record such Memorandum in the Official

6. **Entitlements.** Optionee shall make good faith, diligent effort to obtain the discretionary approvals during the Option Term. Such efforts shall include Optionee's expenditure of such funds, as the Optionee shall reasonably determine necessary for this purpose, including, without limitation, application fees, travel costs, architectural fees, engineering fees, legal fees, and consulting fees, to expedite the permit, license, and other approval processes. Neither party shall be bound by the terms of this Agreement or the Ground Lease if compliance with the California Environmental Quality Act is required for the Project but not achieved, and all feasible mitigation measures and alternatives, including a "no project" alternative, shall be available to the lead agency under the California Environmental Quality Act. Approval of this Agreement does not in any way restrict the lead agency under California Environmental Quality Act from denying, modifying, or altering the Project.

7. **Access.** During the Option Term, MTD shall permit Optionee and its authorized agents, consultants, and contractors to enter upon the Premises at reasonable times during normal business hours to inspect and conduct such tests and studies of the Premises that Optionee desires to conduct. Optionee shall notify MTD, in writing (which notice may be given by email), of its intention, or the intention of its agents, consultants, or representatives, to enter the Premises at least twenty-four (24) hours prior to such intended entry and shall obtain MTD's prior written consent to any intrusive inspections, tests or studies to be conducted. MTD shall have the right to be present for any inspection, test or study. Optionee shall restore the Premises to its original condition immediately after completion of any physical tests or inspections. Optionee shall indemnify and agrees to protect, defend, and hold MTD, its agents, consultants, and employees free and harmless from and against any and all actual costs, losses, liabilities, damages, lawsuits, judgments, actions, causes of action, proceedings, penalties, demands, attorney's fees, liens and expenses of any kind or nature whatsoever incurred by MTD to the extent caused by any entry and/or activities on the Premises by Optionee, Optionee's agents, consultants, or contractors. The foregoing restoration, indemnity and defense obligations do not apply to (a) any loss, liability, cost or expense to the extent arising from the negligent acts or omissions of MTD, (b) any diminution in value in the Premises arising from or relating to matters discovered but not exacerbated by Optionee during its investigation of the Premises, (c) any latent defects in the Premises discovered to the extent not exacerbated by Optionee, and (d) the discovery of any hazardous materials or regulated substances (but not deposited) on or under the Premises by Optionee.

Prior to entering the Premises, Optionee shall obtain a policy of commercial general liability insurance covering any and all liability of Optionee and MTD with respect to or arising out of any investigative activities. Such policy of insurance shall be an occurrence policy and shall have a liability limit of not less than Three Million Dollars (\$3,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage. Such insurance policy shall name MTD as an additional insured and shall be in a form and substance and issued by an insurance company reasonably satisfactory to MTD. All physical tests shall be conducted in a manner that safeguards all persons from injury or death and all property from damage. Optionee shall bear the cost of all inspections, tests and studies pertaining to the Premises. No such activities by or on behalf of Optionee on the Premises shall permanently damage the Premises or materially interfere with the conduct of MTD's use of the Premises.

8. **Default.** Optionee shall not be deemed to be in default under this Agreement unless Optionee shall have received written notice of such default from Optionor and Optionee shall have failed to cure such default within (i) thirty (30) days after receipt of such written notice in the case of a monetary default, and (ii) sixty (60) days after receipt of such written notice in the case of a non-monetary default; provided, however, that where Optionee's performance of a non-monetary obligation is not reasonably susceptible of completion within such sixty (60) day period and Optionee has in good faith commenced and is continuing to perform the acts necessary to perform such obligation within such sixty (60) day period, Optionee shall not be deemed to be in default for so long as Optionee uses reasonable due diligence in continuing to pursue to completion the performance such obligation and so completes performance within a reasonable time.

9. **Representations and Warranties.**

(a) The Optionee hereby represents and warrants to the Optionor as follows:

(i) **Organization and Standing.** Optionee is a Delaware limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware.

(ii) **Authority.** Optionee has the requisite power and authority to enter into this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation by Optionee of the transactions contemplated herein have been duly authorized, and no other proceedings on the part of Optionee are necessary to authorize the execution, delivery and performance of this Agreement, and the transactions contemplated herein. This Agreement and each other agreement required to be executed and delivered by Optionee in connection herewith constitutes the valid and binding obligation of Optionee enforceable against Optionee in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency, moratorium, or other similar laws affecting the enforcement of creditors' rights generally.

(iii) **No Required Consents.** There are no third parties who must consent to or approve of this transaction on behalf of Optionee or to the Ground Lease.

(iv) **Bankruptcy.** Optionee has not (i) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, (ii) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceeding, to hold, administer and/or liquidate all or substantially all of its property, or (iii) made an assignment for the benefit of creditors.

(b) The Optionor hereby represents and warrants to the Optionee as follows:

(i) **Authority.** Optionor has the requisite power and authority to enter into this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation by

Optionor of the transactions contemplated herein have been duly authorized, and no other proceedings on the part of Optionor are necessary to authorize the execution, delivery and performance of this Agreement, and the transactions contemplated herein. This Agreement and each other agreement required to be executed and delivered by Optionor in connection herewith constitutes the valid and binding obligation of Optionor enforceable against Optionor in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency, moratorium, or other similar laws affecting the enforcement of creditors' rights generally.

(ii) **No Required Consents.** There are no third parties who must consent to or approve of this transaction on behalf of Optionor or to the Ground Lease.

(iii) **Surplus Land Act.** The granting of the Option and the contemplated conveyance of the Premises pursuant to the exercise of the Option are not subject to the provisions of the Surplus Land Act (Cal. Gov. Code s. 54220 et seq).

10. **Risk of Loss; Condemnation.**

10.1 **Risk of Loss.** If during the Option Term the Premises, or any material part thereof, is destroyed or materially damaged to the extent it is no longer suitable for the contemplated development, Optionee shall have the right, exercisable within ninety (90) days after receiving written notice describing such destruction or material damage in reasonable detail to terminate this Agreement. Upon termination of this Agreement in accordance with this Section 10.1, this Agreement shall thereafter be deemed null and void and the parties shall thereafter be released from all further obligations and liabilities under this Agreement, except for the obligations of the parties that expressly survive termination.

10.2 **Condemnation; Effect of Taking.** If the Premises or any material part thereof shall be taken by power of eminent domain or condemned by any competent authority for any public or quasi-public use or purpose (a "**Taking**"), such that the Premises is no longer suitable for the Project, MTD shall provide Optionee with prompt written notice of any such event and Optionee shall have the option to terminate this Agreement exercisable within thirty (30) days after receiving written notice describing such condemnation. Optionor shall be entitled to receive the entire award or payment in connection therewith, subject to Optionee's right to file any separate claim available to Optionee for any taking of Optionee's Option, including without limitation a claim for its Option Payment.

10.3 **Notice.** Optionor shall give Optionee written notice of any taking, threatened taking, damage or destruction of the Property, promptly after learning of the same.

11. **Notice.** Written notice addressed to a party at the addresses below-described, or to such other address that a party may in writing file with the other party, shall be deemed sufficient if said notice is delivered personally, provided in all cases there is a return receipt requested (or other similar evidence of delivery by overnight delivery service) and postage or other delivery charges prepaid, by registered or certified mail, Federal Express or DHL, or such other services as MTD and Optionee may mutually agree upon from time to time. Each notice shall be deemed received and the time period for which a response to any such notice must be given or any action taken with respect thereto (including cure of any prospective Event of

Default) shall commence to run from the date of actual receipt of the notice by the addressee thereof in the case of personal delivery, facsimile transmission if before 5:00 p.m. on regular business days.

Optionor: Santa Barbara Metropolitan Transit District
Attn: General Manager
550 Olive Street
Santa Barbara, CA 93101

Optionee: CONAM RE Investments LLC
3990 Ruffin Road, Suite 100
San Diego, CA 92123
Attention: Rob Singh and Michael Cato

12. **Miscellaneous.**

12.1 **Time is of the Essence.** Time is of the essence of this Agreement, including, without limitation, with respect to all times, restrictions, conditions and limitations set forth herein.

12.2 **Waivers.** Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms or provisions of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or provision of this Agreement, nor shall failure on the part of either party to require exact, full and complete compliance with any of the covenants, conditions, terms or provisions of this Agreement be construed to in any manner change the terms hereof or estop that party from enforcing the full provisions hereof.

12.3 **Captions.** The captions contained in this Agreement are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Agreement.

12.4 **Attorneys' Fees.** In the event of any action, proceeding or arbitration arising out of or in connection with this Agreement, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, including without limitation, attorneys' fees.

12.5 **No Assignment.** Except for an assignment by Optionee to an Affiliated Assignee (as defined below) of all of Optionee's rights and obligations under this Agreement, Optionee shall have no right to assign or transfer its rights or obligations under this Agreement to any other person or entity, without the express written consent of MTD, which consent may be withheld by MTD in its sole and absolute discretion. "Affiliated Assignee" means an entity that controls, is controlled by or is under common control with Optionee, where "control" means the possession of the power to direct the management and policies of the entity in question. Notwithstanding the foregoing, Optionee expressly acknowledges and agrees that it shall remain

liable under this Agreement to observe and perform all of the conditions and obligations in the Agreement which Optionee is bound to observe and perform.

12.6 Entire Agreement; Amendment. This Agreement sets forth the full and complete understanding of the parties relating to the subject matter hereof, and supersedes any and all agreements, understandings and representations made prior hereto with respect to such matters. This Agreement may only be amended by a writing executed by both parties.

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

12.8 Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California and venue for any legal action taken by either party related to this Agreement shall be Santa Barbara County.

12.9 Counterparts. This Agreement may be signed in any number of counterparts. Each counterpart shall represent an original of this Agreement and all such counterparts shall collectively constitute one fully-executed document.

12.10 Successors and Assigns. Subject to Section 12.5 above, the rights and obligations of the parties under this Agreement shall be binding upon the parties' respective successors and assigns.

12.11 Exhibits. Exhibits A, B, and C attached to this Agreement are hereby expressly incorporated into this Agreement by reference.

12.12 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement, or affecting the validity or enforceability of any of the terms or provisions of this Agreement.

12.13 Press Releases. Any press release or other public disclosure regarding this Agreement or the transaction contemplated hereby shall not be made without each of Optionor's and Optionee's prior written consent.

12.14 Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other person other than the parties hereto and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third parties any right of subrogation or action over or against any party to this Agreement. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

12.15 No Partnership, Agency, or Other Relationship. Nothing herein

contained shall be interpreted as creating a partnership or joint venture or agency relationship between Optionor and Optionee, or any other legal relationship other than as Optionor and Optionee.

12.16 County Housing Element Update. Optionor and Optionee acknowledge that the County of Santa Barbara is currently updating the Housing Element portion of its General Plan, as required by State law. In the event the Housing Element is revised, amended, or modified in such a way that the zoning designations applicable to the Premises are amended or revised, if requested by Optionee, Optionor and Optionee agree to meet and discuss in good faith possible revisions to the Option and Ground Lease proposed by Optionee, because of said amendments or revisions to the applicable zoning regulations.

IN WITNESS WHEREOF, Optionor and Optionee have entered into this Agreement as of the day and year first written above.

OPTIONOR:

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

By: _____
Chair, Board of Directors

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

By: _____
Secretary, Board of Directors

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

By: _____
General Manager

OPTIONEE:

CONAM RE INVESTMENTS LLC, a
Delaware limited liability company

By: _____
Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

LEGAL DESCRIPTION

Real property in the unincorporated area of the County of Santa Barbara, State of California, described as follows:

PARCEL ONE: (APN: 059-140-004)

THE EAST 1/2 OF LOT 3 OF THE OUTSIDE PUEBLO LANDS OF THE CITY OF SANTA BARBARA, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON SURVEY MAP NO. 2, BY W.H. NORWAY, APPROVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SANTA BARBARA ON NOVEMBER 16, 1867.

EXCEPT THAT PORTION THEREOF LYING SOUTHERLY OF THE NORTHERLY LINE OF PROPERTY CONVEYED TO THE STATE OF CALIFORNIA, BY DEED RECORDED DECEMBER 29, 1958 AS INSTRUMENT NO. 32412 IN BOOK 1581, PAGE 288 OF OFFICIAL RECORDS.

ALSO EXCEPT THEREFROM 50% OF ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES LYING 500 FEET BELOW THE SURFACE THEREOF, WITH NO RIGHT OF ENTRY, AS RESERVED IN DEED FROM ANTONIO CAVALLI, ET AL., RECORDED AUGUST 14, 1964 AS INSTRUMENT NO. 34895 IN BOOK 2065, PAGE 237 OF OFFICIAL RECORDS.

PARCEL TWO: (APN: 059-140-005 AND 059-140-006)

THE WEST 1/2 OF LOT 3 OF THE OUTSIDE PUEBLO LANDS OF THE CITY OF SANTA BARBARA, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON SURVEY MAP NO. 2, BY W.H. NORWAY, APPROVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SANTA BARBARA ON NOVEMBER 16, 1867.

EXCEPTING THEREFROM THAT PORTION THEREOF WHICH LIES SOUTHERLY OF THE NORTHERLY LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA RECORDED NOVEMBER 3, 1958 AS INSTRUMENT NO. 27043, IN BOOK 1567, PAGE 208 OF OFFICIAL RECORDS.

PARCEL THREE: (APN: 067-230-026)

PARCEL D OF PARCEL MAP NO. 10766, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, ON FILE IN BOOK 3 PAGE 87 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT B
FORM OF GROUND LEASE

LEASE AGREEMENT

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT PROJECT

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EXHIBIT A:	Legal Description
EXHIBIT B:	Proforma Title Policy Exceptions
EXHIBIT C:	Development Plan
EXHIBIT D:	Quarterly Reports
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EXHIBIT F:	[INTENTIONALLY OMITTED]
EXHIBIT G:	Memorandum of Lease

**LEASE AGREEMENT
(SBMTD Project)**

THIS LEASE AGREEMENT ("**Lease**" or "**Agreement**") dated for reference purposes this _____ (____th) day of _____ 2022 is entered into by and between SANTA BARBARA METROPOLITAN TRANSIT DISTRICT, an incorporated transit district under Sections 95000, et seq. of the California Public Utilities Code ("**MTD**" or "**Lessor**") and _____ ("**Lessee**"), as follows:

W I T N E S S E T H

WHEREAS, Lessor owns four parcels of real property located in the County of Santa Barbara, State of California, commonly known as 4678 Calle Real/149 North San Antonio Road, more particularly described in **Exhibit A** (the "**Premises**") attached hereto;

WHEREAS, MTD is a public transit district formed pursuant to California Public Utilities Code §§ 95000 et seq.;

WHEREAS, Public Utilities Code § 96090 governs MTD's power to hold and dispose of real property and allows the Board of MTD to lease or otherwise dispose of any real property when in its judgment it is in MTD's best interest to do so;

WHEREAS, Public Utilities Code §99420 authorizes MTD to enter into agreements for the joint development of a transit-oriented project for any purpose necessary for, incidental to, or convenient for the full exercise of the powers granted to MTD. For purposes of § 99420, "joint development" includes the joint planning of land functionally related to transit facilities of MTD the purpose of which is to foster transit use, enhance transit service, or foster the integration of land use and transportation;

WHEREAS, the Premises is adjacent to MTD service Line 7, which provides transit service to Goleta Old Town, Santa Barbara Transit Center, La Cumbre, Fairview, and County Health facilities. MTD desires for the Premises to be developed with a mixed-income, transit-oriented, residential development that will create new transit users with convenient access to existing MTD transit services and provide MTD the opportunity to expand its services to the surrounding area in the future, including the ability to construct new MTD improvements. Such a residential development would foster transit use and the integration of land use and transportation services by placing a new mixed-income, residential community immediately adjacent to MTD transit facilities. Development of the Premises would allow MTD to enhance transit services throughout the greater Eastern Goleta Valley and unincorporated area of Santa Barbara County;

WHEREAS, MTD conducted a thorough search for qualified residential developers to enter into a joint development of the Premises in accordance with MTD's stated goal, including the preparation of a Request for Qualification/Request for Proposal, dated August 17m 2020 ("**RFP/RFQ**"). The RFP/RFQ set forth MTD's stated purpose for the joint development of the Premises as a transit-oriented, mixed-income residential rental community that provides housing

to a broad spectrum of individuals and families to foster transit use and enhance transit service. Lessee was one of several potential developers to respond to the RFP/RFQ;

WHEREAS, MTD conducted a thorough review of each developer responding to the RFP/RFQ, including review by staff and third-party consultants, and interviews with each developer and its team;

WHEREAS, based on the RFP/RFQ process, Lessee was selected by MTD to enter into exclusive negotiations for the possible development and operation of a transit-oriented residential development project at the Premises;

WHEREAS, Lessee and MTD desire to develop the Premises with a transit-oriented, mixed-income, residential community that provides rental housing at varying income levels, including no less than 15% of the units affordable to very-low, low-, and moderate-income households and subject to long-term affordability restrictions, adjacent to MTD transit facilities and enhances transit services and fosters transit use ("**Project**"). In addition, the Project will provide a learning center and pedestrian access to MTD's transit lines from the surrounding community;

WHEREAS, MTD and Lessee entered into that certain Option Agreement dated August 16, 2022 ("Option Agreement") wherein MTD granted to Lessee and Lessee accepted from MTD an option to enter into a long-term ground lease for the Premises, subject to certain conditions precedent, as set forth in the Option Agreement;

WHEREAS, MTD prepared a comprehensive financial analysis and commissioned an appraisal prepared by Rosenthal & Associates to determine the fair market value of the Property and confirm that the rents and fees collected by MTD under this Lease are not less than the fair market value of the Premises. MTD does not intend to charge or accept fees, costs or rents that are reduced or charged at less than fair market value or to waive or forgive any amounts;

WHEREAS, Lessee expended significant financial resources to obtain the necessary entitlements and approvals to construct the Project. Lessee would not have expended such financial resources without an assurance from Lessor that Lessee could lease the Premises on the terms and conditions set forth in this Lease;

WHEREAS, Lessee has met its obligations under the Option Agreement and has satisfied the conditions precedent to exercise its option to lease the Premises; and

WHEREAS, Lessor desires to lease to Lessee and Lessee desires to lease from Lessor the Premises in order to develop, operate and maintain the Project, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto and each of them do hereby agree as follows:

1. **BACKGROUND AND GENERAL.**

1.1 **Definitions.** The defined terms in this Lease shall have the following meanings:

1.1.1 **"ACCOUNTING YEAR"** shall have the meaning set forth in Section 14.5.

1.1.2 **"ACTUAL COST"** shall mean (i) the reasonable out-of-pocket costs and expenses incurred by Lessor with respect to a particular activity or procedure, including, without limitation, expenditures to third party legal counsel, architects, engineers, financial consultants and advisors, and (ii) reasonable costs incurred in connection with appraisals. In those instances in which Lessee is obligated to reimburse Lessor for its Actual Costs incurred in performing obligations required to be performed by Lessee under this Lease which Lessee fails to perform within the applicable cure period, if any, provided under this Lease, Actual Costs shall also include a reasonable allocation of Lessor's reasonable overhead and administrative costs to compensate Lessor for performing such obligations on behalf of Lessee, which allocation shall be made by Lessor in its reasonable discretion.

1.1.3 **"ADA"** shall have the meaning set forth in Section 1.2.1.

1.1.4 **"ADJUSTMENT DATES"** shall have the meaning set forth in subsection 4.2.1.3.

1.1.5 **"ADMINISTRATIVE CHARGE"** shall have the meaning set forth in Section 4.6.

1.1.6 **"AGGREGATE TRANSFER"** shall have the meaning set forth in subsection 4.6.3.

1.1.7 **"ALTERATIONS"** shall have the meaning set forth in Section 5.2.

1.1.8 **"ANNUAL MINIMUM RENT"** shall have the meaning set forth in subsection 4.2.1.

1.1.9 **"APARTMENT MANAGEMENT AGREEMENT"** means the agreement entered into between the Lessee and an Apartment Management Company for the operation of the apartment facilities.

1.1.10 **"APARTMENT MANAGEMENT COMPANY"** means a reputable, financially responsible company reasonably approved by Lessor that is qualified in the management and operation similarly sized apartment communities throughout the State of California or the United States.

1.1.11 **"APPLICABLE LAWS"** shall have the meaning set forth in subsection 1.2.1.

1.1.12 **"APPLICABLE RATE"** shall mean an annually compounded rate of interest equal to the Prime Rate, plus three percent (3%) per annum; however, the Applicable Rate shall in no event exceed the maximum rate of interest that may be charged pursuant to Applicable

Laws. In the event that the Applicable Rate as determined by the first sentence of this definition exceeds such maximum rate of interest, then the Applicable Rate shall be deemed the maximum rate permissible under Applicable Laws notwithstanding the first sentence of this definition.

1.1.13 "**APPROVALS**" means all discretionary approvals from the relevant governmental agencies, including without limitation the County of Santa Barbara, the State Regional Water Quality Control Board, and the County of Santa Barbara Department of Environmental Health Services, necessary for the Construction Work.

1.1.14 "**APPROVED GOVERNMENTAL CHANGES**" shall mean any changes to the Project Plan (or other Alterations, as applicable) required by applicable governmental agencies as a condition to the issuance of required governmental permits and Approvals for the Construction Work (or other Alterations, as applicable), except for any change that is a Material Modification.

1.1.15 "**AWARD**" shall have the meaning set forth in subsection 6.1.3.

1.1.16 "**BENEFICIAL INTEREST**" shall have the meaning set forth in subsection 4.6.4.

1.1.17 "**BUSINESS DAY**" shall have the meaning set forth in Section 17.3.

1.1.18 "**CHANGE OF OWNERSHIP**" shall have the meaning set forth in subsection 4.6.1.

1.1.19 "**CHANGE OF CONTROL**" shall have the meaning set forth in subsection 4.6.1.

1.1.20 "**COUNTY**" shall mean the County of Santa Barbara, California.

1.1.21 "**CO DATE**" shall mean the date of the issuance of the first certificate of occupancy (whether temporary or permanent) for at least eighty percent (80%) of the apartment units to be constructed as part of the Construction Work. If the Construction Work is phased or divided in such a way that the apartment units are constructed in two or more distinct phases or time periods, the CO Date shall mean the dates of the issuance of the certificate of occupancy (whether temporary or permanent) for each distinct phase of apartment units constructed as part of the Construction Work for that phase.

1.1.22 "**CONDEMNATION**" shall have the meaning set forth in subsection 6.1.1.

1.1.23 "**CONDEMNOR**" shall have the meaning set forth in subsection 6.1.4.

1.1.24 "**CONSTRUCTION WORK**" shall have the meaning set forth in Section 5.1.

1.1.25 "**CONSUMER PRICE INDEX**" shall mean the Consumer Price Index--All Urban Consumers for Los Angeles-Riverside-Orange County, as published from time to time

by the United States Department of Labor or, in the event such index is no longer published or otherwise available, such replacement index as may be agreed upon by Lessor and Lessee.

1.1.26 "**DATE OF TAKING**" shall have the meaning set forth in subsection 6.1.2.

1.1.27 "**EFFECTIVE DATE**" shall mean the date that the Memorandum of Lease in the form attached hereto as **Exhibit G** is recorded in the Office of the Recorder of Santa Barbara County, California.

1.1.28 "**EFFECTIVE GROSS INCOME**" shall have the meaning set forth in subsection 4.2.2

1.1.29 "**ENCUMBRANCE**" shall have the meaning set forth in subsection 12.1.1.

1.1.30 "**ENCUMBRANCE HOLDER**" shall have the meaning set forth in subsection 12.1.1.

1.1.31 "**ENVIRONMENTAL REGULATION**" shall have the meaning set forth in Section 1.1.38

1.1.32 "**EVENTS OF DEFAULT**" shall have the meaning set forth in Section 13.1.

1.1.33 "**EXCLUDED TRANSFERS**" shall have the meaning set forth in subsection 4.6.2.

1.1.34 "**FINAL PLANS AND SPECIFICATIONS**" means the plans and specifications for construction of the Improvements that have received final approval by the Building Department of the County of Santa Barbara.

1.1.35 "**FINANCING EVENT**" shall have the meaning set forth in Section 12.1.

1.1.36 "**FORCE MAJEURE**" means organized labor dispute, freight embargo, civil disturbance, enemy action, war, insurrection, terrorism, strikes, walk outs, riots, fire, earthquake, epidemic and government restrictions related thereto, pandemic and government restrictions related thereto, flood, tsunami, tornado or other act of God, inability to obtain institutional financing for the Premises or Project and other property and projects in general but not specifically related to the Premises or Project (e.g., due to a significant global or national disruption in the capital markets or inability to obtain construction financing for similarly sized residential apartment communities in California on commercially reasonable terms), or similar bases for excused performance which are not within the reasonable control of Lessee (other than financial inability).

1.1.37 "**FORCE MAJEURE DELAY**" shall have the meaning set forth in subsection 5.6.1.

1.1.38 "**GROSS RENT**" shall have the meaning set forth in subsection 4.2.2

1.1.39 "**HAZARDOUS MATERIALS**" means: (i) any chemical, emission or substance that is listed, classified or regulated during the Term as toxic, hazardous, a pollutant or contaminant, or otherwise injurious or detrimental under any federal, state or local law, statute, code, ordinance, regulation, requirement or rule ("**Environmental Regulation**"); or (ii) any petroleum product or by-product, asbestos-containing material, lead-containing paint, polychlorinated biphenyls, radioactive material or radon.

1.1.40 "**IMPROVEMENTS**" means all buildings, structures, fixtures, fences, anchorage facilities, fountains, walls, paving, parking areas, driveways, walkways, plazas, landscaping, permanently affixed utility systems and other improvements now or hereafter located on the Premises other than such items that are installed and owned by, or dedicated to, any public agency or for public use.

1.1.41 "**INITIATING PARTY**" shall have the meaning set forth in the first paragraph of Article 16.

1.1.42 "**INSTITUTIONAL LENDER**" shall have the meaning set forth in subsection 12.3.1.

1.1.43 "**INSURANCE MODIFICATION DATE**" shall have the meaning set forth in Section 9.7.

1.1.44 "**LATE FEE**" shall have the meaning set forth in Section 4.5.

1.1.45 "**LEASE**" shall mean this Lease Agreement.

1.1.46 "**LEASE YEAR**" shall have the meaning set forth in Section 2.1.

1.1.47 "**LEASED FEE MORTGAGE**" shall have the meaning set forth in Section 12.10

1.1.48 "**LESSEE**" shall have the meaning set forth in the first paragraph of this Lease.

1.1.49 "**MATERIAL MODIFICATION**" shall mean (a) a modification to the Construction Work after obtaining all required governmental permits and Approvals for the Construction Work, or (b) other Alterations, which, in either case, (1) are not in compliance with the Permitted Uses under the Lease; or (2) changes the total number of apartment units by more than 10 percent (10%).

1.1.50 "**MONTHLY MINIMUM RENT**" shall have the meaning set forth in subsection 4.2.1.

1.1.51 "**NET AWARDS AND PAYMENTS**" shall have the meaning set forth in Section 6.7.

1.1.52 "**NOTICE OF COMPLETION**" shall have the meaning set forth in subsection 5.7.6.

1.1.53 **"OPERATING COVENANT EXCEPTIONS"** shall have the meaning set forth in Section 3.3.

1.1.54 **"OPERATING YEAR"** shall have the meaning set forth in subsection 4.2.2.

1.1.55 **"PARTIAL TAKING"** shall have the meaning set forth in Section 6.5.

1.1.56 **"PAYMENT BOND"** shall have the meaning set forth in subsection 5.4.4.2.

1.1.57 **"PERCENTAGE RENT"** shall have the meaning set forth in subsection 4.2.2.

1.1.58 **"PERFORMANCE BOND"** shall have the meaning set forth in subsection 5.4.4.1.

1.1.59 **"PERMITTED USES"** shall have the meaning set forth in Section 3.1.

1.1.60 **"PREMISES"** shall have the meaning set forth in the first Recital.

1.1.61 **"PROFORMA TITLE POLICY EXCEPTIONS"** shall have the meaning set forth in Section 1.2.2.

1.1.62 **"PROJECT"** shall have the meaning set forth in the ninth Recital.

1.1.63 **"PROJECT PLAN"** shall have the meaning set forth in Section 5.1.

1.1.64 **"PRIME RATE"** shall be the average prime rate of interest published in the Wall Street Journal, or if the Wall Street Journal ceases to publish a prime rate then a reasonable substitute therefor.

1.1.65 **"QUALIFIED PROPERTY MANAGER"** means a regionally recognized property management company specializing in multifamily projects that is not an Undesirable Person and which (i) is a reputable management company having at least seven (7) years' experience in the management of properties with similar uses as the Project and in the State in which the Project is located, (ii) has, for at least seven (7) years prior to its engagement as property manager, managed at least eight (8) properties of the same or similar property type and size as the Project in California, (iii) is financially solvent as determined by Lessor in its reasonable judgment, and (iv) immediately upon its engagement as property manager of the Project, will hold and otherwise maintain all required licenses and permits for the current use, management, operation and leasing of the Project.

1.1.66 **"REASONABLE AND UNREASONABLE"**, depending on the context in which it is used "reasonable" means just, rational, appropriate, ordinary or usual in the circumstances; what a normal prudent rational person would do or not do under similar circumstances. "Unreasonable" means the opposite.

1.1.67 "**REPLY**" shall have the meaning set forth in Section 16.5.

1.1.68 "**REQUIRED COMPLETION DATE**" shall have the meaning set forth in Section 5.6.1.

1.1.69 "**RESERVE FUND**" shall have the meaning set forth in Section 5.11.

1.1.70 "**RESPONDING PARTY**" shall have the meaning set forth in the first paragraph of Article 16.

1.1.71 "**SECTION**" shall mean a section of this Lease.

1.1.72 "**SHALL**" and "**WILL**" are mandatory and the word "**MAY**" is permissive.

1.1.73 "**STATE**" shall mean the State of California.

1.1.74 "**STATEMENT OF POSITION**" shall have the meaning set forth in subsection 16.6.

1.1.75 "**SUBLEASE**" shall have the meaning set forth in subsection 11.1.

1.1.76 "**SUBSECTION**" shall mean a subsection of a Section of this Lease.

1.1.77 "**TAXES**" shall have the meaning set forth in subsection 4.1.2.

1.1.78 "**TERM**" shall have the meaning set forth in Section 2.1.

1.1.79 "**TIME OF THE ESSENCE**" shall have the meaning set forth in Section 15.2.

1.1.80 "**TOTAL RENT**" shall mean the greater of Percentage Rent or Annual Minimum Rent for the Operating Year.

1.1.81 "**TENANT**" shall mean a residential tenant of the Premises, which, the parties, acknowledge, is technically, a subtenant.

1.1.82 "**UNIFORM SYSTEM**" shall mean any commercially reasonable and customary form or accounting, consistently applied designated by Lessee and reasonably approved by Lessor, it being acknowledged that cash basis accounting shall be acceptable.

1.1.83 "**UNINSURED LOSS**" shall have the meaning set forth in Section 10.3.

1.1.84 "**WRITTEN APPRAISAL EVIDENCE**" shall have the meaning set forth in subsection 16.7.

1.2 **Lease Agreement.** For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, Lessor hereby leases to Lessee, and Lessee hereby leases and hires from Lessor, an exclusive right to possess and use, as tenant, the

Premises for the Term (as hereinafter defined) and upon the terms and conditions and subject to the requirements set forth herein.

1.2.1 **As-Is.** Lessee accepts the Premises and existing Improvements in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Lease at the time of the Effective Date as well as risks of fire, earthquake, debris flow, landslide, tsunami and other natural disasters. Lessee hereby represents that in connection with its acceptance of the Premises Lessee has been given the opportunity to perform such tests, inspections, reviews studies and investigations respecting the Premises and the existing Improvements as it considers necessary or appropriate to adequately evaluate the condition and other aspects of the Premises. Lessee hereby accepts the Premises and the existing Improvements on an "AS IS WITH ALL FAULTS" basis and, except as expressly set forth in this Lease or in the Option Agreement, Lessee is not relying on any representation or warranty of any kind whatsoever, express or implied, from Lessor or its agents or employees, as to any matters concerning the Premises and/or any Improvements located thereon, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Premises and/or any Improvements located thereon, including, but not limited to, the structural elements, foundation, roof, protections against erosion, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the land and within the Improvements and within each space therein, (ii) the quality, nature, adequacy and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises and/or any Improvements located thereon, (iv) the development potential of the Premises, and the use, habitability, merchantability or fitness, or the suitability, value or adequacy of the Premises and/or any Improvements located thereon for any particular purpose, (v) the zoning or other legal status or entitlement or lack thereof of the Premises or any other public or private restrictions on use of the Premises, (vi) the compliance of the Premises and/or any Improvements located thereon with any applicable codes, laws, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions of Santa Barbara County, State, the United States of America and/or any other governmental or quasi-governmental entity ("**Applicable Laws**") including, without limitation, relevant provisions of the Americans with Disabilities Act ("**ADA**"), (vii) the presence of any underground storage tank or Hazardous Materials on, under or about the Premises or the adjoining or neighboring properties (of which the Lessor has no actual knowledge that has not been disclosed to Lessee), (viii) the quality of any labor and materials used in any Improvements, (ix) subject to subsection 1.2.2 below, the condition of title to the Premises, and (x) the economics of the proposed operation of the Premises and/or any Improvements located thereon.

1.2.2 **Title.** Lessor covenants, represents and warrants that: (i) Lessor owns fee title to the Premises described in **Exhibit A**; (ii) the Premises are free and clear of any and all monetary liens, mechanic's liens, claims, encumbrances, easements, leases, rights to occupy and tenants, other than as set forth in the proforma title insurance policy attached hereto as **Exhibit B**, ("**Proforma Title Policy Exceptions**"); (iii) this Lease is a binding obligation of Lessor, enforceable in accordance with its terms and conditions; (iv) Lessor has authority to enter into this Lease and has taken all actions required to enter into this Lease; and (v) the individuals executing this Lease on behalf of Lessor have the authority to bind Lessor. Lessee hereby acknowledges the title of Lessor in and to the Premises, and covenants and agrees never to contest or challenge

the extent of said title, except as is necessary to ensure that Lessee may occupy and operate the Premises and all Improvements thereon, pursuant to the terms and conditions of this Lease. The foregoing representations and warranties shall survive for the duration of this Lease.

1.2.3 **Title Policy.** Concurrently herewith, and as a condition to the effectiveness of this Lease, Lessor shall cause First American Title Company to issue to Lessee an ALTA Extended Coverage Policy of Title Insurance in the amount of One Hundred Million Dollars (\$100,000,000.00) insuring the leasehold estate, subject to the exceptions, and otherwise in the form shown on **Exhibit B** attached hereto. Lessor shall pay for the standard coverage portion of the Title Policy and, Lessee shall pay for any extended coverage portion of the Policy, any endorsements, and any ALTA survey.

1.2.4 **Pending Title Matters.** Lessor and Lessee acknowledge that the Memorandum of Lease shall affect title to the Premises.

2. TERM.

2.1 **Term.** The term of the Lease ("**Term**") shall commence on the Effective Date and, unless terminated sooner in accordance with the provisions of this Lease, expire at 11:59 p.m. on the day immediately preceding the ninety-ninth (99th) anniversary of the Effective Date. For purposes of this Lease, "**Lease Year**" shall mean each twelve (12) month period during the Term of this Lease beginning on the Effective Date; however, during the Term, Lessee shall have the right to cause a Lease Year to correspond to a calendar year by delivering written notice thereof to Lessor.

2.2 **Ownership of Improvements During Term.** Until the expiration of the Term or sooner termination of this Lease, Lessee shall own all Improvements now existing or hereafter constructed by Lessee upon the Premises, and all alterations, additions, or betterments made thereto by Lessee.

2.3 **Reversion or Removal of Improvements.** Upon the expiration of the Term or sooner termination of this Lease, whether by cancellation, forfeiture or otherwise, all structures, buildings, Improvements, all alterations, additions, and betterments thereto, and all other Improvements made to or upon the Premises shall remain upon and be surrendered with the Premises as part thereof and title thereto shall vest in Lessor, without compensation therefor to Lessee, subject to Lessee's right to demolish and remove all the Improvements, including without limitation all foundations, infrastructure, and roads, prior to the expiration or termination of this Lease at Lessee's sole expense. Nothing contained herein shall be construed to deny or abrogate the right of Lessee, prior to the expiration of the Term or termination of this Lease, to receive any and all proceeds which are attributable to the Condemnation of business installations, Improvements, structures and buildings belonging to Lessee immediately prior to the taking of possession by the Condemnor as said rights are set forth in Article 6 of this Lease, or to remove any furniture or equipment or any signage used in the operation of the Premises, or any personal property, upon the expiration of the Term or earlier termination of this Lease or at any time during the Term, subject to Lessee's obligations under this Lease to use the Premises for the Permitted Uses.

2.3.1 **Duty to Remove Equipment, Etc.** No later than the expiration of the Term or sooner termination of this Lease, Lessee shall remove at its cost and expense such furniture, equipment and personal property owned or leased by Lessee as are not affixed to said structures, buildings and Improvements and reasonably necessary for the orderly operation of the Premises. Should Lessee fail to so remove said furniture, equipment and personal property within said period, and said failure continues for thirty (30) days after written notice from Lessor to Lessee (and Lessor providing reasonable access to the Premises for Lessee to do so), Lessee shall lose all right, title and interest in and thereto, and Lessor may elect to keep the same upon the Premises or, within one hundred eighty (180) days, shall sell, remove, or demolish the same, in event of which sale, removal, or demolition Lessee shall reimburse Lessor for its Actual Costs incurred in connection with such sale, removal or demolition in excess of any consideration received by Lessor as a result of said sale, removal or demolition.

3. **USE OF PREMISES.**

3.1 **Specific Primary Use.** The Premises shall be used by Lessee for the development, construction, operation and management of the Project, which is a mixed-income residential apartment community with no less than 15% of the total number of units affordable to very-low, low-, and moderate-income households, and related improvements as more accurately described in that certain Development Plan dated _____ issued by the County of Santa Barbara ("**Development Plan**") a copy of which is attached hereto as **Exhibit C** ("**Permitted Uses**"), subject to any modification that is (a) expressly permitted by this Lease, or (b) approved by Lessor (which approval shall not be unreasonably withheld, conditioned, or delayed). Lessee shall construct all of the units approved in the Development Plan and shall not reduce the number of units constructed without Lessor's prior written consent, which approval shall not be unreasonably withheld, conditioned or delayed.

Upon completion of the Construction Work and thereafter throughout the remaining Term of this Lease, the Premises shall at all times be operated by an Apartment Management Company. Lessor hereby approves ConAm Management Corporation, a California corporation as the Apartment Management Company. Lessee shall not appoint a new Apartment Management Company without Lessor's prior written consent, which shall not be unreasonably withheld or delayed and shall be deemed given if it is a Qualified Property Manager approved by any applicable Institutional Lender; provided, however, the termination of the agreement with the Apartment Management Company as the result of a default by, or the resignation or dissolution of, the Apartment Management Company shall not require Lessor's consent or constitute a default under this Lease but the replacement of such Apartment Management Company shall require Lessor's consent and approval as and to the extent required above. The Premises shall not be used for any purpose other than the Permitted Uses, without the prior written consent of Lessor. Lessor makes no representation or warranty regarding the continued legality of the Permitted Uses or any of them, and Lessee bears all risk of an adverse change in Applicable Laws, provided any such change which prohibits the continued use of the Premises for the Permitted Uses or results in the Permitted Uses becoming commercially unreasonable shall enable the Lessee to change the Permitted Uses, with the prior written consent of the Lessor, which consent may not be unreasonably withheld, conditioned or delayed.

3.2 **Prohibited Uses.** Notwithstanding the foregoing:

3.2.1 **Nuisance.** Lessee shall not conduct or permit to be conducted any private or public nuisance on or about the Premises, nor commit any waste thereon. No unreasonable accumulation of rubbish, trash, waste, residue, brush, weeds or undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon any portion of the Premises, except in appropriate receptacles intended for such purposes, nor shall any portion of the Premises be maintained so as to render said Premises a fire hazard or unsanitary, unsightly, offensive, or a risk to public health and safety. Notwithstanding the foregoing, Lessee shall be permitted to perform the Construction Work on, or Alterations of, the Premises in compliance with Article 5 of this Lease. Lessee shall not be responsible for the activities of Tenants that result in a breach of the foregoing provisions except to the extent such activities are expressly authorized or approved by Lessee; however, Lessee shall use reasonable efforts to enforce the terms of any Subleases (which shall expressly prohibit such behavior).

3.2.2 **Restrictions and Prohibited Uses.** Without expanding upon or enlarging the Permitted Uses of the Premises as set forth in this Lease, the following uses of the Premises are expressly prohibited:

3.2.2.1 The Premises shall not be used or developed in any way which is in material violation of any Applicable Laws;

3.2.2.2 The Premises shall not be used or developed in any way which is materially inconsistent with the Permitted Uses;

3.2.2.3 All Improvements shall at all times be kept in good condition and repair consistent with the requirements of Section 10.1 of this Lease;

3.2.2.4 Lessee shall use the customary standard of care and diligence for comparable projects to avoid and not permit any condition to exist upon the Premises which shall induce, breed or harbor infectious plant diseases, rodents, or noxious insects and Lessee shall take reasonable measures to prevent any conditions from existing on the Premises which create an unreasonable danger to the health or safety of any persons residing or working at, or persons patronizing, the Premises;

3.2.2.5 No tools, equipment, or other structure designed for use in boring for water, oil, gas or other subterranean minerals or other substances, or designed for use in any mining operation or exploration, shall hereafter be erected or placed upon the Premises, except (a) as is necessary to allow Lessee to perform its maintenance and repair obligations pursuant to this Lease, (b) for drilling any water well to serve the Premises, should that be necessary, and (c) for such boring or drilling as necessary to perform soils or water testing or monitoring, or any dewatering program to relieve soil water pressure; and

3.2.2.6 No adverse environmental condition in violation of Applicable Laws shall be permitted to exist on any portion of the Premises, nor shall any Hazardous Materials be permitted to be generated, treated, stored, disposed of, or otherwise deposited in or on or allowed to emanate from the Premises or any portion thereof, including, without limitation, into the surface waters and subsurface waters thereof; provided, however, that (i) Hazardous Materials may be stored, used or disposed of, so long as such storage, use and disposal is (a) ancillary to the

ordinary course of business of an otherwise Permitted Uses with the intent that such substances will be used, stored or disposed of in the ordinary course of business, and (b) conducted in compliance with all Applicable Laws.

3.3 **Active Use.** The parties acknowledge that the ultimate objective of this Lease is the complete and continuous use of the Premises for the Permitted Uses on the Premises, along with the generation and realization of revenue therefrom. Accordingly, Lessee agrees and covenants that following the CO Date, it shall operate the Premises continuously (except to the extent that Lessee is prevented from doing so due to damage, destruction, government mandate, Force Majeure, or temporary voluntary interruption as necessary for maintenance and repair, or to accommodate renovation, alteration or other improvement work required or permitted to be performed by Lessee under this Lease provided that such temporary voluntary interruption shall not affect the entire Premises for more than three (3) consecutive months or the equivalent thereof, (e.g., one-third the Premises for one (1) consecutive month) without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed (collectively, "**Operating Covenant Exceptions**") in light of these objectives, consistent with the operation of comparable apartment communities in Santa Barbara. This Lease shall be construed with due regard to the aforementioned objectives. Notwithstanding the foregoing, for so long as Lessee is diligently pursuing to completion the work giving rise to a temporary interruption, the foregoing limitation shall not apply.

3.4 **Days of Operation.** The Improvements on the Premises shall be open every day of the year, subject to the Operating Covenant Exceptions.

3.5 **Compliance with Applicable Laws.** Lessee shall comply with all Applicable Laws and shall pay for and maintain any and all licenses and permits related to or affecting the use, operation, maintenance, repair or improvement of the Premises.

3.6 **Reservations.** Lessee expressly agrees that this Lease and all rights hereunder shall be subject to all encumbrances, reservations, licenses, easements and rights of way (a) contained in the Proforma Title Policy Exceptions, or (b) any dedications, easements, rights of way on or over the Premises to public utilities or public service corporations, or other government agencies, or to others if required by government agencies, granted for the purpose of obtaining the Approvals for the Permitted Uses, or (c) otherwise agreed to in writing by the parties in their respective sole discretion.

4. **PAYMENTS TO LESSOR.**

4.1 **Net Lease.** The parties acknowledge that the rent to be paid by Lessee under this Lease is intended to be absolutely net to Lessor. The rent and other sums to be paid to Lessor hereunder are not subject to any credit, demand, set-off or other withholding, except as expressly set forth in this Lease. Except as specifically set forth herein, Lessee shall be solely responsible for all capital costs (including, without limitation, all impacts fees, development fees, permitting fees, construction costs, underground utilities, street improvements, infrastructure, structural repairs or replacements) and operating expenses attributable to the operation and maintenance of the Premises, including, without limitation, the parking areas included within the Premises.

4.1.1 **Utilities.** In addition to the rental charges as herein provided, Lessee shall pay, or cause to be paid, all utility and service charges for furnishing water, power, sewage disposal, light, telephone service, garbage, trash collection and all other utilities and services to the Premises. The foregoing shall not obligate Lessee to discharge any such sums that are the obligations of Tenants pursuant to direct agreements with the providers of such services.

4.1.2 **Taxes and Assessments.** Lessee agrees to pay before delinquency all taxes, assessments, fees, or charges which at any time may be levied by the State, County, City or any tax or assessment levying body upon any interest in this Lease or any possessory right which Lessee may have in or to the Premises covered hereby or to the Improvements thereon for any reason, including but not limited to taxes or charges imposed upon the Premises by any special assessment district that may be formed that includes the Premises, as well as all applicable taxes, assessments, fees, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by it in, on or about the Premises including any tax, assessment, charge or levy upon the rent payable by Lessee under this Lease ("**Taxes**"). Lessee's obligation to pay Taxes hereunder shall include, but is not limited to, the obligation to pay any Taxes, or increases in Taxes arising as a result of the execution and delivery of this Lease. Lessee shall have the right to contest the amount of any assessment imposed against the Premises or the possessory interest therein; provided, however, the entire expense of any such contest (including interest and penalties which may accrue in respect of such Taxes) shall be the responsibility of Lessee. "**Taxes**" shall not include any franchise, corporate, estate, inheritance, succession, capital levy, stamp tax or transfer tax of Lessor, or any income, excess profits or revenue tax, nor shall "**Taxes**" include any increase resulting from a change in ownership of Lessor's interest in the Premises or a real property tax imposed on the Premises by Lessor in its capacity as a public transit district.

4.2 **Rental Payments.** Throughout the Term, for the possession and use of the Premises granted herein, Lessee shall pay Lessor a monthly amount equal to the *greater* of (a) Monthly Minimum Rent or (b) Percentage Rent.

4.2.1 **Annual Minimum Rent and Monthly Minimum Rent.** Lessee shall pay to Lessor the minimum rent described in this subsection 4.2.1 in advance (subject to adjustment pursuant to Sections 4.2.1.3 below) during the periods indicated below (the "**Annual Minimum Rent**"). Annual Minimum Rent shall be payable by Lessee to Lessor on a monthly basis in equal installments of one-twelfth (1/12th) of the Annual Minimum Rent (the "**Monthly Minimum Rent**"); provided, however, if any period is shorter or longer than twelve (12) full months then the Annual Minimum Rent and Monthly Minimum Rent, as applicable, shall be calculated on a pro rata basis based on the number of days in the applicable period as compared to the number of days in such full calendar year or month, as applicable.

4.2.1.1 During the period from the Effective Date through the CO Date, Annual Minimum Rent shall equal the product of the number of residential units set forth in the Development Plan multiplied by One Thousand Five Hundred (\$1,500) per year, which the parties initially estimate shall equal Five Hundred Thousand Dollars (\$500,000.00); provided the Annual Minimum Rent shall not be less than Four Hundred Seventy-Five Thousand Dollars (\$475,000.00) (the "**First Rent Period**"). Lessee shall provide written notice to Lessor of the CO Date promptly upon the occurrence thereof.

4.2.1.2 During the period commencing on the day after the end of the First Rent Period and continuing through the date on which ninety percent (90%) of the total number of apartment units set forth in the Development Plan are leased, the Annual Minimum Rent shall equal the product of the number of residential units set forth in the Development Plan multiplied by Two Thousand Two Hundred Fifty Dollars (\$2,250) per year, which the parties initially estimate shall equal Seven Hundred Fifty Thousand Dollars (\$750,000.00); provided the Annual Minimum Rent shall not be less than Seven Hundred Twelve Thousand Five Hundred Dollars (\$712,500.00) (the "**Second Rent Period**"). Notwithstanding the foregoing, if the Construction Work is phased or divided in such a way that the apartment units are constructed in two or more distinct phases or time periods, then the Annual Minimum Rent during the Second Rent Period shall be calculated by applying the formula above to the number of apartment units set forth in the Development Plan for the phase or phases for which the CO Date has occurred and the formula set forth in Section 4.2.1.1 to the remainder of apartment units set forth in the Development Plan for which the CO Date has not yet occurred, with the minimum Annual Minimum Rent for the Second Rent Period adjusted accordingly; provided that the Second Rent Period shall not exceed twenty-four (24) months per phase, if the Construction Work is phased or divided in such a way that the apartment units are constructed in two or more distinct phases or time periods.

4.2.1.3 Commencing on the day after the end of the Second Rent Period for each phase for which the CO Date has occurred (the "**Full Rent Commencement Date**"), the Annual Minimum Rent shall equal the product of the number of apartment units set forth in the Development Plan multiplied by Three Thousand Thirty Dollars (\$3,030) per year, which the parties initially estimate shall equal One Million Dollars (\$1,000,000.00); provided that the Annual Minimum Rent shall not be less than Nine Hundred Fifty Thousand Dollars (\$950,000.00). Commencing on the second (2nd) anniversary of the Full Rent Commencement Date and every year thereafter (each an "**Adjustment Date**" and collectively the "**Adjustment Dates**"), the Annual Minimum Rent shall be increased or decreased, as applicable, to an amount equal to ninety percent (90%) of the average of the Total Rent for the two (2) Operating Years immediately preceding the applicable Adjustment Date. For purposes of illustration only, if the Total Rent paid in Operating Year 2025 is \$1,200,000 and the Total Rent paid in Operating Year 2026 is \$1,300,000, the Annual Minimum Rent for Operating Year 2027 at the Adjustment Date would be \$1,125,000.

4.2.2 **Percentage Rent.** For the purposes of this Lease, "**Percentage Rent**" for any given Operating Year shall be the sum of the following:

Ten Percent (10%) of the Effective Gross Income for the current Operating Year. "**Effective Gross Income**" means the positive amount of Gross Rent, net of the Concessions, plus Acceptable Other Income for the applicable Operating Year. "**Gross Rent**" means the sum of actual collected, monthly rents under all leases. "**Concessions**" means (1) rental abatements, (2) "free" rent, and (3) other monetary inducements offered by Lessee to Tenants. "**Acceptable Other Income**" means any other income actually collected by Lessee from (1) laundry, (2) vending, (3) short-term lease premiums, (4) parking, and (5) any other type of income actually collected by the Lessee from the Project, but shall not include (w) reimbursement for repairs to the Project under insurance carried by Lessee or any Tenant (as defined below) for which a Tenant is responsible, (x) reimbursements from Tenants for legal fees or utilities, (y) contributions to the actual cost of the construction of the Improvements (such as payments from

cable, internet, or other data transmission companies), or (z) security or other deposits (unless and until such amounts are forfeited by the applicable Tenant for unpaid rent but not for reimbursement of repair costs or attorneys' fees). Acceptable Other Income does not include pet fee income or interest income. "**Operating Year**" means (i) with respect to the first Operating Year, the period commencing on the day after the end of the First Rent Period and ending on the last day of the first full calendar year thereafter, (ii) with respect to each Operating Year thereafter (other than the last Operating Year if the expiration of the Term does not fall on December 31), the calendar year and (iii) with respect to the last Operating Year (if the expiration of the Term does not fall on December 31), the partial calendar year ending on the expiration of the Term.

4.2.2.1 **Quarterly Report and Estimated Payment.** Within forty-five (45) days after the close of each of the first three (3) calendar quarters of each Operating Year of the Term hereof, Lessee shall file a report of total revenue in the form attached hereto as **Exhibit D** certified as true, correct, and complete in all material respects by Lessee, and pay to Lessor a sum equal to the Percentage Rent applicable to such quarter as follows: Lessee shall calculate the Percentage Rent owed for such quarter and deduct therefrom the amount of Monthly Minimum Rent payable for such quarter; if the resulting amount is a positive number, Lessee shall pay that amount to Lessor concurrently with Lessee's submission of such quarterly report to Lessor.

4.2.2.2 **Accounting Records and Procedures.** Lessee agrees to and shall comply with, the recordkeeping and accounting procedures, as well as the inspection and audit rights granted to Lessor, set forth in Article 14 of this Lease.

4.2.2.3 **Total Revenue.** Except as herein otherwise provided, the term "**Total Revenue**" as used in this Lease shall be calculated on a cash basis.

(1) Total Revenue reported by Lessee shall not include security or other deposits unless and until such amounts are forfeited by the applicable Tenant.

(2) Total Revenue shall not include any of the following items:

a. sales of fixtures, equipment or property which are not Lessee's stock in trade;

b. receipts from insurance claims other than rental interruption or business interruption insurance proceeds paid to the Lessee as a replacement of Total Revenue (which shall be net of the actual, documented, reasonable costs paid to unrelated third parties of obtaining such payments);

c. condemnation proceeds;

d. settlements or awards for damages, costs of collection or suit, and attorneys' fees recovered by Lessee for breach of any sublease; provided, however, that there shall be included in Total Revenue the portion of any such settlement or award which is attributable to damages for nonpayment of rent or other amounts that, if paid to Lessee under the sublease, would have constituted Total Revenue (which shall be net of the actual, documented, reasonable costs paid to unrelated third parties of obtaining such payments); and

e. real estate taxes and assessments refunded by governmental agencies (including, without limitation, any tax or fee credits to which Lessee is entitled from time to time).

4.3 **Rent**. Any amounts which Lessee may be required to pay pursuant to the terms of this Lease including, without limitation, Annual Minimum Rent, Monthly Minimum Rent and Percentage Rent, and every fine, penalty, interest, expense, and cost which may be added for non-payment or late payment shall constitute "rent".

4.4 **Payment**. Monthly Minimum Rent shall be paid by Lessee in advance pursuant to Section 4.2. Payments of Monthly Minimum Rent shall be received by Lessor on or before the first business day of each calendar month of the Term. Estimated payments of Percentage Rent shall be paid by Lessee in arrears pursuant to Section 4.2.2.1. Percentage Rent due, if any, shall be calculated following the end of each Operating Year during the Term and shall be received by Lessor on or before the forty-fifth (45th) day following the end of each Operating Year during the Term, calculated as follows: Lessee shall calculate the total Percentage Rent owed to Lessor for the relevant Operating Year of the Term; it shall deduct from said amount the total Monthly Minimum Rent and estimated quarterly payments of Percentage Rent paid to Lessor for that same Operating Year; if the resulting amount is a positive number, Lessee shall pay that amount to Lessor; if that amount is a negative number (*i.e.*, Lessee overpaid the quarterly estimate payments), Lessor shall promptly return such overpayment to Lessee, or Lessee may elect to deduct such overpayment against the next installments of Monthly Minimum Rent.

Payment may be made by check or draft issued and payable to Lessor and mailed or otherwise delivered to the address in Section 15.9, to such other address, by wire transfer, or electronically pursuant to such direction as may be provided to Lessee by Lessor. Lessee acknowledges that Lessor shall have no obligation to issue monthly rental statements, invoices or other demands for payment for Monthly Minimum Rent and Percentage Rent, and that such rental payments required herein shall be payable notwithstanding the fact that Lessee has received no such statement, invoice or demand.

4.5 **Late Fees**. In the event any payment hereunder is not received by Lessor by the date due, Lessee acknowledges that Lessor will experience additional management, administrative and other costs that are impracticable or extremely difficult to determine. Therefore, a fee ("**Late Fee**") of five percent (5%) of the total payment owed shall be added to any amount that remains unpaid seven (7) days after such amount was due and payable; however with respect to any late payment other than Monthly Minimum Rent and Percentage Rent, such Late Fee shall only be payable if Lessee fails to pay such amount within seven (7) days following receipt of written notice of such late payment. In addition to any Late Fee, any unpaid rent due shall additionally bear interest at the Applicable Rate, computed from thirty (30) days after the date when such amounts were due and payable, compounded monthly, until paid. Lessee acknowledges that such Late Fee and interest shall be applicable to all identified monetary deficiencies under this Lease, whether identified by audit or otherwise, and that interest on such amounts shall accrue from and after thirty (30) days after the date when such amounts were due and payable as provided herein (as opposed to the date when such deficiencies are identified by Lessor).

4.6 **Changes of Ownership.** Except as otherwise provided in this Section 4.6, each time Lessee proposes a Change of Ownership (that is not an Excluded Transfer), Lessor shall be paid an Administrative Charge equal to the Actual Cost incurred by Lessor in connection with its review and processing of said Change of Ownership ("**Administrative Charge**"), which shall not exceed Ten Thousand Dollars (\$10,000.00) adjusted to reflect any increase in the Consumer Price Index during the period from the Effective Date through the date of Lessee's notification to Lessor of the proposed Change of Ownership. Changes of Ownership are further subject to the provisions of Article 11 of this Lease.

4.6.1 **Change of Ownership.** "Change of Ownership" shall mean (a) any transfer by Lessee of a greater than fifty percent (50%) direct ownership interest in Lessee, (b) any transaction or series of related transactions not described in subsection 4.6.1(a) which constitute an Aggregate Transfer of a greater than fifty percent (50%) of the direct ownership interest in Lessee, (c) the addition, removal or replacement of one or more general partners, managers or managing members in a Lessee which is a limited partnership or limited liability entity, except by death or incapacity if a Change of Control results, (d) the sale, assignment, or transfer of fifty percent (50%) or more of the stock, partnership interests or limited liability company interests in an entity that owns, or is a general partner, manager, or managing member of an entity that owns, an interest in this Lease if a Change of Control results, or (e) a Change of Control (as defined below) of Lessee.

For the purposes of this Lease, "Change of Control" shall refer to a transaction whereby the transferee acquires a beneficial interest in Lessee which brings such transferee's cumulative beneficial interest in Lessee to over fifty percent (50%).

4.6.2 **Excluded Transfers.** Notwithstanding anything to the contrary contained in this Lease, Changes of Ownership resulting from the following transfers ("**Excluded Transfers**") shall not be deemed to create an obligation to pay Lessor any Administrative Charge, nor require the approval of the Lessor if, but only if, the transferee is a U.S. citizen or if the transferee is a corporation, limited liability company, partnership, trust or other legal entity, is organized in the U.S. or if not, is qualified to do business in California and maintains an office in California for service of process:

4.6.2.1 a transfer to a spouse in connection with a property settlement agreement or decree of dissolution of marriage or legal separation, as long as such transfer does not result in a change in the management of Lessee;

4.6.2.2 a transfer of ownership interests in Lessee or in constituent entities of Lessee (i) to a member of the immediate family of the transferor (which for purposes of this Lease shall be limited to the transferor's spouse, children, step children, parents, siblings and grandchildren), (ii) to a trust for the benefit of a member of the immediate family of the transferor, (iii) from such a trust or any trust that is an owner in a constituent entity of Lessee as of the Effective Date, to the settlor or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer described in this subsection 4.6.2.3 is the result of gift, devise, intestate succession or operation of law, or (iv) in connection with a pledge by any partners of a constituent entity of Lessee to an affiliate of such partner;

4.6.2.3 a transfer of ownership interests in any entity whose ownership interests are publicly traded;

4.6.2.4 a mere change in the form, method or status of ownership (including, without limitation, the creation of single purpose entities) so long as the ultimate beneficial ownership remains the same as of the Effective Date, or as otherwise excluded in accordance with subsections 4.6.2.1 through 4.6.2.4 above;

4.6.2.5 the issuance and offering for sale through an initial public offering or other comparable transaction of securities in Lessee. The subsequent purchase, sale, transfer, or exchange of such publicly held shares are Excluded Transfers except to the extent that such sale, transfer or exchange results in a Change of Control in which a majority of the issued and outstanding shares no longer are publicly traded as in a "going private" transaction in which case such transaction shall not be an Excluded Transfer; or

4.6.2.6 the Change of Ownership permitted without Lessor's consent pursuant to Section 12.1.2 or 12.2.3.

4.6.3 **Aggregate Transfer.** "Aggregate Transfer" shall refer to the total percentage of the shares of stock, partnership interests, membership interests or any other equity interests (which constitute beneficial residual interests in Lessee) transferred or assigned in one transaction or a series of related transactions (other than those enumerated in subsection 4.6.2) occurring since the later of (a) the Effective Date, (b) the execution by Lessee of this Lease, or (c) the most recent Change of Ownership upon which an Administrative Charge was paid to Lessor; provided, however, that there shall be no double counting of successive transfers of the same interest in the case of a transaction or series of related transactions involving successive transfers of the same interest. Isolated and unrelated transfers shall not be treated as a series of related transactions for purposes of the definition of Aggregate Transfer.

4.6.4 **Beneficial Interest.** As used in this Lease, "beneficial interest" shall refer to the ultimate direct or indirect ownership interests in Lessee, regardless of the form of ownership and regardless of whether such interests are owned directly or through one or more layers of constituent partnerships, corporations, limited liability companies or trusts. Except as otherwise provided herein, an interest in Lessee, this Lease held or owned by a partnership, limited liability company, corporation or other entity shall be treated as owned by the partners, members, shareholders or other equity holders of such entity in proportion to their respective equity interests, determined by reference to the relative ownership interests of all partners, members, shareholders or other equity holders in such entity, as such interest may be from time to time be adjusted. Where more than one layer of entities exists between Lessee and the ultimate owners, then the foregoing sentence shall be applied successively to each such entity in order to determine the ownership of the beneficial interests in Lessee, this Lease, and any transfers thereof.

4.7 **Calculation and Payment; Proposed Change of Ownership.** A deposit of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00), adjusted to reflect any increase in the Consumer Price Index during the period from the Effective Date through the date of Lessee's notification to Lessor of the proposed Change of Ownership shall accompany such notification to be applied toward the Administrative Charge and request for Lessor's approval thereof, which

approval shall not be unreasonably withheld, conditioned or delayed. If the transaction is approved, the balance of the Administrative Charge (including documentation in support of the calculation of the Administrative Charge), if any, shall be due and payable concurrently with the consummation of the transaction constituting the Change of Ownership giving rise to the obligation to pay such fee, regardless of whether or not money is transferred by the parties in connection with such consummation. If Lessor disapproves the proposed transaction then, concurrently with its notice of its disapproval, which shall include in reasonable detail the reasons for such disapproval, Lessor shall deliver to Lessee a written notice setting forth the Administrative Charge (including documentation in support of the calculation of the Administrative Charge), together with a refund of the amount, if any, of the deposit in excess of the Administrative Charge otherwise allowable under Section 4.6. In the event that the Administrative Charge exceeds the deposit, then Lessee shall pay Lessor the balance of the Administrative Charge otherwise allowable under Section 4.6 within thirty (30) days after receipt of the notice from Lessor setting forth the Administrative Charge (including documentation in support of the calculation of the Administrative Charge). An Administrative Charge not paid when due hereunder shall bear interest at the Prime Rate plus three percent (3%).

4.7.1 Within forty five (45) days after Lessee delivers to Lessor a request for approval of Proposed Change of Ownership, along with all documents Lessee reasonably believes necessary to support said request, that requires Lessor's approval, Lessor shall notify Lessee in writing whether Lessor has received all documents reasonably necessary to support said request, which notice shall specify with reasonable particularity any additional documents reasonably necessary to support said request which Lessor has not yet received. Within forty-five (45) days after Lessee delivers such request or Lessor has received all documents reasonably necessary to support said request, whichever is later, Lessor shall provide its approval or disapproval thereof to Lessee, in writing, together with the reasons for any disapproval. If Lessor fails to provide its approval or disapproval thereof within such period, Lessee may deliver written notice of such failure to Lessor. If Lessor fails to provide its approval or disapproval thereof to Lessee, in writing, together with the reasons for any disapproval, within five (5) days of Lessee's delivery of such second written notice, Lessor shall be deemed to have approved the Proposed Change of Ownership. Lessor's approval of a Proposed Change of Ownership that is subject to Lessor's approval shall not be unreasonably withheld or conditioned.

4.8 **Shareholder, Partner, Member, Trustee and Beneficiary List.** Prior to the Effective Date, prior to each subsequent Change of Ownership, and upon the request of Lessor (which requests shall be no more frequent than once per year), Lessee shall provide Lessor with an updated schedule listing the names and mailing addresses of all shareholders, partners, members and other holders of equity in Lessee and this Lease with a direct or indirect ownership interest in Lessee of twenty percent (20%) or more, which Lessor shall keep confidential. In the event that such shareholder, partner, member or other interest holder is a trust, Lessee shall include in such schedule the name and mailing address of each trustee of said trust, together with the names and mailing addresses of each beneficiary of said trust. To the extent that Lessee is unable to obtain the information requested by this Section 4.8, Lessee shall have complied with this provision if Lessee uses reasonable commercial efforts to obtain such information. Lessee shall use commercially reasonable efforts to confirm that the holders of twenty percent (20%) or greater interests in Lessee are not a "Blocked Person" (any such holder being referred to herein as an

"Undesirable Holder" or "Undesirable Person"). For purposes hereof a "Blocked Person" is any person on the list of specially designated nationals and blocked persons subject to financial sanctions that are maintained by the U.S. Treasury Department, Office of Foreign Development Assets Control, pursuant to applicable law, including, without limitation, trade embargo, economic sanctions or other prohibitions imposed by the Executive Order of the President of the United States. This Section 4.8 shall not apply to ownership interests in any entity whose ownership interests are publicly traded on a U.S. stock exchange.

5. CONSTRUCTION WORK; ALTERATIONS.

5.1 **Construction Work.** Promptly following the Effective Date, Lessee shall prepare Final Plans and Specifications consistent with the Development Plan, the result of which shall be the construction plan for the Project ("**Project Plan**"). The construction work described in the Project Plan, along with all associated improvements, hardscape, landscape and other site work to be performed in connection with the work described in such Project Plan, is referred to herein as the "**Construction Work**".

The scope, size, design, density, site coverage, layout, amenities, unit count, room count, open space, view corridors, height, construction materials, landscaping, hardscaping and other improvement specifications pertaining to the Construction Work shall be in substantial accordance with the Development Plan and the Project Plan. Lessee shall be responsible for the acquisition of and compliance with all required governmental planning, construction, and entitlement approvals and permits for the Construction Work. Lessee shall be solely responsible for all costs and expenses incurred in connection with the design, entitlement and construction of the Construction Work. Lessor shall execute all documents, approvals, or consents required or reasonably desirable in connection therewith; provided that such execution does not result in any material, unreimbursed cost, or increase in liability to Lessor that is not assumed by Lessee.

5.2 **Application of Article 5 to Construction Work.** The remaining sections of this Article 5 pertain to the Construction Work and to any other Material Modifications or Alterations (as defined below) which Lessee may be required or desire to make to the Premises during the Term. For purposes of this Lease, "**Alterations**" shall mean the construction of any alterations, repairs or modifications to the Improvements other than Material Modifications that are commenced or constructed on the Premises by the Lessee after the Construction Work has been completed, which are consistent with the Permitted Uses.

5.3 **Alterations.** Subject to the provisions of this Lease, Lessee may make Alterations to the Premises, from time to time, which are consistent with the Permitted Uses of the Premises, as set forth in Section 3.1 of this Lease, without the consent of the Lessor. Lessee shall not make any Material Modifications to the Improvements or the Premises without Lessor's prior written consent, which shall not be unreasonably withheld, delayed or conditioned. Within forty-five (45) days after Lessee delivers to Lessor a request for approval of a Material Modification, along with all documents Lessee reasonably believes necessary to support said request, Lessor shall notify Lessee in writing whether Lessor has received all documents reasonably necessary to support said request, which notice shall specify with reasonable particularity any additional documents reasonably necessary to support said request which Lessor has not yet received. Within forty-five (45) days after Lessee delivers such request or Lessor has received all documents

reasonably necessary to support said request, whichever is later, Lessor shall provide its approval or disapproval thereof to Lessee, in writing, together with the reasons for any disapproval. If Lessor fails to provide its approval or disapproval thereof within such period, Lessee may deliver written notice of such failure to Lessor. If Lessor fails to provide its approval or disapproval thereof to Lessee, in writing, together with the reasons for any disapproval, within five (5) days of Lessee's delivery of such second notice, Lessor shall be deemed to have approved the Material Modification.

5.4 **Conditions Precedent to the Commencement of Construction.** No Construction Work or Alterations shall be commenced until each and all of the following conditions have been satisfied or affirmatively waived by Lessor; provided, however, the following conditions shall not apply to any Minor Alterations. "**Minor Alterations**" are those costing less than Three Million Dollars (\$3,000,000.00). "**Major Alterations**" are those costing Three Million Dollars (\$3,000,000.00) or more, in both cases as Three Million Dollars (\$3,000,000.00) is adjusted to reflect any increase in the Consumer Price Index during the period from the Effective Date through the date of commencement of such work. Notwithstanding the foregoing, Lessee shall provide to Lessor copies of all permits and approvals necessary for the commencement and completion of any Minor Alterations.

5.4.1 **Narrative Description and Copies of Plans and Specifications.** Lessee shall provide to Lessor a narrative description of the Construction Work or Alterations, as the case may be, which shall include a construction cost estimate and a general description of the Construction Work or Alterations, together with the plans, specifications and a copy of the final approved construction plans.

5.4.2 **Copies of Permits and Other Approvals.** Lessee shall have received and furnished Lessor with copies of all permits, licenses and other governmental approvals necessary for commencement of the Construction Work or Alterations, as the case may be. Copies of all permits, licenses and other governmental approvals necessary for subsequent stages of the Construction Work or Alterations shall be furnished to the Lessor prior to commencement of such stages.

5.4.3 **Copies of Construction Contracts.** Lessee shall have furnished Lessor with copies of any contract(s) entered into between Lessee and any general contractor(s) employed for the purpose of constructing the Construction Work or Alterations, as the case may be.

5.4.4 **Performance and Payment Bonds.** Lessee shall, at its own cost and expense, have furnished Lessor with the following separate corporate surety bonds not less than ten business (10) days prior to the commencement of any construction that will cost more than Three Million Dollars (\$3,000,000.00) (as such sum is increased by the corresponding increase in CPI from the Effective until the date of the work), which bonds must be in form and content reasonably satisfactory to Lessor:

5.4.4.1 A corporate surety performance bond or equivalent assurance, such as a subguard insurance policy, ("**Performance Bond**") issued by a surety or insurance company licensed to transact business as such in the State of California, in an amount not less than one hundred percent (100%) of the amount of all hard construction costs for the Construction Work or

Alterations. The Performance Bond and its issuer shall be in all material respects reasonably satisfactory to Lessor. It shall name Lessee as principal, said issuer as surety, and subject to the Lessee's construction lender's consent, the construction lender and Lessor as dual obligees (absent such construction lender's consent, the Lessor shall be an additional obligee), assuring full and satisfactory performance by Lessee of Lessee's obligations herein to build, construct and otherwise complete the Construction Work or Improvements described in the approved Final Plans and Specifications.

5.4.4.2 A corporate surety payment bond, issued by a surety company licensed to transact business as such in the State of California, with Lessee as principal, said company as surety, and subject to Lessee's construction lender's consent, the construction lender and Lessor as dual obligees (absent such construction lender's consent, the Lessor shall be an additional obligee), in a sum equal to one hundred percent (100%) of the total construction cost anticipated to be incurred in connection with the approved work, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of said construction work or for labor done thereon of any kind whatsoever and protecting Lessor from any and all liability, loss or damages arising out of or in connection with any failure to make such payment (the "**Payment Bond**"). The Payment Bond shall be in form and content reasonably satisfactory to Lessor.

In the event that construction is performed by a licensed general contractor on behalf of Lessee, provided that such contractor provides Lessor with a bond or bonds compliant with this subsection, and in all material respects reasonably satisfactory to Lessor and otherwise complying with this subsection, Lessor will accept such contractor's bonds in lieu of the Performance Bond and/or Payment Bond by Lessee required by this subsection 5.4.4.

5.4.5 **Alternative Security**. In lieu of providing the Payment and Performance Bonds, Lessor may permit Lessee, in Lessor's reasonable discretion (however, with respect to the Construction Work, Lessor shall permit Lessee to provide the completion guaranty described in clause (i) below), to provide any one or a combination of the following alternative security reasonably acceptable to Lessor: (i) a completion guaranty, in commercially reasonable form, made by an individual or entity with a net worth of no less than five times the cost of the contemplated Construction Work or Alteration and liquidity of no less than fifty percent (50%) of the cost of the contemplated Construction Work or Alteration (a completion guaranty from the guarantor of the construction loan that is acceptable to Lessee's construction lender will be deemed to satisfy Lessor's reasonable discretion), (ii) a certificate of deposit, cash or United States governmental security, (iii) a letter of credit, or (iv) a set aside letter from Lessee's construction lender. The security described in clauses (ii), (iii) and (iv) above shall be in an amount equal to one hundred percent (100%) of the construction contract price for hard costs, and shall permit Lessor to draw thereon to complete the construction of the Improvements if same have not been completed by Lessee or if a material Event of Default has occurred under this Lease. Any alternative security provided by Lessee pursuant to this subsection may name, subject to Lessee's construction lender's consent, Lessee's construction lender and Lessor as co-beneficiaries (absent such construction lender's consent, the Lessor shall be an additional beneficiary). Lessor shall have the authority, in its reasonable discretion and with the consent of the Lessee, to waive or reduce the amount of any bonds or alternate security required hereunder.

5.4.6 **Evidence of Financing.** Lessee shall have provided evidence reasonably satisfactory to Lessor that Lessee has sufficient financial resources (whether as debt and/or equity) to complete the Construction Work or Alterations, as applicable, including a summary of the basic terms of all construction loans, together with any and all recorded documents affecting an interest in the Premises. Under no circumstances shall Lessor be required to subject its fee estate and interest in the Premises, or any portion thereof or any interest therein, to the lien or encumbrance of any leasehold financing or mortgage sought or obtained by Lessee. For the avoidance of doubt, (i) the parties acknowledge and agree that Lessor holds an "unsubordinated fee" in the Premises and shall not subject its fee title estate to the lien or encumbrance of Lessee's lenders or any third party claiming an interest in or through the Lease; (ii) the Lessee is authorized to secure any construction loan and/or permanent loan commitments, by its interest in this Lease and subject to Lessor's fee title estate to the Premises, and (iii) Lessor is authorized to secure any loan, debt, financing, mortgage or lien by its fee interest in the Premises, provided the same is subordinate to the leasehold estate.

5.4.7 **Work Schedule.** With respect to the Construction Work, Lessee shall provide Lessor with a construction schedule which shall result in the substantial completion of the Construction Work on or before the Required Completion Date, as such date may be extended as provided in this Article 5.

5.5 **Lessor Cooperation.** Lessor shall reasonably cooperate with Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the appropriate governmental Approvals, consents, permits (including variances related to required governmental permits and Approvals for the Construction Work that do not materially and adversely affect other real property owned by Lessor proximate to the Premises), which may be required or helpful, in connection with the performance by Lessee of the Construction Work described in Section 5.1 above, as applicable; provided such efforts do not result in any additional material unreimbursed out of pocket cost or expense that are not reimbursed by Lessee or liability to Lessor and provided further that Lessor shall not be required to grant any easements, dedicate any material portion of the Premises or in any other way be required to diminish its full fee title ownership of the Premises except to the extent the same are required in order to perform the Construction Work or operate the Project or to provide utility services for the Project and do not otherwise materially and adversely affect Lessor's fee title ownership of the Premises. Such cooperative efforts may include Lessor's joinder in any application for such approval, consent, or permit, where joinder therein by Lessor is required by the appropriate governmental agency; provided, however, that Lessee shall reimburse Lessor for the Actual Cost incurred by Lessor in connection with such joinder or cooperative efforts and such joinder or cooperative efforts shall not expose Lessor to any additional material liabilities or costs.

5.6 **Completion of Construction Work.** Lessee shall use reasonable commercial efforts to comply with all time deadlines and schedules described in this Article 5, subject to Force Majeure Delay.

5.6.1 **Force Majeure Delay.** Lessee shall diligently pursue the substantial completion of the Construction Work, subject to Force Majeure Delays (as such term is defined in this subsection 5.6.1 below). Subject only to a Force Majeure Delay as provided in this Section 5.6, all of the Construction Work shall be substantially completed on or before three (3) years after

the Effective Date (the "**Required Completion Date**"). The terms "substantial completion" or "substantially completed" as they pertain to the Construction Work shall mean the completion of the Construction Work in substantial accordance with the Final Plans and Specifications, subject to minor so-called punch list items that do not interfere with the use and occupancy of the Construction Work. Without limitation of any other requirements for substantial completion, the Construction Work shall not be considered substantially completed until Lessee has received a temporary certificate of occupancy or equivalent approval required for the legal occupancy and use of all of the Construction Work. Notwithstanding anything to the contrary contained in this Lease, no extension or modification of the requirement to substantially complete the Construction Work by the Required Completion Date shall relieve Lessee of its obligation to pay Lessor the Annual Minimum Rent, Percentage Rent and other amounts set forth in Article 4 of this Lease. Lessee shall promptly notify Lessor in writing any Force Majeure Delay.

Lessee shall diligently pursue the substantial completion of the Construction Work by the Required Completion Date. Any Force Majeure Delay in the construction of the Construction Work shall extend the Required Completion Date by the length of time of such Force Majeure Delay, although Lessee shall to the extent commercially reasonable, commence and proceed to complete the portions, if any, of the Improvements that can be completed notwithstanding such Force Majeure Delay. Any extension of the Required Completion Date due to Force Majeure Delay shall be limited to the period of the Force Majeure Delay and any additional time required to restart the Construction Work, which additional time to restart the Construction Work shall in no instance exceed ninety (90) days unless due to a Force Majeure Delay. Lessee shall promptly notify Lessor in writing of such Force Majeure Delay.

For purposes of this Article 5, "**Force Majeure Delay**" shall mean delays in Construction Work due to events of Force Majeure.

Lessee and Lessor shall discuss and attempt to agree on the length of time of any entitled Force Majeure Delay pursuant to this subsection 5.6.1. If they are unable to agree within thirty (30) days after the event or occurrence giving rise to Lessee's claim to an entitlement to a Force Majeure Delay under this subsection 5.6.1, the matter shall be arbitrated as set forth in Article 16.

5.6.2 Lessor's Inducement; Failure to Complete. Lessee acknowledges that the principal inducement to Lessor to enter into this Lease Agreement is the timely completion of the Construction Work. If Lessee fails to substantially complete the Construction Work on or before the Required Completion Date (as such date may be extended by any Force Majeure Delay), then no Event of Default shall be deemed to have occurred. For the avoidance of doubt, so long as Lessee is paying the Minimum Annual Rent in accordance with Section 4.2.1, no Event of Default shall be deemed to have occurred on account of Lessee failing to achieve substantial completion by the Required Completion Date. Notwithstanding the foregoing, in the event Lessee fails to substantially complete the Construction Work on or before the Required Completion Date, the Annual Minimum Rent shall be immediately increased to Six Hundred Thousand Dollars (\$600,000.00), ("**Increased Annual Minimum Rent**") until commencement of the Second Rent Period.

5.7 Manner of Construction.

5.7.1 General Construction Standards. All construction, alteration, modification or repairs permitted herein shall be accomplished by Lessee with due diligence, subject to Force Majeure Delay. Lessee shall take all reasonable steps to minimize any damage, disruption or inconvenience caused by such work and make adequate provisions for the safety and convenience of all persons affected thereby. Lessee shall repair, at its own cost and expense, any and all damage caused outside of the Premises by such work, and shall restore the area upon which such work is performed to the condition which existed before such work was commenced. Additionally, Lessee shall pay or cause to be paid all costs and expenses associated therewith and shall indemnify, defend and hold Lessor harmless from and against all damages, costs, expenses, losses or claims related to the performance of such work, except to the extent that such damages, costs, expenses, losses or claims are caused by the active negligence or willful misconduct of Lessor or its agents, employees or contractors. Dust, noise and other effects of such work shall be controlled using accepted measures customarily utilized in order to control such deleterious effects associated with construction projects in well populated and developed areas of Southern California, as required by Applicable Laws.

5.7.2 Utility Work. Any work performed by or on behalf of Lessee to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit, or any other utility service shall be performed in a manner that, under the circumstances, reasonably minimizes interference with the provision of such services to the Premises and other persons.

5.7.3 Construction Safeguards. Lessee shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by or on behalf of Lessee, in accordance with Applicable Laws, all reasonably necessary safeguards for the protection of workers and the public.

5.7.4 Compliance with Construction Documents and Laws; Issuance of Permits. All Improvements on the Premises shall be completed in substantial compliance with any construction documents approved by Lessor (to the extent applicable), as may be modified from time to time, in accordance with this Lease, and also in compliance with all Applicable Laws. Lessee shall have the sole responsibility for obtaining all necessary permits and shall make application for such permits directly to the person or governmental agency having jurisdiction thereover.

5.7.5 Rights of Access. During the construction period, representatives of Lessor shall, upon reasonable prior written notice and at reasonable times during normal business hours, have the right of reasonable access to the Premises and the Improvements thereon without charges or fees, but at no cost or expense or liability to Lessee and at Lessor's sole risk. Such access shall be undertaken in a manner reasonably calculated to minimize interference with Lessee's construction, and Lessor shall comply with Lessee's safety standards in connection with any such access. Lessee shall have the right to have a representative present to accompany the representatives of Lessor in connection with such access. In the event of any emergency which is life threatening or which involves the threat of potential substantial damage to the Premises, Lessor shall make diligent efforts to contact Lessee and Lessee's Apartment Management Company prior

to entering the Premises in advance; however, if Lessor is unable to contact Lessee or Lessee's Apartment Management Company, Lessor and its representatives shall have the right to enter the Premises without accompaniment by Lessee.

5.7.6 **Notice of Completion.** Upon completion of the Construction Work or any other Major Alterations, Lessee shall file or cause to be filed in the Official Records of the County of Santa Barbara a Notice of Completion (the "**Notice of Completion**") with respect to the Improvements and Lessee shall deliver to Lessor, at no cost to Lessor, two (2) sets of reproducible final as-built plans and specifications of the relevant Improvements.

5.7.7 **Final Completion Certificate.** Within ten (10) business days after Lessee's request following completion of the Construction Work, Lessor shall execute and deliver to Lessee (a) a final completion certificate as to the work which is the subject thereof, which shall conclusively evidence the completion of such work by Lessee in accordance with the terms of this Lease, or (b) a specific written description of the work necessary to obtain such final completion certificate.

5.8 **Use of Plans.** Contracts between Lessee and any architect, design professional or licensed contractor in connection with the Construction Work alteration or modification of Improvements on the Premises (other than for a Minor Alteration) shall provide, in commercially reasonable form to the extent permitted by Lessee's Encumbrance Holder, for the assignment thereof to Lessor (in addition to Lessee's Encumbrance Holder(s) and of any bonding agents) as security to Lessor for Lessee's performance hereunder, and Lessor shall be furnished with a copy of any such contract, together with the further agreement of the parties thereto, that if this Lease is terminated by Lessor due to Lessee's default, Lessor (or if Lessor enters into a new lease with Lessee's Encumbrance Holder pursuant to Article 12, then Lessee's Encumbrance Holder or any bonding agent) may, at its election, use any plans and specifications created by such architect, design professional or contractor in connection with the contract, upon the payment of any sums due to any party thereto. Lessor's right to elect to use plans and specifications as described above shall not include the unauthorized right to use any trademarks, trade names or logos of Lessee or any such architect, design professional or contractor. The assignment to Lessor and Lessee's Encumbrance Holder(s) described in this Section 5.8 shall be effective until the CO Date, and shall be subordinate to the security interest, if any, of Lessee's Encumbrance Holder in the assigned contract, which subordination shall be in a commercially reasonable form.

5.9 **Where Lessor Approval Not Required.** For the avoidance of doubt, Lessee shall not be required to seek or obtain the approvals of Lessor for Alterations which are not Material Modifications; provided, however, that Lessee shall with respect to Major Alterations (a) give written notice thereof (including a description of the work to be done and the permits obtained for such work), and (b) furnish a copy of "as-built" plans upon completion of such work to Lessor. In the event Lessee seeks to complete Alterations that are not in compliance with the Permitted Uses for the Premises or that constitute Material Modifications, Lessee shall receive Lessor's prior written approval, which shall not be unreasonably withheld, conditioned or delayed.

5.10 **Protection of Lessor.** Nothing in this Lease shall be construed as giving Lessee or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services, or the furnishing of any materials, in any such manner as would give

rise to the filing of mechanics' liens or other claims against the Lessor's interest in the Premises or Lessor.

5.10.1 **Posting Notices.** Lessor shall have the right at all reasonable times and places to post and, as appropriate, keep posted, on the Premises any notices which Lessor may deem necessary for the protection of Lessor's interest in the Premises from mechanics' liens or other claims. Lessee shall give Lessor at least ten (10) business days prior written notice of the commencement of the Construction Work or any Major Alterations to be done on the Premises under this Article 5, in order to enable Lessor timely to post such notices.

5.10.2 **Prompt Payment.** Lessee shall make, or cause to be made, prompt payment of all monies due and owing to all persons doing any work or furnishing any materials or supplies to Lessee or any of its contractors or subcontractors in connection with the Premises and the Improvements thereon. Lessee shall have the right to contest any such amount; provided, however, the entire expense of any such contest (including interest and penalties which may accrue) shall be the responsibility of Lessee.

5.10.3 **Liens; Indemnity.** Subject to Lessee's rights to contest the same prior to payment, Lessee shall keep the Premises and any Improvements thereon free and clear of all mechanics' liens and other liens arising out of or in connection with work done for Lessee and/or any parties claiming through Lessee. Lessee agrees to and shall indemnify, defend and hold Lessor harmless from and against any claim, liability, loss, damages, costs, expenses, attorneys' fees incurred in defending and all other expenses on account of claims of lien(s) of laborers or materialmen or others for work performed or materials or supplies furnished to Lessee or persons claiming under it.

In the event any lien is recorded, Lessee shall, within forty five (45) days after demand (but in all events prior to foreclosure of the lien), furnish any one of the following, as determined by Lessee: (i) the bond described in California Civil Code Section 8424, or successor statute, which results in the removal of such lien from the Premises, (ii) a set aside letter from Lessee's construction lender, in form and substance reasonably satisfactory to Lessor, setting aside sufficient funds from Lessee's construction loan for the satisfaction of such lien, or (iii) a title insurance policy or endorsement insuring Lessor against any loss or liability arising out of such lien, together with any other evidence requested by Lessor to evidence that such claim will be paid, removed or discharged as a claim against the Premises and/or Lessor.

5.11 **Reserve Fund.**

Commencing no later than the expiration of the fifth (5th) anniversary of the commencement of the Full Rent Commencement, the Lessee shall establish and maintain (collectively, the "**Reserve Fund**"): (i) a reserve fund for the costs of additions, replacements, renovations or significant upgrades of or to the Improvements on the Premises, including building exteriors and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural or roof) that increase the capacity, efficiency, useful life or economy of operation of the Improvements or their major systems, after the completion of the Construction Work; and (ii) a reserve fund to fund the cost of the purchase and installment of replacements, additions or upgrades of or to the furniture, fixtures and equipment used in the Improvements throughout the Term. Lessee shall make contributions to the Reserve Fund in the amount of Two Hundred Fifty Dollars (\$250.00) (adjusted to reflect any increase in the Consumer Price Index during the period from the commencement of such obligation) per residential unit per Operating Year. The Reserve Fund shall be maintained in a separate bank account solely controlled by Lessee, its Apartment Management Company, and/or Lessee's Encumbrance Holder. Lessee shall have the right to use some or all of the Reserve Fund from time to time for any of the uses described above in its sole discretion. If Lessee's Encumbrance Holder imposes obligations equal to or greater than the Reserve Funds, then the obligations of Lessee's Encumbrance Holder shall control, and be in lieu of, the Reserve Fund. Except as set forth below, Lessor shall not have any rights with respect to the Reserve Fund. Lessee shall submit to Lessor on an annual basis a report showing the balance of the funds remaining in the Reserve Fund together with an accounting of how monies in Reserve Fund were expended during the reporting period. Notwithstanding anything to the contrary above, Lessor shall be allowed to access and use the Reserve Fund if: (a) this Lease is terminated as a result of Lessee's default and Lessee has failed to maintain the Premises in accordance with the Maintenance Standard, or (b) upon termination of this Lease Lessee fails to return the Premises to Lessor in the condition required Section 2.3 of this Lease.

6. **CONDEMNATION.**

6.1 **Definitions.**

6.1.1 **Condemnation.** "**Condemnation**" means (1) the exercise by any governmental entity of the power of eminent domain, whether by legal proceedings or otherwise, and (2) a voluntary sale or transfer to any Condemnor (as hereafter defined), either under threat of Condemnation or while legal proceedings for Condemnation are pending. Condemnation shall not include any dedications of fee interest or easements required by the Approvals or in connection with the Construction Work, including, without limitation, for roads, pedestrian paths, bikeways, or utility easements.

6.1.2 **Date of Taking.** "**Date of Taking**" means the effective date of the Order for Possession in the eminent domain action.

6.1.3 **Award.** "**Award**" means all compensation, sums or anything of value awarded, paid or received from a total or partial Condemnation.

6.1.4 **Condemnor.** "Condemnor" means any public or quasi-public authority, or private corporation or individual, having the power of eminent domain.

6.1.5 **Premises.** For purposes of Article 6, the "Premises" means the property described in the first WHEREAS clause.

6.2 **Parties' Rights and Obligations to be Governed by Lease.** If, during the Term of this Lease, there is any taking of all or any part of the Premises, any Improvements on the Premises or any interest in this Lease by Condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this Article 6.

6.3 **Total Taking.** If the Premises are totally taken by Condemnation, this Lease shall terminate on the effective date of the Order for Possession in the eminent domain action.

6.4 **Effect of Partial Taking.** If a portion of the Premises or the Improvements thereon are taken by Condemnation, this Lease shall remain in effect, except that Lessee may elect to terminate this Lease if the remaining portion of the Premises are rendered unsuitable (as defined herein) for Lessee's continued use for the purposes contemplated by this Lease, which may include the operation of a residential apartment community. The remaining portion of the Premises shall be deemed unsuitable for Lessee's continued use if, following a reasonable amount of reconstruction (to the extent that funds therefor are available from the Award), Lessee's business on the Premises could not be operated at an economically feasible level, as determined by the Lessee in its sole discretion, taking into consideration Section 6.5 below. Lessee must exercise its right to terminate by giving Lessor written notice of its election within one hundred twenty (120) days after the nature and extent of the taking and the amount of compensation have been determined. Such notice shall also specify the date of termination, which shall not be prior to the Date of Taking. Failure to properly exercise the election provided for in this Section 6.4 will result in this Lease continuing in full force and effect, except that Annual Minimum Rent shall be reduced pursuant to Section 6.5, below.

In the event that Lessee does not elect to terminate this Lease as provided above, then Lessee, whether or not the Awards or payments, if any, on account of such taking shall be sufficient for the purpose, shall, at its sole cost and expense, within a reasonable period of time, commence and complete restoration of the remainder of the Premises as nearly as possible to its condition and character immediately prior to such taking, taking into account, however, any necessary reduction in size, number of buildings, or other changes resulting from the taking, as determined by the Lessee in its reasonable sole discretion, and subject to such Alterations as Lessee may desire to make in accordance with Section 5.3; provided, however, that in case of a taking for temporary use, Lessee shall not be required to effect restoration until such taking is terminated.

6.5 **Effect of Partial Taking on Rent.** If any portion of the Premises is taken by Condemnation and this Lease remains in full force and effect as to the portion of the Premises not so taken (a "Partial Taking"), the Annual Minimum Rent shall be reduced as of the date of the Partial Taking to an amount equal to the Annual Minimum Rent multiplied by the percentage of total apartment units on the Premises not taken immediately prior to the Partial Taking. A taking of a permanent exclusive surface easement on or over the land shall be treated as the taking of a

fee interest in the land. All other obligations of Lessee under this Lease, including but not limited to the obligation to pay Percentage Rent, shall remain in full force and effect.

6.6 **Waiver of Code of Civil Procedure Section 1265.130.** Each party waives the provisions of Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate this Lease in the event of a Partial Taking of the Premises.

6.7 **Payment of Award.** Awards and other payments on account of a taking, less costs, fees and expenses incurred in the collection thereof ("**Net Awards and Payments**"), shall be applied as follows:

6.7.1 **Partial Taking Without Termination.** Net Awards and Payments received on account of a taking (other than a total taking or a Partial Taking which results in termination hereof or a taking for temporary use) in excess of Ten Million Dollars (\$10,000,000.00) (as adjusted to reflect any increase in the Consumer Price Index during the period from the Effective Date through the date of the taking) shall be held by the Encumbrance Holder, if required, and shall be paid out to Lessee or Lessee's designee(s), in progress payments, to pay the cost of restoration of the Premises so that the same will be in good repair for the Permitted Uses. Net Awards and Payments that are less than or equal to the foregoing threshold shall (subject to the requirements of the Encumbrance Holder) be payable to Lessee and used to pay such restoration costs. The balance, if any, subject to the requirements of the Encumbrance Holder, shall be apportioned between the Lessor and Lessee based on their respective interests pursuant to separate claims.

6.7.1.1 Notwithstanding the foregoing, if Lessor is the condemning authority and the taking pertains only to Lessee's interest, then Lessee shall be entitled to the entire amount of the Net Awards and Payments.

In case of a taking other than a total taking or a taking for temporary use, Lessee shall furnish to Lessor reasonable evidence of the total cost of the restoration required by Section 6.4.

6.7.2 **Taking For Temporary Use.** Net Awards and Payments received on account of a taking for temporary use shall be paid to Lessee; provided, however, that if any portion of any such award or payment is paid by the Condemnor by reason of any damage to or destruction of the Improvements, such portion shall be held and applied as provided in the first sentence of Section 6.7.1, above. There shall not be any reduction in rent for the taking of a temporary use such as a temporary construction easement or the temporary taking of a leasehold interest by the Condemnor.

6.7.3 **Total Taking and Partial Taking with Termination.** Net Awards and Payments received on account of a total taking or a Partial Taking which results in the termination of this Lease shall be apportioned between the Lessor and Lessee based on their respective interest pursuant to separate claims.

7. RIGHT OF FIRST OFFER.

In the event Lessor elects to sell the fee interest in the Premises and provided Lessee is not in default of the Lease beyond any applicable notice and cure period, then prior to offering the Premises to a third party, Lessor shall provide written notice to Lessee of its intention to sell the fee interest in the Premises ("**ROFO Notice**"). Within sixty (60) days following delivery of the ROFO Notice (the "**ROFO Response Period**"), Lessee shall have the right to offer to purchase the fee interest in the Premises upon the terms and conditions proposed by Lessee in a purchase and sale agreement presented to Lessor ("**Lessee Purchase Offer**"). Within sixty (60) days following delivery of the Lessee Purchase Offer ("**Purchase Offer Response Period**"), Lessor shall elect whether to sell the fee interest in the Premises to Lessee pursuant to the Lessee Purchase Offer. If Lessor elects to proceed with the sale, the parties shall proceed to consummate the sale of the fee interest in the Premises upon the terms and conditions of the Lessee Purchase Offer and such other terms that are standard at that time for such a transaction. If Lessor fails to timely accept the Lessee Purchase Offer within the Purchase Offer Response Period, or Lessee fails to purchase the Premises pursuant to the Lessee Purchase Offer as accepted by Lessor, then Lessor shall be free to sell the fee interest in the Premises to any party upon terms and conditions set forth in the Lessee Purchase Offer, provided that the purchase price for the Premises may be no less than one hundred percent (100%) of the price offered by Lessee, or terms more favorable to Lessor, provided that such transaction is consummated within six (6) months after expiration of the Purchase Offer Response Period, but not otherwise. Lessee's rights under this provision are personal to Lessee and shall apply to any proposed sale of the fee interest in the Premises. Notwithstanding the foregoing, this Section 7 shall be of no force and effect if such sale or right of first offer is prohibited by applicable law.

8. INDEMNITY.

Except to the extent caused by the negligence or willful misconduct of any such Indemnatee, Lessee shall at all times defend, indemnify, protect, and save harmless Lessor, its affiliated entities, and each of their respective members, partners, directors, officers, agents, counsel, and employees (only to the extent acting in such capacity) (collectively, "**Indemnitees**") from any and all third party claims, demands, investigations, costs, proceedings, actions, suits, judgments, awards, fines, liens, damage, losses, expenses or liability, charge or cost of any kind or character including expenses and reasonable attorneys' fees incurred in defending against the same by an attorney selected by Lessee and reasonably satisfactory to Lessor (including a joint defense), (collectively, "**Claims**") arising out of or in connection with the death of or injury to persons or damage to property to the extent that such arises from, relates to or is caused (directly or indirectly) by (a) the operation, maintenance, use, or occupation of the Premises by Lessee or its agents, officers, employees, licensees, concessionaires, permittees, Tenants or their respective invitees, (b) the acts, omissions, or negligence of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Tenants on or about the Premises, or (c) the failure of Lessee to observe and abide by any of the terms or conditions of this Lease. On notice from Lessor, Lessee shall, at Lessee's sole cost and expense and by counsel selected by Lessee and reasonably satisfactory to Lessor, defend (which may include a joint defense) any action or proceeding brought against Lessor or any Indemnatee by reason of any such Claims. The obligation of Lessee to so relieve, indemnify, protect, and save harmless Lessor and each of its officers, agents, directors, consultants, counsel, and employees, shall continue during any periods of occupancy or

of holding over by Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Tenants, beyond the expiration of the Term or other termination of this Lease. The obligations of Lessee under this Section 8 shall not apply to the Claims arising from any Hazardous Materials that (x) are caused by the Lessor or its agents, employees or contractors, (y) that migrate upon or under the Premises from neighboring properties, or (z) existed in, on, under, or about the Premises prior to the date of this Lease.

9. INSURANCE.

9.1 **Lessee's Insurance for Operations.** Without limiting Lessee's indemnification of Lessor, during the Term of this Lease, Lessee shall provide and maintain the following insurance issued by companies authorized to transact business in the State of California by the Insurance Commissioner and having a "general policyholders rating" of at least A-VII (or such higher rating as may be required by an Encumbrance Holder) as set forth in the most current issue of "A.M. Best's Key Rating Guide" or an equivalent rating from another industry-accepted rating agency.

9.1.1 General Liability insurance (written on ISO policy form CG 00 01 or its equivalent) and endorsed to name Lessor as an additional insured, with limits of not less than the following (which may be satisfied by a combination of primary and excess coverage):

General Aggregate:	\$2,000,000.00
Products/Completed Operations Aggregate:	\$2,000,000.00
Personal and Advertising Injury:	\$1,000,000.00
Each Occurrence:	\$1,000,000.00

9.1.2 Automobile Liability insurance (written on ISO form CA 00 01 or its equivalent) with a limit of liability of not less than One Million Dollars (\$1,000,000.00) of Primary Coverage for each accident and providing coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto."

9.1.3 Workers Compensation and Employers' Liability insurance providing workers compensation benefits, as required by the Labor Code of the State of California and for which Lessee is responsible, and including Employers' Liability coverage with limits of not less than the following:

Each Accident:	\$1,000,000.00
Disease - policy limit:	\$1,000,000.00
Disease - each employee:	\$1,000,000.00

9.1.4 Commercial Property insurance covering damage to the Premises, including improvements and betterments, from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30), excluding earthquake (unless Lessee elects to maintain such coverage), and including Ordinance or Law Coverage, written for the full replacement value of the Improvements, adjusted annually, with no co-insurance endorsement and with a commercially reasonable deductible, and also including business interruption, including loss of rent equal to twenty four (24) months of Rent, with proceeds from the business interruption insurance payable to Lessee and

Lessor (in trust) in proportion to the payments to Lessor and to Lessee that would have been earned during the period to which the proceeds relate subject to the requirements of an Encumbrance Holder, who shall also be a loss-payee on the property insurance.

Notwithstanding the foregoing, during any period during which no Improvements exist on the Premises or all of the existing Improvements are being demolished in connection with the Construction Work, the obligation to provide insurance under this subsection 9.1.4 shall not be applicable so long as the insurance coverage described in subsection 9.2.1 below is carried.

The coverage limits in subsections 9.1.1, 9.1.2, and 9.1.3 inclusive must be covered by excess liability coverage ("**Umbrella Coverage**") having a limit of not less than Twenty-Five Million Dollars (\$25,000,000.00) which policy shall be in "following form" and shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. Such umbrella liability policy or excess liability policy shall include coverage for additional insureds. Lessee's obligation to carry the insurance provided for in this Section may be satisfied by inclusion of the Premises within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Lessee; provided, however, that Lessor and those persons or entities identified in the preceding paragraph shall be named as additional insureds and that the coverage afforded Lessor not be reduced or diminished by reason of the use of such blanket policies of insurance, and provided further that the requirements set forth herein are otherwise satisfied.

9.2 **Lessee's Insurance During Construction.** For the Construction Work and any Major Alterations on the Premises, Lessee or Lessee's contractor or subcontractors will provide the following insurance:

9.2.1 **Builder's Risk.** Builder's Risk Course of Construction to insure against damage from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30) naming Lessee as first named insured and contractors and subcontractors as insureds. The Lessor and any Encumbrance Holder shall be named as Loss Payees. This insurance shall be endorsed to include ordinance or law coverage, coverage for temporary offsite storage, debris removal, pollutant cleanup and removal, testing, preservation of property, excavation costs, landscaping, shrubs and plants and full collapse coverage during construction (without restricting collapse coverage to specified perils). This insurance shall be written on a completed-value basis and cover the entire value of the construction project, including Lessee furnished materials and equipment, against loss or damage until completion and acceptance by Lessee.

9.2.2 **General Liability.** Such insurance shall be written on ISO policy form CG 20 10 1185 or its equivalent with limits satisfying the requirements of Section 9.1.1. The products/completed operations coverage shall continue to be maintained for the following periods: (a) in the case of the Construction Work, three (3) years after the date the Construction Work is completed and accepted by the Lessee, or (b) in the case of Major Alterations after the completion of the Construction Work, such period after the date such Major Alterations are completed and accepted by Lessee, but not to exceed three (3) years after such completion and acceptance.

9.2.3 **Automobile Liability.** Such coverage shall be written on ISO policy form CA 00 01 or its equivalent with a limit of liability as reasonably required by the Lessor for the Alterations. Such insurance shall include coverage for all "owned," "hired" and "non-owned" automobiles, or coverage for "any auto."

9.2.4 **Professional Liability.** Such insurance, as applicable during the course of construction, shall cover liability arising from any error, omission, negligent or wrongful act of the contractor and/or licensed professional (*i.e.*, architects, engineers, surveyors, etc.). The limits of the coverage required under this subsection 9.2.4 shall be (a) One Million Dollars (\$1,000,000.00) with respect to the prime architect for the Construction Work (or such lesser amount as required by Lessor for the prime architect in connection with any subsequent Major Alterations), and (b) Two Million Dollars (\$2,000,000.00) with respect to each other contractor, subcontractor, architect, engineer, surveyor or other licensed professional rendering services in connection with the design or construction of the Construction Work or subsequent Major Alterations with a contract in excess of Two Million Dollars (\$2,000,000) (as such sum is increased based on the increase in CPI from the Effective Date until the applicable date), provided that Lessor shall have the discretion to reduce the coverage limits under this clause (b) if appropriate in the judgment of Lessor based on the nature and scope of the services being provided.

9.3 **Provisions Pertaining to Property Insurance.** The insurance coverage required in Sections 9.1.4 and 9.2.1 shall name Lessee, Lessor (in trust) and any Encumbrance Holder as loss payee. Subject to Section 12.8, upon the occurrence of any loss, the proceeds of property and builder's risk insurance shall be held by Lessor if no Encumbrance Holder exists (in which case, such funds shall be held and disbursed by the Encumbrance Holder) in trust for the named insureds as their interests appear, and shall be disbursed by Lessor on a monthly or more frequent basis to pay for work completed in accordance with then-prevailing industry custom and practice; provided, however, that if the insurance proceeds received with respect to a loss are less than Ten Million Dollars (\$10,000,000.00) (as adjusted to reflect any increase in the Consumer Price Index during the period from the Effective Date through the date of the loss), subject to Section 12.8, Lessee shall have the right to adjust, receive and use such proceeds to pay the renovation and repair of Improvements. In the event of a loss, Lessee shall be obligated to rebuild or replace the destroyed or damaged buildings, structures, equipment, and Improvements, in accordance with the procedures set forth hereinabove for the initial construction (with such alterations as Lessee may desire to make in accordance with Section 5.3), except as otherwise provided in Article 10 hereof; provided, however, that if the uninsured loss exceeds Four Million Dollars (\$4,000,000) (as adjusted to reflect any increase in the Consumer Price Index during the period from the Effective Date through the date of the loss), then Lessee shall have the right to (a) reduce the size of the Project (and receive a corresponding, proportionate reduction of the Annual Minimum Rent based on the reduced number of Units), (b) make the necessary repairs to bring the Premises into compliance with the Maintenance Standard and continue operation of the Project, subject to this Lease, or (c) terminate this Lease (subject to complying with the surrender provisions). Subject to Section 12.8, any surplus or proceeds after said rebuilding or replacement shall be distributed to Lessee.

9.4 **General Insurance Requirements.** Subject to the immediately following grammatical paragraph, a duplicate policy or policies (or certificates of insurance) evidencing the insurance coverage required under this Article 9 shall be filed with Lessor no later than the

Effective Date, provided that the evidence of the insurance coverage required under Section 9.1.5 shall be required to be delivered by Lessee prior to the commencement of the Construction Work or any Major Alterations. All certificates of insurance shall (a) specifically identify the Lease; (b) clearly evidence all coverages required under the Lease; (c) identify any deductibles or self-insured retentions exceeding One Hundred Fifty Thousand Dollars (\$150,000) (as adjusted to reflect any increase in the Consumer Price Index during the period from the Effective Date through the current date) or such other commercially reasonable amount as approved by the Lessor; and (d) evidence all other requirements under this Article 9. The policy or policies of insurance shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to Lessor or ten (10) business days in case of cancellation for failure to pay the premium to the extent such notice is generally available in the insurance industry. Prior to the expiration of such policy, a certificate showing that such insurance coverage has been renewed shall be obtained by Lessee and filed with Lessor.

Any insurance coverage may be issued in the form of a blanket policy insuring other properties, if such coverage provides the same protection as required under this Article 9 as if the insurance had been procured on an individual property basis.

9.5 **Additional Required Provisions.** Lessee's insurance policies required by this Article 9 shall be for a term of not less than one year and shall additionally provide:

(a) that Lessor shall be named as additional insureds under any liability insurance policy or policies;

(b) that the amount of any losses to the extent property insurance proceeds are available, shall be payable to additional insureds (but giving priority to any existing Encumbrance Holder) notwithstanding any act, omission or negligence of Lessee which might otherwise result in forfeiture of such insurance;

(c) in any property insurance policy, a waiver of all right of subrogation against Lessor and its partners, officers, agents, employees and volunteers with respect to losses payable under such policies;

(d) in any general liability, automobile, Umbrella Coverage, worker's compensation, or property insurance policy, that such policies shall not be invalidated should the insured waive, prior to a loss, any or all right of recovery against any party for losses covered by such policies;

(e) to the extent of the indemnification obligations of Lessee in favor of any additional insureds, the commercial general liability insurance policies shall provide coverage on a primary and non-contributory basis with respect to such additional insureds, regardless of any other insurance or self-insurance that such additional insureds may elect to purchase or maintain;

(f) that losses, if any, shall be adjusted with and payable to Lessee and to Encumbrance Holders, if any, pursuant to a standard mortgagee clause;

(g) that such policies shall not be suspended, voided, canceled, or reduced in coverage or in limits below the amounts required under this Lease without at least thirty (30) days

prior written notice to Lessor and all Encumbrance Holders or ten (10) business days in case of cancellation for failure to pay the premium to the extent such notice is generally available in the insurance industry;

(h) that the commercial general liability insurance shall apply separately to each insured against whom a claim is made, except with respect to the overall limits of said insurer's liability; and

(i) that the property and commercial general liability insurance policies shall contain no special limitations on the scope of protection afforded to the additional insureds, and no failure to comply with the reporting provisions of such policies shall affect the coverage afforded to such additional insureds.

9.6 **Failure to Procure Insurance.** If Lessee fails to procure or renew the herein required insurance and does not cure such failure within five (5) business days after written notice from Lessor, in addition to the other rights and remedies provided hereunder, Lessor may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith. All monies so paid by Lessor shall be repaid by Lessee, with interest thereon at the Applicable Rate, to Lessor within thirty (30) days after Lessee's receipt of written demand therefor. If any of the insurance provided for in this Lease should, after diligent effort by Lessee to obtain, be unobtainable on commercially reasonable terms through no act or omission on the part of Lessee, and if Lessee shall in such case obtain the maximum insurance obtainable and promptly give notice to Lessor of the extent of Lessee's inability to obtain any insurance required to be maintained hereunder, then the failure of Lessee to procure and maintain such insurance as is unobtainable on commercially reasonable terms as aforesaid shall be excused, but only for so long as such insurance remains unobtainable on commercially reasonable terms.

9.7 **Adjustment to Amount of Liability Coverage and Deductible.** The amounts of liability insurance required under Section 9.1.1, 9.1.2, and 9.1.3 and the deductible under the property insurance required under Section 9.1.4 shall be subject to adjustment as of each fifth (5th) anniversary of the commencement of the Full Rent Commencement Period (each, an "**Insurance Modification Date**") to reflect any increase in the Consumer Price Index during the period from the last Insurance Modification Date to the extent such increased coverage is available at commercially reasonable rates.

9.8 **Notification of Incidents, Claims or Suits.** Lessee shall notify Lessor of any accident or incident on or about the Premises which involves injury or property damage over One Million Dollars (\$1,000,000.00) (as adjusted to reflect any increase in the Consumer Price Index during the period from the Effective Date through the current date) in the aggregate and pursuant to which a claim against Lessee and/or Lessor is made or threatened in writing. Such notification shall be made in writing within ten (10) business days after Lessee first becomes aware of the claim or threatened claim.

10. **MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION.**

10.1 **Lessee's Maintenance and Repair Obligations.** Lessee shall maintain the Premises, including paved or unpaved ground surfaces and Improvements thereon, in good, clean,

safe, and functional condition and comparable to the condition of similarly situated properties in Santa Barbara County (the "**Maintenance Standard**"). Without limiting the foregoing, at Lessee's sole cost and expense, but subject to the terms and conditions of this Lease, Lessee shall keep and maintain the Premises and all equipment, Improvements or physical structures of any kind which may exist or be erected, installed or made on the Premises in good and substantial repair and condition, including without limitation capital improvements and structural and roof repairs and replacement, and shall make all necessary repairs and alterations and replacements thereto, except as otherwise provided in this Article 10 and Section 2.3.

Lessee shall undertake such repairs, alterations or replacements in compliance with Applicable Laws, the Maintenance Standard and the terms and provisions of this Article 10. Lessee shall maintain all Improvements on the Premises in a safe, clean and sanitary condition, in compliance with all Applicable Laws.

10.2 **Maintenance Deficiencies.** If Lessor provides written notice to Lessee of a material deficiency or other material breach in the performance by Lessee of the maintenance and repair obligations of Lessee under Section 10.1 above, then Lessee shall promptly commence the cure thereof and shall complete such cure within the time period for such cure set forth in the Lessor's deficiency notice, which cure period shall not be less than sixty (60) days except if the deficiency pertains to a condition that is a material and immediate threat to health and safety or constitutes a material violation of Applicable Law, in which case Lessor shall have the right to immediately require Lessee to take all commercially reasonable steps to remedy or make safe the condition. If Lessee fails to cure any such deficiency within the cure period set forth above, then Lessor, shall be entitled, but shall not be obligated to, cure such deficiency on behalf of the Lessee following an additional written notice to Lessee of not less than thirty (30) days, and in such event the Lessee shall upon demand, reimburse Lessor for the Actual Cost thereof, together with interest on any such amounts, at the Applicable Rate. Notwithstanding the foregoing, if the nature of the deficiency is such that it is not capable of cure within the cure period specified in Lessor's notice (for example, as a result of permitting requirements or construction material procurement delays beyond the control of Lessee), then as long as during the specified cure period Lessee commences the cure of the deficiency and thereafter continues the prosecution of the completion of such cure in a manner and with such diligence that will effectuate the cure in as short a period as reasonably possible, then the cure period specified in Lessor's deficiency notice shall be extended for such additional time as necessary to complete the cure in as short a period as reasonably possible.

If a cited deficiency does not constitute a material violation of law, and if in the reasonable and good faith business judgment of Lessee the deficiency notice was erroneously issued by Lessor, then Lessee shall have the right to contest such deficiency notice by written notice to Lessor within ten (10) business days after the date the deficiency notice is received by Lessee. If Lessee files any such contest with Lessor, then the cure period for the deficiency notice and Lessor's entitlement to cure the deficiency as set forth in the immediately preceding paragraph, shall be tolled during the period between the date Lessor receives written notice of such contest and continuing until Lessor notifies Lessee in writing that Lessor denies Lessee's contest. If Lessor denies Lessee's contest, Lessee may elect to have the dispute resolved pursuant to Article 16 by written notice thereof to Lessor within five (5) business days after receipt of Lessor's denial, in which event the cure period shall be tolled pending resolution of the dispute.

10.3 **Option to Terminate for Uninsured Casualty.** In the event of any damage to or destruction of the Premises, or any Improvements located thereon, Lessee shall, subject to the provisions of Section 9.3 and except as otherwise expressly provided in this Section 10.3, promptly (taking into consideration the necessity of obtaining approvals and permits for such reconstruction) repair and/or restore such Improvements to their condition existing prior to the damage or destruction, with such alterations thereto as are permissible pursuant to Article 5. Except as otherwise expressly provided in Section 9.3 or this Section 10.3, such obligation to repair and restore is absolute, and is in no way dependent upon the existence or availability of insurance proceeds. Repair and restoration of any damage or destruction shall take place in accordance with the provisions of Article 5. Notwithstanding the foregoing, Lessee shall have the options set forth above in Section 9.3 if the Improvements on the Premises are Substantially Damaged (as defined below) and such damage or destruction: (i) occurs within the final fifteen (15) years of the Term, or (ii) resulted from a cause not required to be insured against by this Lease (an "**Uninsured Loss**"), and where all of the following occur:

10.3.1 No more than one hundred eighty (180) days following the Uninsured Loss, Lessee shall notify Lessor of its election to terminate this Lease; to be effective, this notice must include the written consent of any Encumbrance Holder to Lessee's election to exercise this option to terminate.

10.3.2 No more than one hundred and twenty (120) days following the giving of the notice required by subsection 10.3.1 or such longer time as may be reasonable under the circumstances, Lessee shall, at Lessee's expense: remove all debris, foundations and other rubble from the Premises and either restore to good working order or demolish any damaged Improvements.

10.3.3 No more than sixty (60) days following the completion of obligations described above in Section 10.3.2, Lessee shall deliver to Lessor a quitclaim deed to the Premises in recordable form, in form and content reasonably satisfactory to Lessor and/or with such other documentation as may be reasonably requested by Lessor or any title company on behalf of Lessor, terminating Lessee's interest in the Premises and reconveying such interest to Lessor free and clear of any and all Encumbrances and subleases.

10.3.4 "**Substantially Damaged**" means that the cost to repair the damaged Improvements exceeds Four Million Dollars (\$4,000,000) (as adjusted to reflect any increase in the Consumer Price Index during the period from the Effective Date through the date of the loss) for a fully insured loss, or Four Million Dollars (\$4,000,000) (as adjusted to reflect any increase in the Consumer Price Index during the period from the Effective Date through the date of the loss) for an Uninsured Loss.

10.4 **No Option to Terminate for Insured Casualty.** Except as provided in Section 10.3, Lessee shall have no option to terminate this Lease or otherwise be relieved of its obligation to restore the Improvements on the Premises where the damage or destruction results from a cause required to be insured against by this Lease.

10.5 **No Lessor Obligation to Make Repairs.** Lessor shall have no obligation whatsoever to make any repairs or replacements or to perform any maintenance on the Premises but may elect to do so in accordance with Section 10.2.

10.6 **Notice of Damage.** Lessee shall give prompt notice to Lessor of any material fire or material damage affecting the Premises from any cause whatsoever.

10.7 **Waiver of Civil Code Sections.** The parties' rights shall be governed by this Lease in the event of damage or destruction. The parties hereby waive the provisions of California Civil Code Section 1932 and any other provisions of law which provide for contrary or additional rights.

11. **ASSIGNMENT.**

11.1 **Residential Leases.** Lessor shall not have any right to approve or disapprove any of the terms and conditions of any residential subleases to Tenants ("**Sublease**"). To facilitate executing any Subleases, the parties agree that it is in their mutual interest to allow a Sublease not to refer to this Lease or the fact that it is a Sublease provided that (a) no Sublease shall be executed for a term, including options, of more than three (3) years, (b) each Sublease shall prohibit the Tenant from creating a nuisance or violating any applicable law, and (c) no term or condition of the Sublease shall violate or be in conflict with this Agreement.

11.2 **Approval of Assignments, Change of Ownership.** Except as specifically provided in this Article 11 or in Article 12, Lessee shall not, without the prior written consent of Lessor, which consent, subject to the provisions of Section 11.2.3, may not be unreasonably withheld or conditioned, either directly or indirectly give, assign, transfer, or grant control of this Lease or any interest, right or privilege therein, or license the use of all or substantially all of the Premises. Any Change of Ownership that is not an Excluded Transfer shall constitute an assignment of Lessee's interest under this Lease. Lessee shall provide Lessor with any information reasonably requested by Lessor in order to determine whether or not to grant approval of the matters provided herein requiring Lessor's consent. For purposes of this Section 11.2, Lessor and Lessee agree that it would not be unreasonable for Lessor to withhold its consent to these matters requiring Lessor's consent, for any of the following reasons, which are not exclusive: (i) the net worth and/or financial stability of the proposed assignee is materially less than the net worth and/or financial stability of the Lessee; (ii) the net worth and/or financial stability of the proposed assignee is inadequate to operate the Premises for the Permitted Uses in the manner required by this Lease and/or to meet all of Lessee's financial and other obligations under this Lease; (iii) the proposed assignee does not have the experience or qualifications to operate the Premises in a manner substantially equal to that conducted by the Lessee; or (iv) the proposed transferee has a character or reputation that is not consistent with the quality of the Premises or the Permitted Uses.

11.2.1 **Qualified Transferee.** Notwithstanding anything to the contrary in this Lease, Lessee may, without Lessor's consent, assign this Lease to an affiliate of Lessee, or after the CO Date, a Qualified Transferee. A "**Qualified Transferee**" means any person or entity (a) with a net worth in excess of Twenty Million Dollars (\$20,000,000) (as adjusted to reflect any increase in the Consumer Price Index during the period from the Effective Date through the date of the assignment or sublease), and (b) (i) who owns or manages, or has developed, at least three (3) residential apartment communities that are of comparable quality to or better than the quality

standard required hereunder for the Apartment Management Company, and (ii) who engages a Qualified Property Manager to manage the Premises.

11.2.2 **Involuntary Transfers Prohibited.** Except as otherwise specifically provided in this Lease, neither this Lease nor any of the Lessee's interest in this Lease (as opposed to ownership interests in Lessee itself) shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Lessee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Lessee, or by any process of law including proceedings under the Bankruptcy Act.

11.2.3 **Procedure.** Requests for approval of any proposed assignment shall be processed in accordance with the following procedures:

11.2.3.1 Prior to entering into any agreement requiring the approval of Lessor pursuant to Section 11.1 or 11.2, Lessee (or the entity seeking approval of such assignment) shall notify Lessor and deliver to Lessor all information relevant to the proposed assignment, including without limitation any draft assignment agreement or any other documents which set forth any proposed agreement regarding the Premises. Lessor shall evaluate the information provided to it and, within ten (10) business days after Lessee delivers the request, Lessor may request additional information as may be reasonably necessary to act on the request.

11.2.3.2 In completing its review of the proposal and granting or withholding its consent thereto, Lessor will not be bound by any deadline contained in any proposed assignment, escrow instructions or other agreements to which Lessor is not a party.

11.2.3.3 Lessee shall be required to reimburse Lessor for its Actual Costs incurred in connection with the proposed assignment, whether or not Lessor ultimately grants its approval to the proposed assignment (without duplication of any Administrative Charge payable under Section 4.6).

11.2.3.4 At the request of Lessee, Lessor shall agree to execute a subordination, nondisturbance and attornment agreement in commercially reasonable form.

11.2.3.5 Prior to granting its approval over any proposed assignment, Lessor shall be provided with an executed assignment and acceptance of assignment in form and content as reasonably approved by the Lessor.

11.3 **Terms Binding Upon Successors, Assigns and Sublessees.** Except as otherwise specifically provided for herein, each and all of the provisions, agreements, terms, covenants, and conditions herein contained to be performed, fulfilled, observed, and kept by Lessee hereunder shall be binding upon the heirs, executors, administrators, successors, and assigns of Lessee, and all rights, privileges and benefits arising under this Lease in favor of Lessee shall be available in favor of its heirs, executors, administrators, successors, and assigns. Notwithstanding the foregoing, no assignment or subletting by or through Lessee in violation of the provisions of this Lease shall vest any rights in any such assignee or sublessee.

11.4 **Release.** Upon an assignment of this Lease in accordance with the requirements of this Article 11 to an assignee that is not an "Affiliate" of Lessee, if such assignee assumes in

writing all obligations under this Lease accruing from and after the effective date of such assignment, the transferring Lessee shall be automatically released of any further liability with respect to this Lease, other than for (i) obligations that have accrued prior to the effective date of such assignment, and (ii) Lessee's indemnification obligations under this Lease with respect to matters occurring prior to the effective date of such assignment. For purposes hereof the term "**Affiliate**" of Lessee means any person or entity that directly or indirectly is in control of, is controlled by, or is under common control with Lessee and the term "control" means the direct or indirect power to direct or cause the direction of the management and policies of such person or entity whether by contract or otherwise.

12. ENCUMBRANCES.

12.1 Financing Events.

12.1.1 Definitions. For the purposes of this Lease, including without limitation the provisions of Sections 4.6 through 4.7 hereof: (i) a "**Financing Event**" shall mean any financing or refinancing consummated by Lessee or by the holders of partnership or membership interests or other direct or indirect ownership interests in Lessee (collectively, "**Ownership Interests**"), whether with private or institutional investors or lenders, where such financing or refinancing is an Encumbrance (as defined below); for purposes of Section 12.1.2 below and Sections 4.6 through 4.7 above, a "**Financing Event**" shall also include all of the foregoing actions involving the granting of a mortgage, deed of trust or other security interest in a sublease, and any modification, extension, renewal, restatement, or supplement of or to a Financing Event; and (ii) an "**Encumbrance**" shall mean any direct or indirect grant, pledge, assignment, transfer, mortgage, hypothecation, grant of control, grant of security interest, or other encumbrance, of or in all or any portion of (A) Lessee's interest under this Lease and the estate so created (including without limitation a direct or indirect assignment of Lessee's right to receive rents from subtenants) or (B) Ownership Interests if an absolute assignment from the holder of such Ownership Interests to the holder of the Encumbrance would have required Lessor's consent under this Lease, to a lender ("**Encumbrance Holder**") as security for a loan. The term "**Encumbrance Holder**" shall also be deemed to include any and all affiliates of such Encumbrance Holder which have succeeded by assignment or otherwise to any rights, interests or liabilities of the Encumbrance Holder with respect to the Encumbrance, or which have been designated by the Encumbrance Holder to exercise any rights or remedies under the Encumbrance or to take title to the leasehold estate under this Lease or to Ownership Interests, and such affiliates shall enjoy all of the rights and protections given to Encumbrance Holders under this Lease. The term "**Equity Encumbrance Holder**" shall mean an Encumbrance Holder holding an Encumbrance with respect to Ownership Interests.

12.1.2 Lessor Approval Not Required. Lessee may, without the prior written consent of Lessor, consummate one or more Financing Event(s); provided, however, that Lessee shall give written notice to Lessor within thirty (30) days following the consummation of each Financing Event. One (1) copy of any and all security devices or instruments as finally executed or recorded by the parties in connection with any approved Encumbrance shall be filed with Lessor not later than ten (10) business days after the effective date thereof.

12.1.3 Lease Amendments. Lessor agrees to make such reasonable amendments or modifications to this Lease as may be requested by an Encumbrance Holder, provided that in

the reasonable opinion of the Lessor there shall be no material adverse change in any substantive rights of the Lessor or obligations of Lessee. Without limitation of the preceding sentence, such matters may include recognition agreements and/or estoppel certificates and be requested by a provider of preferred equity for financing purposes (*i.e.*, preferred equity that has the same attributes as mezzanine debt). The preceding sentences will be in effect regardless of the fact that such Encumbrance Holder may make such request prior to the execution of the closing of the Financing Event, in such event such amendment will become effective as of the closing of the Financing Event.

12.2 **Consent Requirements In The Event of a Foreclosure Transfer.**

12.2.1 **Definitions.** As used herein, a "**Foreclosure Transfer**" shall mean any transfer of the entire leasehold estate under this Lease or of all of the Ownership Interests in Lessee pursuant to any judicial or nonjudicial foreclosure or other enforcement of remedies under or with respect to an Encumbrance, or by voluntary deed or other transfer in lieu thereof, including, without limitation, the appointment of a receiver or other similar exercise of an Encumbrance Holder's remedies, to a U.S. citizen or if the transferee is a corporation, limited liability company, partnership, trust or other legal entity, it is organized in the U.S. or if not, is qualified to do business in California and maintains an office or an agent in California for service of process:

12.2.2 A "**Foreclosure Transferee**" shall mean any transferee (including without limitation an Encumbrance Holder) which is a U.S. citizen or if the transferee is a corporation, limited liability company, partnership, trust or other legal entity, is organized in the U.S. or if not, is qualified to do business in California and maintains an office or an agent in California for service of process that acquires title to the entire leasehold estate under this Lease or to all of the Ownership Interests in Lessee pursuant to a Foreclosure Transfer. An "**Equity Foreclosure Transferee**" shall mean a Foreclosure Transferee whose acquired interest consists of all of the Ownership Interests in Lessee.

12.2.3 **Foreclosure Transfer.** The consent of Lessor shall not be required with respect to any Foreclosure Transfer.

12.2.4 **Subsequent Transfer By Encumbrance Holder.** For each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, with respect to a single subsequent transfer of this Lease or the Ownership Interests (as applicable) by such Encumbrance Holder to any third party, (i) Lessor's consent to such transfer shall not be required provided that (i) the transferee is a U.S. citizen, or if the transferee is a corporation, limited liability company, partnership, trust or other legal entity, the transferee is organized in the U.S. or if not, is qualified to do business in California and maintains an office or an agent in California for service of process, (ii) such transferee does not have an Undesirable Holder and (iii) such transferee (other than a transferee of Ownership Interests) shall expressly agree in writing to assume and to perform all of the obligations under this Lease first accruing following the effective date of such transfer, other than Excluded Defaults (as defined below). For clarification purposes, the right to a single transfer under this Section shall apply to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, so that there may be more than one "single transfer" under this Section.

12.3 **Effect of Foreclosure**. In the event of a Foreclosure Transfer, the Encumbrance Holder shall forthwith give notice to Lessor in writing of such transfer setting forth the name and address of the Foreclosure Transferee and the effective date of such transfer, together with a copy of the document by which such transfer was made.

12.3.1 Any Encumbrance Holder which is a commercial bank, savings bank, savings and loan institution, insurance company, pension fund, investment bank, opportunity fund, mortgage conduit, real estate investment trust, commercial finance lender, EB-5 lender or other similar financial institution which ordinarily engages in the business of making, holding or servicing commercial real estate loans, including any affiliate thereof (an "**Institutional Lender**"), shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform only the full obligations of Lessee under this Lease (other than Excluded Defaults as defined below) accruing during its period of ownership of the leasehold and until such time as an actual transfer is made. Upon a subsequent transfer of the leasehold in accordance with subsection 12.2.4 above, such Institutional Lender shall be automatically released of any further liability with respect to this Lease, other than for (i) rent payments, property tax payments, and other monetary obligations under specific terms of this Lease that accrue solely during such Institutional Lender's period of ownership of the leasehold, and (ii) Lessee's indemnification obligations under this Lease with respect to matters pertaining to or arising during such Institutional Lender's period of ownership of leasehold title.

12.3.2 Any other Foreclosure Transferee (*i.e.*, other than an Institutional Lender as provided in Section 12.3.1 above) shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease first accruing following the effective date of such transfer (other than any such pre-existing Event of Default that (i) is an incurable non-monetary default, or (ii) is a non-monetary default that can only be cured by a prior lessee (collectively, "**Excluded Defaults**"), subject to release of liability upon a subsequent transfer pursuant to Section 11.4 above.

12.3.3 Following any Foreclosure Transfer which is a transfer of the leasehold interest under this Lease, Lessor shall recognize the Foreclosure Transferee as the Lessee under the Lease and shall not disturb its use and enjoyment of the Premises, and the Foreclosure Transferee shall succeed to all rights of Lessee under this Lease as a direct lease between Lessor and such Foreclosure Transferee, provided that the Foreclosure Transferee shall not be obligated for Excluded Defaults. Pursuant to Section 12.3.7 below, following any Foreclosure Transfer which is a transfer of Ownership Interests, the foregoing rights under this Section 12.3.3 shall also inure to the benefit of the Lessee.

12.3.4 No Encumbrance Holder shall become liable for any of Lessee's obligations under this Lease unless and until and arising after, such Encumbrance Holder becomes a Foreclosure Transferee with respect to Lessee's leasehold interest under the Lease.

12.3.5 No Foreclosure Transfer, and no single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.4, shall in and of itself trigger (i) any acceleration of any financial obligation of Lessee under this Lease, or (ii) any termination right under this Lease. Any Foreclosure Transfer, and any single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection

12.2.4, shall be deemed to be excluded from the definition of "**Change of Ownership**" for all purposes of this Lease. For clarification purposes, the "single subsequent transfer" referred to above applies to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder (as more fully explained in Section 12.2.4), so that there may be more than one "single subsequent transfer" benefited by this Section.

12.3.6 In the event that an Institutional Lender becomes a Foreclosure Transferee, all obligations with respect to the Construction Work described in Section 5.1 above shall be tolled until such Institutional Lender completes a subsequent transfer of its foreclosed interest in the Lease or Ownership Interests, provided that such Institutional Lender is making commercially reasonable and diligent efforts to market and sell its foreclosed interest. Nothing in this Section 12.3.6 shall be construed as a limit or outside date on any cure periods provided to Encumbrance Holders under this Lease.

12.3.7 Following a Foreclosure Transfer with respect to all of the Ownership Interests in Lessee, (i) any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees in this Article 12 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease, and (ii) if the Foreclosure Transferee was also an Equity Encumbrance Holder, then any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees who are Encumbrance Holders in this Article 12 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease.

12.4 **No Subordination.** Lessor's rights in the Premises and this Lease, including without limitation Lessor's right to receive Annual Minimum Rent and Percentage Rent, shall not be subordinated to the rights of any Encumbrance Holder. An Encumbrance Holder shall have all of the rights set forth in the security instrument creating the Encumbrance, to the extent that such rights are consistent with the terms of this Lease and do not encumber Lessor's fee estate or interest in the Premises or any portion thereof (excluding, for the avoidance of doubt, any Improvements), including the right to commence an action against Lessee for the appointment of a receiver and to obtain possession of the Premises under and in accordance with the terms of said Encumbrance and this Lease.

12.5 **Intentionally Omitted.**

12.6 **Notice and Cure Rights of Encumbrance Holders.**

12.6.1 **Right to Cure.** Each Encumbrance Holder shall have the right, at any time during the term of its Encumbrance, and in accordance with the provisions of this Article 12, to do any act or thing required of Lessee in order to prevent termination of Lessee's rights hereunder, and all such acts or things so done hereunder shall be treated by Lessor the same as if performed by Lessee and, in such event, the Encumbrance Holder shall have the right to recover any costs relating thereto from Lessee pursuant to the terms of any applicable loan documents.

12.6.2 **Notice of Default.** Lessor shall not exercise any remedy available to it upon the occurrence of an Event of Default (other than exercising Lessor's self-help remedies pursuant to Section 13.5 in the case of emergency situations), and no such exercise shall be effective, unless it first shall have given written notice of such default to each and every then existing Encumbrance Holder which has notified Lessor in writing of its interest in this Lease and the addresses to which such notice should be delivered. Such notice shall be sent simultaneously with the notice or notices to Lessee. An Encumbrance Holder shall have the right and the power to cure the Event of Default specified in such notice in the manner prescribed herein and, in such event, the Encumbrance Holder shall have the right to recover any costs relating thereto from Lessee pursuant to the terms of any applicable loan documents. If such Event or Events of Default are so cured, this Lease shall remain in full force and effect.

12.6.3 **Manner of Curing Default.** Events of Default may be cured by an Encumbrance Holder in the following manner:

(a) If the Event of Default is in the payment of rental, taxes, insurance premiums, utility charges or any other sum of money, an Encumbrance Holder may pay the same, together with any Late Fee or interest payable thereon, to Lessor or other payee within thirty (30) days after the expiration of Lessee's 30-day cure period and Encumbrance Holder's receipt of the aforesaid notice of default and, in such event, the Encumbrance Holder shall have the right to recover any costs relating thereto from Lessee pursuant to the terms of any applicable loan documents. If, after such payment to Lessor, Lessee pays the same or any part thereof to Lessor, Lessor shall refund said payment (or portion thereof) to such Encumbrance Holder.

(b) If the Event of Default cannot be cured by the payment of money, but is otherwise curable by the Encumbrance Holder, the default may be cured by an Encumbrance Holder as follows:

(1) The Encumbrance Holder may cure the default within thirty (30) days after the end of Lessee's cure period as provided in Section 13.1 hereof (the "**initial cure period**"), provided, however, if the curing of such default reasonably requires activity over a longer period of time, the initial cure period shall be extended for such additional time as may be reasonably necessary to cure such default, so long as the Encumbrance Holder commences a cure within the initial cure period and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default. However, if possession of the Premises is required in order to cure the default, such additional time shall include the time needed to institute foreclosure proceedings and obtain possession of the Premises, provided such proceedings are pursued with diligence and continuity and, upon obtaining such possession, the Encumbrance Holder prosecutes the cure to completion with diligence and continuity.

(c) If the Event of Default is not capable of cure by an Encumbrance Holder, Lessor shall not exercise any remedy available to it (other than exercising Lessor's self-help remedies pursuant to Section 13.5 in the case of emergency situations) if, within the initial cure period, the Encumbrance Holder notifies Lessor that it will foreclose its Encumbrance, and thereafter the Encumbrance Holder diligently and continuously commences and prosecutes to completion foreclosure proceedings.

12.7 New Lease.

12.7.1 **Obligation to Enter New Lease.** In the event that this Lease is terminated by reasons of bankruptcy, assignment for the benefit of creditors, insolvency or any similar proceedings, operation of law, an Excluded Default or other event beyond the reasonable ability of an Encumbrance Holder to cure or remedy, Lessor shall, upon the written request of any Encumbrance Holder with respect to Lessee's entire leasehold estate under this Lease or all of the Ownership Interests in Lessee (according to the priority described below if there are multiple Encumbrance Holders), enter into a new lease (which shall be effective as of the date of termination of this Lease) with the Encumbrance Holder for the then remaining Term of this Lease on the same terms and conditions as shall then be contained in this Lease. In no event, however, shall the Encumbrance Holder be obligated to cure any Excluded Defaults. Lessor shall notify the most junior Encumbrance Holder of a termination described in this Section 12.7 within thirty (30) days after the occurrence of such termination, which notice shall state (i) that the Lease has terminated in accordance with Section 12.7 of this Lease, and (ii) that such Encumbrance Holder has ten (10) business days following receipt of such notice within which to exercise its right to a new lease under this Section 12.7, or else it will lose such right. An Encumbrance Holder's election shall be made by giving Lessor written notice of such election within ten (10) business days after such Encumbrance Holder has received the above-described written notice from the Lessor. Within a reasonable period after request therefor, Lessor shall execute and return to the Encumbrance Holder any and all documents reasonably necessary to secure or evidence the Encumbrance Holder's interest in the new lease or the Premises. From and after the effective date of the new lease, the Encumbrance Holder (or its affiliate) shall have the same rights to a single transfer that are provided in subsection 12.2.4 above, and shall enjoy all of the other rights and protections that are provided to a Foreclosure Transferee in this Article 12. Any other subsequent transfer or assignment of such new lease shall be subject to all of the requirements of Article 11 of this Lease. If there are multiple Encumbrance Holders, this right shall inure to the most junior Encumbrance Holder in order of priority; provided, however, if such junior Encumbrance Holder shall accept the new lease, the priority of each of the more senior Encumbrance Holders shall be restored in accordance with all terms and conditions of such Encumbrances(s). If a junior Encumbrance Holder does not elect to accept the new lease within ten (10) business days of receipt of notice from Lessor, the right to enter into a new lease shall be provided to the next most junior Encumbrance Holder, under the terms and conditions described herein, until an Encumbrance Holder either elects to accept a new lease, or no Encumbrance Holder so elects.

12.7.2 **Priority of New Lease.** The new lease made pursuant to this Section 12.7 shall be prior to any mortgage, deed of trust or other similar encumbrance upon Lessor's fee interest in the Premises, and any future fee mortgagee or other future holder of any mortgage, deed of trust or other similar encumbrance on the fee interest in the Premises is hereby given notice of the provisions hereof.

12.8 **Holding of Funds.** Any Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee that is an Institutional Lender shall have the right to hold and control the disbursement of any insurance or condemnation proceeds to which Lessee is entitled to hold and control under this Lease and that are required by the terms of this Lease to be applied to restoration of the improvements on the Premises. Notwithstanding the foregoing or any other provision in this Lease to the contrary, the application

of insurance proceeds and condemnation proceeds allocable to Lessee shall be governed by the terms of the Encumbrance.

12.9 **Participation in Certain Proceedings and Decisions.** Any Encumbrance Holder shall have the right to intervene and become a party in any arbitration, litigation, condemnation or other proceeding affecting this Lease.

12.10 **Fee Mortgages and Encumbrances; Lessor's Right to Sell or Assign Rents.** Nothing contained in this Lease shall limit Lessor's right to mortgage from time to time its interest in the Premises ("**Leased Fee Mortgage**") and such mortgage shall be subject to and subordinate to this Lease and all amendments thereto and shall attach only to Lessor's fee interest in the Premises. Any Leased Fee Mortgage by Lessor shall not give or be deemed to give any mortgagee of Lessor's interest in the Property any greater rights than Lessor has under this Lease. Lessee agrees to reasonably cooperate with Lessor with respect to any Leased Fee Mortgage and to provide information and access to the Premises for the purpose of inspection as may be reasonably requested by any mortgagee or proposed mortgagee of Lessor's interest in the Property. The holder of any Leased Fee Mortgage shall provide Lessee with a recognition and non-disturbance agreement in a commercially reasonable form. Nothing contained in this Lease shall be deemed in any way to limit, restrict or otherwise affect Lessor's absolute right at any time or times to convey its interest in the Premises, subject to this Lease, or to assign its interest in this Lease, or to assign from time to time the whole or any portion of the rent or other sums and charges at any time paid or payable hereunder by Lessee to Lessor, to a transferee designated by Lessor in a notice to Lessee, and in any such case, Lessee shall pay the rent and the other sums and charges payable by Lessee to Lessor, or the portion thereof so assigned subject to the terms of this Lease, to Lessor's said designee at the address mentioned in any such notice; provided, however, that any such conveyance or assignment shall require the grantee or assignee to assume the obligations of Lessor under this Lease and shall not give the grantee or assignee any greater rights than Lessor has under this Lease. If, in the case of any assignment or conveyance of Lessor's entire reversionary interest in the Premises, the grantee or assignee shall assume the obligations of Lessor under this Lease, then Lessor shall be released from all liabilities and obligations under this Lease accruing after such conveyance or assignment.

13. **DEFAULT.**

13.1 **Events of Default.** The following are deemed to be "Events of Default" hereunder:

13.1.1 **Monetary Defaults.** The failure of Lessee to pay the rentals due, or make any other monetary payments required under this Lease, within thirty (30) days after written notice to Lessee that said payments are past due (a "**Monetary Default**"). Lessee may cure such nonpayment by paying the amount overdue, with interest thereon and the applicable Late Fee, if any, within such thirty (30) day period.

13.1.2 **Maintenance of Reserve Fund.** The failure of Lessee to maintain and/or replenish the Reserve Fund required pursuant to Section 5.11 of this Lease if not cured within thirty (30) days after written notice of such failure.

13.1.3 **Failure to Perform Other Obligations.** The failure of Lessee to keep, perform, and observe any and all other promises, covenants, conditions and agreements set forth in this Lease, including without limitation the obligation to maintain adequate accounting and financial records, within sixty (60) days after written notice of Lessee's failure to perform from Lessor; provided, however, that where Lessee's performance of such covenant, condition or agreement is not reasonably susceptible of completion within such sixty (60) day period and Lessee has in good faith commenced and is continuing to perform the acts necessary to perform such covenant, condition or agreement within such sixty (60) day period, Lessor will not exercise any remedy available to it hereunder for so long as Lessee uses reasonable due diligence in continuing to pursue to completion the performance such covenant, condition or agreement and so completes performance within a reasonable time.

13.1.4 **Nonuse of Premises.** The abandonment, vacation, or discontinuance of use of the Premises, or any substantial portion thereof, for a period of sixty (60) days, except when prevented by Force Majeure or when temporarily closed for renovations or repairs required or permitted to be made under this Lease; provided, however, the termination of operations in a portion of the Premises by a sublessee shall not constitute an Event of Default under this Section 13.1.4.

13.2 **Limitation on Events of Default.** Lessee shall not be considered in default as to any provision of this Lease when such default is the result of or pursuant to, any process, order, or decree of any court or regulatory body of competent jurisdiction, or any other circumstances which are physically impossible to cure provided Lessee uses due diligence in pursuing whatever is required to obtain release from or reversal of such process, order, or decree or is attempting to remedy such other circumstances preventing its performance.

13.3 **Remedies.** Upon the occurrence of an Event of Default beyond any applicable cure period, and subject to the rights of any Encumbrance Holder to cure such Event of Default as provided in Section 12.6 hereof, Lessor shall have, in addition to any other remedies in law or equity, the following remedies which are cumulative:

13.3.1 **Terminate Lease.** In the case of a Monetary Default or a default under Sections 3.1 (as to the Permitted Use); 3.2.2.1; 3.2.2.6; 8; 9.1.1 through 9.1.4; 9.2; 9.3; 9.4; 11.2

(and its subsections); or 12.2.4 (a "**Terminable Default**"), that is not cured within thirty (30) days after Lessor delivers written notice thereof to Lessee and any Encumbrance Holder, Lessor may terminate this Lease upon thirty (30) days' notice by giving Lessee and an Encumbrance Holder additional written notice of termination (which notice shall be deemed rescinded if the applicable default is cured within such period; however, for non-Monetary Defaults that cannot reasonably be cured within such 30-day period, termination shall not be effective if, within such 30-day period, Lessee (or any Encumbrance Holder) acknowledges such default, commences a cure, and diligently prosecutes such cure to completion). Lessor may not terminate this Lease for any other Event of Default. On the giving of the notice, but subject to the rights of any Encumbrance Holder expressly set forth in this Lease, all of Lessee's rights in the Premises and in the Improvements shall terminate. Promptly after notice of termination, Lessee shall surrender and vacate the Premises and all Improvements in broom-clean condition, and Lessor may re-enter and take possession of the Premises and all remaining Improvements and, except as otherwise specifically provided in this Lease, eject all parties in possession or eject some and not others, or eject none. Termination under this subsection shall not relieve Lessee from the payment of any sum then due to Lessor or from any claim for damages against Lessee as set forth in subsection 13.4.3. Lessor agrees to use reasonable efforts to mitigate damages, and shall permit such access to the Premises as is reasonably necessary to permit Lessee to comply with its removal obligations. Notwithstanding the foregoing, if, within ten (10) business days of Lessee's receipt of the default notice, Lessee gives Lessor written notice that Lessee disputes the existence of the default and requests a resolution of the dispute pursuant to Section 16 below, then Lessor may not exercise its right to terminate this Lease on account of such default until the expiration of the applicable cure period measured as if such cure period commenced upon the earlier of (a) the date of the determination by the arbitrator that such default exists or (b) the failure by Lessee to diligently and continuously pursue such arbitration proceeding.

13.3.2 **Keep Lease in Effect.** Without terminating this Lease, so long as Lessor does not deprive Lessee of legal possession of the Premises and allows Lessee to assign or sublet subject only to Lessor's rights set forth herein, Lessor may continue this Lease in effect and bring suit from time to time for rent and other sums due, and for Lessee's breach of other covenants and agreements herein. No act by or on behalf of Lessor under this provision shall constitute a termination of this Lease unless Lessor gives Lessee written notice of termination. Lessor has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). It is the intention of the parties to incorporate the provisions of California Civil Code Section 1951.4 by means of this provision.

13.3.3 **Termination Following Continuance.** Even though it may have kept this Lease in effect pursuant to subsection 13.3.2, thereafter, in the case of a Terminable Default only, Lessor may elect to terminate this Lease and all of Lessee's rights in or to the Premises (subject to the notice requirements of Section 13.3.1) unless prior to such termination Lessee (or any Encumbrance Holder) shall have cured the Event of Default or shall have satisfied the provisions of Sections 13.3.1 or 13.2, hereof. Lessor agrees to use reasonable efforts to mitigate damages.

13.3.4 **Lessee's Documents and Materials.** In the event this Lease is terminated prior to expiration of the fifth (5th) Operating Year, Lessee shall provide Lessor with copies of all reports, studies, surveys, contracts, agreements, plans and specifications for the project

prepared by or for Lessee in Lessee's possession or under Lessee's control, but excluding confidential proprietary materials and communications with Lessee's legal counsel (collectively, "**Lessee's Documents and Materials**"), provided that Lessee shall not be deemed to make any representation to Lessor regarding the accuracy, completeness, methodology, or current status of third party reports, nor shall Lessee (or its consultants) assume any liability with respect to any matter or information referred to or contained in Lessee's Documents and Materials, nor shall Lessor have any claim against Lessee or any consultant or contractor of Lessee arising out of the contents of Lessee's Documents and Materials. Upon Lessor's written request under such circumstances, Lessee shall quitclaim assign to Lessor all of Lessee's right, title and interest in and to Lessee's Documents and Materials.

13.4 **Damages**. Should Lessor elect to terminate this Lease under the provisions of the foregoing Section, Lessor shall be entitled to recover from Lessee as damages:

13.4.1 **Unpaid Rent**. The worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Lease;

13.4.2 **Post-Termination Rent**. The worth, at the time of the award, of the unpaid rent that would have been earned under this Lease after the date of termination of this Lease until the date Lessee surrenders possession of the Premises to Lessor; (i) the worth at the time of the award of any unpaid rent which had been earned at the time of such termination; plus (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after such termination until the time of award exceeds the amount of rental loss that Lessee proves could have been reasonably avoided by Lessor during such period; plus, (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; and plus (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom. As used in (i) and (ii) above, the "worth at the time of award" shall be computed by allowing interest at the lesser of six percent (6%) per annum or the maximum rate then allowable by law to be contracted for between the parties for such purpose. As used in (iii) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

13.4.3 **Other Amounts**. The amounts necessary to compensate Lessor for the sums and other obligations which under the terms of this Lease become due prior to, upon or as a result of the expiration of the Term or sooner termination of this Lease, including without limitation, those amounts of unpaid taxes, insurance premiums and utilities for the time preceding surrender of possession, the cost of removal of rubble or debris, attorneys' fees, court costs, and unpaid Administrative Charges.

13.5 **Others' Right to Cure Lessee's Default**. Lessor (and any Encumbrance Holder, as provided in the last sentence of this section), at any time after Lessee's failure to perform any covenant, condition or agreement contained herein beyond any applicable notice and cure period, may cure such failure at Lessee's cost and expense other than a Monetary Default.

14. ACCOUNTING.

14.1 **Maintenance of Records and Accounting Method.** In order to determine the amount of and provide for the payment of the Percentage Rent, Administrative Charge, and other sums due under this Lease, Lessee shall at all times during the Term of this Lease, and for thirty-six (36) months thereafter, keep, or cause to be kept, locally accessible, true, accurate, and complete records and double-entry books of account, which may be kept electronically, for the current and three (3) prior Accounting Years, such records to show all transactions relative to the conduct of operations. Such accounting records, when maintained in summary form, shall be supported by detail transactions conducted on or from the Premises separate and apart from those in connection with Lessee's (or sublessee's or licensee's, as appropriate) other business operations, if any. With respect to the calculation of Total Revenue and the preparation of the reports and maintenance of records required herein, Lessee shall keep the books and records in all material respects in accordance with the Uniform System.

14.2 **Cash Registers.** To the extent retail sales are conducted on the Premises, or other cash or credit sales of goods or services are conducted by the Lessee, all such sales shall be recorded by means of cash registers or computers which automatically issue a customer's receipt or certify the amount recorded in a sales slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape (or other equivalent security mechanism) located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record.

Lessee shall cause to be implemented property management and point of sale systems which can accurately verify all sales for audit purposes and customer review purposes.

Lessee's obligations set forth in this Section 14.2 include Lessee's obligation to make sure that Lessee keeps records sufficient to permit Lessor and Lessor's auditors to determine the proper levels of Percentage Rent, Administrative Charge, and other sums due under this Lease.

14.3 **Availability of Records for Inspector's Audit.** Books of account and records (including but not limited to the records described in Section 14.2) pertaining to Total Revenue and its components for the then current and three (3) prior Accounting Years as hereinabove required shall be kept or made accessible at the Premises or at another location within Santa Barbara County, and Lessor shall have the right at any reasonable times and on reasonable prior notice to examine and audit said books and records, without restriction, for the purpose of determining the accuracy thereof and of the monthly statements of Total Revenue derived from occupancy of the Premises and the compliance of Lessee with the terms of this Lease. Upon at least three (3) business days advance notice, Lessor and or its duly authorized representatives or agents may enter upon the Premises at any and all reasonable times during the Term of this Lease for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of Lessor. This Section 14.3 shall survive the expiration of the Term or other termination of this Lease for thirty-six (36) months after such expiration or termination.

14.4 **Cost of Audit.** In the event that, for any reason, Lessee does not make available its (or its licensee's) records and books of account pertaining to Total Revenue and its components, at the Premises or at a location within Santa Barbara County, Lessee agrees to pay the Actual Costs incurred by Lessor in conducting any audit at the location where said records and books of account are maintained. In the event that any audit discloses a discrepancy in Lessor's favor of greater than five percent (5%) of the revenue due Lessor for the period audited, then Lessee shall pay Lessor reasonable audit contract costs, together with the amount of any identified deficiency, with interest thereon. Notwithstanding the foregoing, if Lessee gives Lessor written notice that Lessee disputes the results of Lessor's audit within thirty (30) days following Lessee's receipt thereof, then Lessor and Lessee shall attempt to resolve the dispute, and pending the resolution of the dispute the foregoing adjustments and payment of costs with respect to the disputed amount shall be suspended. If Lessor and Lessee are unable to resolve the dispute within thirty (30) days following the date Lessee delivered its dispute notice to Lessor, the parties shall retain an independent certified public accountant to resolve the dispute, whose determination shall be conclusive. The actual, documented, and reasonable fees of such accountant, which shall not be determined on a contingency basis, shall be paid by Lessee if Lessor was underpaid by five percent (5%) or more of the revenue due Lessor for the period audited; otherwise, Lessor shall pay for the fees of such accountant.

14.5 **Accounting Year.** The term "**Accounting Year**" as used herein shall mean each calendar year during the Term unless Lessee is on a fiscal year in which case it shall mean Lessee's fiscal year.

14.6 **Intentionally Omitted.**

14.7 **Intentionally Omitted.**

14.8 **Inadequacy of Records.** In the event that Lessee fails to keep the records required by this Article 14, such failure shall be deemed a breach of this Lease by Lessee if such failure is not cured within the cure period set forth in Section 13.1.3. In addition to the other remedies available to Lessor, Lessor may prepare a calculation of the Percentage Rent payable by Lessee during the period in which the accounting records were inadequately maintained. Such calculation may be based on the past Total Revenue levels on or from the Premises, or any other method as reasonably determined by Lessor and shall utilize such methodology as Lessor deems reasonable. Within thirty (30) days after receipt of Lessor's determination of Percentage Rent due, if any, Lessee shall pay such Percentage Rent, together with the Late Fee and interest to the date of payment at the Applicable Rate as provided in Section 4.5, together with Lessor's Actual Cost in connection with the attempted audit of the inadequate records and the reconstruction and estimation of Total Revenue and the calculation of Percentage Rent due; provided, however, that if the Lessee disagrees with the Lessor's calculation of Percentage Rent, the matter shall be settled through arbitration in the manner set forth in Article 16 hereof.

15. **MISCELLANEOUS.**

15.1 **Quiet Enjoyment.** Lessee, upon performing its obligations hereunder, shall have the quiet and undisturbed possession of the Premises throughout the Term of this Lease, subject, however, to the terms and conditions of this Lease.

a tenancy from month-to-month only and shall not constitute a renewal or extension of the Term. During any such holdover period, the Minimum Monthly Rent and Percentage Rent rates in effect at the end of the Term shall be increased to one hundred fifty percent (150%) of such previously effective amounts. Such holdover shall otherwise be subject to the same terms, conditions, restrictions and provisions as herein contained. Such holding over shall include any time employed by Lessee to remove machines, appliances and other equipment during the time periods herein provided for such removal.

Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee, and Lessor expressly reserves the right to require Lessee to surrender possession of the Premises to Lessor as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Section 15.4 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Lessor provided at law or in equity. If Lessee fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Lessor accruing therefrom, Lessee shall protect, defend, indemnify and hold Lessor harmless from all losses, costs (including reasonable attorneys' fees), damages, claims and liabilities resulting from such failure, including, without limitation, any claims made by any succeeding Lessee arising from such failure to surrender.

15.5 Waiver of Conditions or Covenants. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms, and agreements of this Lease shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term, or agreement of this Lease, nor shall failure on the part of either party to require exact full and complete compliance with any of the covenants, conditions, terms, or agreements of this Lease be construed as in any manner changing the terms hereof or estopping that party from enforcing the full provisions hereof, nor shall the terms of this Lease be changed or altered in any manner whatsoever other than by written agreement of Lessor and Lessee. No delay, failure, or omission of Lessor to re-enter the Premises or of either party to exercise any right, power, privilege, or option, arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right. No notice to Lessee shall be required to restore or revive "time of the essence" after the waiver by Lessor of any default. Except as specifically provided in this Lease, no option, right, power, remedy, or privilege of either party shall be construed as being exhausted by the exercise thereof in one or more instances.

15.6 Remedies Cumulative. The rights, powers, options, and remedies given Lessor by this agreement shall be cumulative except as otherwise specifically provided for in this Lease.

15.7 Authorized Right of Entry. In any and all cases in which provision is made herein for termination of this Lease, or for exercise by Lessor of right of entry or re-entry upon the Premises in the case of an Event of Default, or in case of abandonment or vacation of the Premises by Lessee, Lessee hereby irrevocably authorizes Lessor to enter upon the Premises and remove any and all persons and property whatsoever situated upon the Premises, without breaching the peace, provided such entry is done in accordance with the requirements of applicable law, and place all or any portion of said property, except such property as may be forfeited to Lessor, in storage for the account of and at the expense of Lessee.

15.8 **Place of Payment and Filing.** All rent shall be paid to and all statements and reports herein required and other items deliverable to Lessor hereunder shall be filed with or delivered to Lessor. Checks, drafts, letters of credit and money orders shall be made payable to Lessor.

15.9 **Service of Written Notice or Process.** Any notice required to be sent under this Lease shall be in compliance with and subject to this Section 15.9. If Lessee is not a resident of the State of California, or is an association, company or partnership without a member or partner resident of said State, or is a foreign corporation, Lessee shall file with Lessor a designation of a natural person residing in Santa Barbara County or Los Angeles County, State of California, or a registered agent, which is authorized to accept service, giving his, her or its name, residence, and business address, as the agent of Lessee for the service of process in any court action between Lessee and Lessor, arising out of or based upon this Lease, and the delivery to such agent of written notice or a copy of any process in such action shall constitute a valid service upon Lessee.

If for any reason service of such process upon such agent is not possible, then any officer of Lessee may be personally served with such process outside of the State of California and such service shall constitute valid service upon Lessee; and it is further expressly agreed that Lessee is amenable to such process and submits to the jurisdiction of the court so acquired and waives any and all objection and protest thereto.

Written notice addressed to a party at the addresses below-described, or to such other address that a party may in writing file with the other party, shall be deemed sufficient if said notice is delivered personally, by facsimile transmission or, provided in all cases there is a return receipt requested (or other similar evidence of delivery by overnight delivery service) and postage or other delivery charges prepaid, by registered or certified mail, Federal Express or DHL, or such other services as Lessee and Lessor may mutually agree upon from time to time. Each notice shall be deemed received and the time period for which a response to any such notice must be given or any action taken with respect thereto (including cure of any prospective Event of Default) shall commence to run from the date of actual receipt of the notice by the addressee thereof in the case of personal delivery, facsimile transmission if before 5:00 p.m. on regular business days.

Copies of any written notice to Lessee shall also be simultaneously delivered to any Encumbrance Holder of which Lessor has been given written notice and an address for service. Notice given to Lessee as provided for herein shall be effective as to Lessee notwithstanding the failure to send a copy to such Encumbrance Holder, Major Sublessee or encumbrancer.

As of the date of execution hereof, the persons authorized to receive notice on behalf of Lessor and Lessee are as follows:

LESSOR:

SANTA BARBARA METROPOLITAN TRANSIT
DISTRICT
Attn: General Manager
550 Olive Street
Santa Barbara, CA 93101
Phone:
Fax:

With a Copies to: Mullen & Henzell L.L.P.
Attn: Graham M. Lyons
112 E. Victoria Street
Santa Barbara, CA 93101
Phone:
Fax:

LESSEE: Lessee
3990 Ruffin Road, Suite 100
San Diego, CA 92123
Attn: Rob Singh and Michael Cato

Phone: 858-614-7200
Fax:

Either party shall have the right to change its notice address by written notice to the other party of such change in accordance with the provisions of this Section 15.9.

15.10 **Interest**. In any situation where Lessor has advanced sums on behalf of Lessee pursuant to this Lease, such sums shall be due and payable within ten (10) business days after Lessee's receipt of written demand, together with interest at the Applicable Rate (unless another rate is specifically provided herein) from the date such sums were first advanced, until the time payment is received. In the event that Lessee repays sums advanced by Lessor on Lessee's behalf with interest in excess of the maximum rate permitted by Applicable Laws, Lessor shall either refund such excess payment or credit it against subsequent installments of Annual Minimum Rent and Percentage Rent.

15.11 **Captions**. The captions contained in this Lease are for informational purposes only and are not to be used to interpret or explain the particular provisions of this Lease.

15.12 **Attorneys' Fees**. In the event of any action, proceeding or arbitration arising out of or in connection with this Lease, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, and also including all fees, costs and expenses incurred in executing, perfecting, enforcing and collecting any judgment.

15.13 **Amendments**. This Lease may only be amended in writing executed by duly authorized officials of Lessee and Lessor. Notwithstanding the foregoing, a party shall have the power to execute such amendments to this Lease as are necessary to implement any arbitration judgment issued pursuant to this Lease. No amendment, other than one implemented through an arbitration judgment, shall be binding upon an Encumbrance Holder as to which Lessor has been notified in writing, unless the consent of such Encumbrance Holder is obtained with respect to such amendment.

15.14 **Time For Lessor Approvals.** Except where a different time period is specifically provided for in this Lease, whenever in this Lease the approval of Lessor is required, approval or disapproval shall be given within thirty (30) days after receipt of: (i) the written request for approval from Lessee and (ii) all documents reasonably requested by Lessor related to Lessee's request. If Lessor disapproves a matter that requires its approval under this Lease, then Lessor shall notify Lessee in writing of the reason or reasons for such disapproval concurrently with its disapproval.

15.15 **Estoppel Certificates.** Each party agrees to execute, within fifteen (15) business days after the receipt of a written request therefor from the other party, a certificate stating: (i) that this Lease is in full force and effect and is unmodified (or stating otherwise, if true); (ii) that, to the best knowledge of such party, the other party is not then in default under the terms of this Lease (or stating the grounds for default if such be the case); and (iii) if requested, the amount of the Reserve Fund, Annual Minimum Rent, and Percentage Rent, and dates to which rents and other charges have been paid in advance. Such statement shall be in a form that can be relied on by the requesting party and any prospective purchaser or encumbrancer of the Premises or the Improvements or both, or of Lessor's or Lessee's interest in this Lease. The failure of either party to execute, acknowledge and deliver the certified statement within the specified time shall constitute an acknowledgement by such party to all persons entitled to rely on such statement that this Lease is unmodified and in full force and effect and that the rent and other charges have been duly and fully paid to and including the respective dates immediately preceding the date of the notice of request and shall constitute a waiver with respect to all persons entitled to rely on the statement, of any defaults that may exist before the date of the notice.

15.16 **Indemnity Obligations.** Whenever in this Lease there is an obligation to indemnify, hold harmless and/or defend, irrespective of whether or not the obligation so specifies, it shall include the obligation to defend and pay reasonable attorney's fees, reasonable expert fees and court costs.

15.17 **Restrictions on Encumbrances.** Lessor covenants and agrees that Lessor shall not place or permit any mortgage or deed of trust, or other similar lien encumbering the Premises, which is senior to this Lease. Lessee covenants and agrees that Lessee shall not place, create or permit any mortgage or deed of trust, or other similar lien encumbering Lessor's fee interest in the Premises or Lessor's interest in this Lease.

15.18 **Survival of Provisions.** Whether or not specifically stated in this Lease, all of Lessee's obligations to defend, indemnifications, hold harmless agreements, obligations to pay Rent, and any and all other terms and provisions of this Lease that are for the benefit of Lessor shall survive the expiration or sooner termination of this Lease; provided, however, that except as otherwise provided in this Lease, such survival shall be limited to those obligations of Lessee that have either (a) accrued prior to the date of such expiration or sooner termination, or (b) are based on events, conduct, or occurrences that took place prior to the date of such expiration or sooner termination.

15.19 **No Partnership, Agency, or Other Relationship.** Nothing herein contained shall be interpreted as creating a partnership or agency relationship between Lessor and Lessee.

15.20 **No Merger.** It is the intent and purpose of the parties hereto that this Lease shall remain in full force and effect until duly terminated. Ownership by or for the same person of both the fee and leasehold interest in the Premises shall not effect the merger thereof without the prior written consent of any mortgagee of either of such estates to such merger. There shall be no merger of the leasehold interest with the fee estate in the Premises by reason of the fact that the leasehold interest may be held directly or indirectly by or for the account of any person who shall also hold directly or indirectly the fee estate, or any interest therein, nor shall there be any such merger by reason of the fact that all or any part of the leasehold interest may be conveyed or mortgaged to a mortgagee who shall also hold directly or indirectly the fee estate in the Premises or any interest of Lessor under this Lease.

16. **ARBITRATION.**

Except as otherwise provided by this Article 16, disputed matters which may be arbitrated pursuant to this Lease shall be settled by binding arbitration in accordance with the then existing provisions of the California Arbitration Act, which as of the date hereof is contained in Title 9 of Part III of the California Code of Civil Procedure, commencing with Section 1280.

(a) Either party (the "**Initiating Party**") may initiate the arbitration process by sending written notice ("**Request for Arbitration**") to the other party (the "**Responding Party**") requesting initiation of the arbitration process and setting forth a brief description of the dispute or disputes to be resolved and the contention(s) of the Initiating Party. Within ten (10) business days after service of the Request for Arbitration, the Responding Party shall file a "**Response**" setting forth the Responding Party's description of the dispute and the contention(s) of Responding Party. If Responding Party has any "**Additional Disputes**" they shall follow the format described for the Initiating Party. The Initiating Party shall respond within ten (10) business days after service of the Additional Disputes setting forth Initiating Party's description of the Additional Disputes and contentions regarding the Additional Disputes.

(b) Notwithstanding anything to the contrary which may now or hereafter be contained in the California Arbitration Act, the parties agree that the following provisions shall apply to any and all arbitration proceedings conducted pursuant to this Lease.

16.1 **Selection of Arbitrator.** The parties shall attempt to agree upon an arbitrator who shall decide the matter. If, for any reason, the parties are unable to agree upon the arbitrator within twenty (20) days of the date the Initiating Party serves a request for arbitration on the Responding Party, then at any time on or after such date either party may petition for the appointment of the arbitrator as provided in California Code of Civil Procedure Section 1281.6.

16.2 **Arbitrator.** The arbitrator shall be a retired judge of the California Superior Court, Court of Appeal or Supreme Court, or any United States District Court or Court of Appeals located within the State, who has agreed to resolve civil disputes. The arbitration shall be held in Santa Barbara County.

16.3 **Scope of Arbitration.** Lessor and Lessee affirm that the mutual objective of such arbitration is to resolve the dispute as expeditiously as possible. The arbitration process shall not apply or be used to determine issues other than (i) those presented to the arbitrator by the Initiating

Party provided those disputes are arbitrable disputes pursuant to this Lease, (ii) Additional Disputes presented to the arbitrator by the Responding Party, provided that any such Additional Disputes constitute arbitrable disputes pursuant to this Lease, and (iii) such related preliminary or procedural issues as are necessary to resolve (i) and/or (ii) above. The arbitrator shall render an award. Either party may, at its sole cost and expense, request a statement of decision explaining the arbitrator's reasoning which shall be in such detail as the arbitrator may determine. Unless otherwise expressly agreed by the parties in writing, the award shall be made by the arbitrator no later than the sooner of six (6) months after the date on which the arbitrator is selected by mutual agreement or court order, whichever is applicable, or five (5) months after the date of a denial of a petition to disqualify a potential arbitrator for cause. Lessor and Lessee hereby instruct the arbitrator to take any and all actions deemed reasonably necessary, appropriate or prudent to ensure the issuance of an award within such period. Notwithstanding the foregoing, failure to complete the arbitration process within such period shall not render such arbitration or any determination made therein void or voidable; however, at any time after the expiration of the foregoing five (5) or six (6) month periods, as applicable, either party may deliver written notice to the arbitrator and the other party either terminating the arbitration or declaring such party's intent to terminate the arbitration if the award is not issued within a specified number of days after delivery of such notice. If the arbitrator's award is not issued prior to the expiration of said specified period, the arbitration shall be terminated and the parties shall recommence arbitration proceedings pursuant to this Article 16.

16.4 **Immunity**. The parties hereto agree that the arbitrator shall have the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator pursuant to this Lease.

16.5 **Section 1282.2**. The provisions of Code of Civil Procedure § 1282.2 shall apply to the arbitration proceedings except to the extent they are inconsistent with the following:

(1) Unless the parties otherwise agree, the arbitrator shall appoint a time and place for the hearing and shall cause notice thereof to be served as provided in said § 1282.2 not less than ninety (90) days before the hearing, regardless of the aggregate amount in controversy.

(2) No later than sixty (60) days prior to the date set for the hearing (unless, upon a showing of good cause by either party, the arbitrator establishes a different period), in lieu of the exchange and inspection authorized by Code of Civil Procedure § 1282.2(a)(2)(A), (B) and (C), the parties shall simultaneously exchange the following documents by personal delivery to each other and to the arbitrator:

(a) a written Statement of Position, as further defined below, setting forth in detail that party's final position regarding the matter in dispute and specific numerical proposal for resolution of monetary disputes;

(b) a list of witnesses each party intends to call at the hearing, designating which witnesses will be called as expert witnesses and a summary of each witness's testimony;

(c) a list of the documents each intends to introduce at the hearing, together with complete and correct copies of all of such documents; and

(d) if the issue involves a valuation matter, a list of all Written Appraisal Evidence (as defined below) each intends to introduce at the hearing, together with complete and correct copies of all of such Written Appraisal Evidence.

(3) No later than twenty (20) days prior to the date set for the hearing, each party may file a reply to the other party's Statement of Position ("**Reply**"). The Reply shall contain the following information:

(a) a written statement, to be limited to that party's rebuttal to the matters set forth in the other party's Statement of Position;

(b) a list of witnesses each party intends to call at the hearing to rebut the evidence to be presented by the other party, designating which witnesses will be called as expert witnesses;

(c) a list of the documents each intends to introduce at the hearing to rebut the evidence to be presented by the other party, together with complete and correct copies of all of such documents (unless, upon a showing of good cause by either party, the arbitrator establishes a different deadline for delivering true and correct copies of such documents);

(d) if the issue involves a valuation matter, a list of all Written Appraisal Evidence, or written critiques of the other party's Written Appraisal Evidence if any, each intends to introduce at the hearing to rebut the evidence presented by the other party, together with complete and correct copies of all of such Written Appraisal Evidence (unless, upon a showing of good cause by either party, the arbitrator establishes a different deadline for delivering true and correct copies of such Written Appraisal Evidence); and

(e) Witnesses or documents to be used solely for impeachment of a witness need not be identified or produced.

(4) The arbitrator is not bound by the rules of evidence, but may not consider any evidence not presented at the hearing. The arbitrator may exclude evidence for any reason a court may exclude evidence or as provided in this Lease.

16.6 **Statements of Position.** Where the dispute involves rent to be charged, market values, insurance levels or other monetary amounts, the Statements of Position shall numerically set forth the existing minimum rent, percentage rent, market value, insurance level and/or other monetary amounts in dispute, the party's proposed new minimum rent, percentage rent, market value, insurance level and/or other monetary amounts, and shall additionally set forth the facts supporting such party's position.

16.7 **Written Appraisal Evidence.** Neither party may, at any time during the proceedings, introduce any written report which expresses an opinion regarding the fair market value of the Premises, or any portion thereof, ("**Written Appraisal Evidence**") unless such Written Appraisal Evidence substantially complies with the following standards: it shall describe the Premises; identify the uses permitted thereon; describe or take into consideration the terms, conditions and restrictions of this Lease; correlate the appraisal method(s) applied; discuss the relevant factors and data considered; and, describe the technique of analysis, limiting conditions

and computations that were used in the formulation of the valuation opinion expressed. Written Appraisal Evidence shall in all other respects be in material conformity and subject to the requirements of the Code of Professional Ethics and the Standards of Professional Practice of The Appraisal Institute or any successor entity.

16.8 **Evidence.** The provisions of Code of Civil Procedure § 1282.2(a) (2)(E) shall not apply to the arbitration proceeding. The arbitrator shall have no discretion to allow a party to introduce witnesses, documents or Written Appraisal Evidence (other than impeachment testimony) unless such information was previously delivered to the other party in accordance with Section 16.5 and, in the case of Written Appraisal Evidence, substantially complies with the requirements of Section 16.7, or such evidence consists of a transcript of a deposition of an expert witness conducted pursuant to Section 16.9. Notwithstanding the foregoing, the arbitrator may allow a party to introduce evidence which, in the exercise of reasonable diligence, could not have been delivered to the other party in accordance with Section 16.5, provided such evidence is otherwise permissible hereunder.

16.9 **Discovery.** The provisions of Code of Civil Procedure § 1283.05 shall not apply to the arbitration proceedings except to the extent incorporated by other sections of the California Arbitration Act which apply to the arbitration proceedings. There shall be no pre-arbitration discovery except as provided in Section 16.5; provided, however, each party shall have the right, no later than seven (7) days prior to the date first set for the hearing, to conduct a deposition, not to exceed five (5) hours in duration unless the arbitrator otherwise determines that good cause exists to justify a longer period, of any person identified by the other party as an expert witness pursuant to Sections 16.5 (2)(b) or 16.5 (3)(b).

16.10 **Awards of Arbitrators.**

16.10.1 **Monetary Issues.** With respect to monetary disputes (including without limitation disputes regarding Percentage Rent and the amount of coverage under the policies of insurance required pursuant to Article 9 of this Lease), the arbitrator shall have no right to propose a middle ground or any proposed modification of either Statement of Position. The arbitrator shall instead select whichever of the two Statements of Position is the closest to the monetary or numerical amount that the arbitrator determines to be the appropriate determination of the rent, expense, claim, cost, delay, coverage or other matter in dispute and shall render an award consistent with such Statement of Position. For purposes of this Section 16.10, each dispute regarding Annual Minimum Rent, each category of Percentage Rent and the amount of required insurance coverage shall be considered separate disputes (a "**Separate Dispute**"). While the arbitrator shall have no right to propose a middle ground or any proposed modification of either Statement of Position concerning a Separate Dispute, the arbitrator shall have the right, if the arbitrator so chooses, to choose one party's Statement of Position on one or more of the Separate Disputes, while selecting the other party's Statement of Position on the remaining Separate Disputes. For example, if the parties are unable to agree on the Annual Minimum Rent and Percentage Rent, and the amount of liability insurance coverage to be renegotiated pursuant to Section 9.3, then there shall be three Separate Disputes and the arbitrator shall be permitted to select the Lessor's Statement of Position with respect to none, some or all of such three Separate Disputes and select the Lessee's Statement of Position, on the balance, if any, of such three Separate Disputes. Upon the arbitrator's selection of a Statement of Position, pursuant to this

Article 16, the Statement of Position so chosen and the award rendered by the arbitrator thereon shall be final and binding upon the parties, absent Gross Error on the part of the arbitrator.

16.10.2 **Nonmonetary Issues.** With respect to nonmonetary issues and disputes, the arbitrator shall determine the most appropriate resolution of the issue or dispute, taking into account the Statements of Position submitted by the parties, and shall render an award accordingly. Such award shall be final and binding upon the parties, absent Gross Error on the part of the arbitrator.

16.11 **Powers of Arbitrator.** In rendering the award, the arbitrator shall have the power to consult or examine experts or authorities not disclosed by a party pursuant to Section 16.5(2) hereof, provided that each party is afforded the right to cross-examine such expert or rebut such authority.

16.12 **Costs of Arbitration.** Lessee and Lessor shall equally share the expenses and fees of the arbitrator, together with other expenses of arbitration incurred or approved by the arbitrator. Each party shall pay the cost and expenses of its own witnesses. The payment of attorney fees shall be subject to the award of the arbitrator as set forth in Section 15.12. Failure of either party to pay its share of expenses and fees constitutes a material breach of such party's obligations hereunder.

16.13 **Amendment to Implement Judgment.** Within seven (7) days after the issuance of any award by the arbitrator becomes final, the prevailing party will draft a proposed amendment to the Lease setting forth the relevant terms of such award. Within seven (7) days after delivery of a copy of the amendment to the other party, it will sign the amendment (with any revisions to the proposed amendment necessary to accurately reflect the arbitration award) and return the executed copy to the prevailing party, which shall thereafter be executed by the prevailing party as soon as reasonably practicable.

16.14 **Impact of Gross Error Allegations.** Where either party has charged the arbitrator with Gross Error:

16.14.1 The award shall not be implemented if the party alleging Gross Error obtains a judgment of a court of competent jurisdiction stating that the arbitrator was guilty of Gross Error and vacating the arbitration award ("**Disqualification Judgment**"). In the event of a Disqualification Judgment, the arbitration process shall begin over immediately in accordance with this Section 16.14, which arbitration shall be conducted (with a different arbitrator) as expeditiously as reasonably possible.

16.14.2 The party alleging Gross Error shall have the burden of proof.

16.14.3 For the purposes of this Article 16, the term "**Gross Error**" shall mean that the arbitration award is subject to vacation pursuant to California Code of Civil Procedure § 1286.2 or any successor provision.

16.15 **Arbitration Not Exclusive.** Matters which are not expressly set forth in this Lease as being subject to the arbitration provisions of this Article 16, may be resolved by any other available remedies, including, without limitation, injunctive relief.

16.16 **Notice.**

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION TO NEUTRAL ARBITRATION.

Initials of Lessee

Initials of Lessor

17. **MISCELLANEOUS TERMS.**

17.1 **Meanings of Words Not Specifically Defined.** Words and phrases contained herein shall be construed according to the context and the approved usage of the English language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning by law, or are defined in Section 1.1, are to be construed according to such technical, peculiar, and appropriate meaning or definition.

17.2 **Tense; Gender; Number; Person.** Words used in this Lease in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter and the neuter includes the masculine and feminine; the singular number includes the plural and the plural the singular; the word "person" includes a corporation, partnership, limited liability company or similar entity, as well as a natural person.

17.3 **Business Days.** For the purposes of this Lease, "**business day**" shall mean a business day as set forth in Section 9 of the California Civil Code, and shall include "**Optional Bank Holidays**" as defined in Section 7 of the California Civil Code.

17.4 **Parties Represented by Consultants, Counsel.** Both Lessor and Lessee have entered this Lease following advice from independent financial consultants and legal counsel of their own choosing. This document is the result of combined efforts of both parties and their consultants and attorneys. Thus, any rule of law or construction which provides that ambiguity in a term or provision shall be construed against the draftsman shall not apply to this Lease.

17.5 **Governing Law.** This Lease shall be governed by and interpreted in accordance with the laws of the State of California.

17.6 **Prevailing Wage.** The parties do not intend the Project to constitute a public work as that term is defined in the California Labor Code. Notwithstanding the foregoing, Lessee shall comply with all applicable laws related to the payment of prevailing wages under the California Labor Code as such laws may apply to the work completed by or on behalf of Lessee at the Premises or related to the Project.

17.7 **Reasonableness Standard.** Except where a different standard is specifically provided otherwise herein, whenever the consent of Lessor or Lessee is required under this Lease, such consent shall not be unreasonably withheld and whenever this Lease grants Lessor or Lessee the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations, Lessor and Lessee shall act reasonably and in good faith.

17.8 **Memorandum of Lease and Assignment of Easement.** The parties hereto shall execute and acknowledge the Memorandum of Lease in the form attached hereto as **Exhibit G** for recording within two (2) business days of execution of this Lease. Lessee shall pay for the recording fees, and Lessor shall pay for the documentary taxes incurred in connection with the recordation of the Memorandum of Lease.

17.9 **Exhibits.** All exhibits referred to in the Lease are hereby incorporated herein as a part hereof.

[Signatures appear on next page]

IN WITNESS WHEREOF, Lessor and Lessee have entered into this Lease as of the date first mentioned above effective as of the Effective Date.

LESSOR:

**SANTA BARBARA METROPOLITAN
TRANSIT DISTRICT**

By:

Chair, Board of Directors

**SANTA BARBARA METROPOLITAN
TRANSIT DISTRICT**

By:

Secretary, Board of Directors

**SANTA BARBARA METROPOLITAN
TRANSIT DISTRICT**

By:

General Manager

LESSEE:

By:

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT A

EXHIBIT B

PROFORMA TITLE POLICY EXCEPTIONS

EXHIBIT C
DEVELOPMENT PLAN

EXHIBIT C

EXHIBIT D
QUARTERLY REPORT

EXHIBIT D

-1-

EXHIBIT E

INTENTIONALLY OMITTED

EXHIBIT E

EXHIBIT F

INTENTIONALLY OMITTED

EXHIBIT F

EXHIBIT G

MEMORANDUM OF LEASE

RECORDING REQUESTED BY:

AND WHEN RECORDED RETURN TO:

APN Nos.

MEMORANDUM OF LEASE

The undersigned hereby declare:
Documentary Transfer Tax: \$
Computed on full value of property conveyed
County of Santa Barbara

THIS MEMORANDUM OF LEASE (the "Memorandum") dated for reference purposes this ____ (____th) day of _____, 202__ is entered into by and between SANTA BARBARA METROPOLITAN TRANSIT DISTRICT and _____ as follows:

1. Lessor is the owner of that certain real property commonly known as _____ more particularly described in **Exhibit A** ("Property");
2. Effective as of the date this Memorandum is recorded in the Office of the Recorder of Santa Barbara County (the "Effective Date"), Lessor hereby leases to Lessee the property described in Exhibit A for a term of ninety-nine (99) years commencing as of the Effective Date pursuant to a Lease Agreement dated of even date herewith (the "Lease"). Lessee has a right of first offer to acquire the fee interest in the Property. The Lease is not recorded.
3. This Memorandum is executed for the purpose of giving constructive notice to third parties of the existence of and Lessee's rights under the Lease Agreement.

This instrument is merely a memorandum of the Lease Agreement and is subject to the terms and conditions thereof. In the event of any inconsistencies between the terms of this instrument, the Lease the terms of the Lease shall prevail. This Memorandum may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, this Memorandum of Lease has been executed on the date set forth above effective as of the Effective Date.

LESSOR:

**SANTA BARBARA METROPOLITAN
TRANSIT DISTRICT**

By:

Chair, Board of Directors

**SANTA BARBARA METROPOLITAN
TRANSIT DISTRICT**

By:

Secretary, Board of Directors

**SANTA BARBARA METROPOLITAN
TRANSIT DISTRICT**

By:

General Manager

LESSEE:

By:

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

State of _____ }
County of _____ }

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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

State of _____ }
County of _____ }

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

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

WITNESS my hand and official seal.

Signature _____ (Seal

EXHIBIT C

MEMORANDUM OF OPTION

RECORDING REQUESTED BY:

**AND WHEN RECORDED RETURN
TO:**

APN Nos.

MEMORANDUM OF OPTION

The undersigned hereby declare:
Documentary Transfer Tax: \$
Computed on full value of property conveyed
County of Santa Barbara

THIS MEMORANDUM OF OPTION (the "Memorandum") dated for reference purposes this ____ (____th) day of ____, 202_ is entered into by and between SANTA BARBARA METROPOLITAN TRANSIT DISTRICT ("Optionor") and ConAm RE Investments, LLC, a Delaware limited liability company ("Optionee") as follows:

1. Optionor is the owner of that certain real property commonly known as 4678 Calle Real/149 North San Antonio Road, Santa Barbara, California more particularly described in Exhibit A ("Property");

2. Optionor and Optionee have entered into the certain option agreement ("Option Agreement") whereby Optionor grants to Optionee the option to lease the Property, subject to certain terms and conditions. The Option Agreement is not recorded.

3. This Memorandum is executed for the purpose of giving constructive notice to third parties of the existence of and Optionee's rights under the Option Agreement.

This instrument is merely a memorandum of the Option Agreement and is subject to the terms and conditions thereof. In the event of any inconsistencies between the terms of this instrument, the Option Agreement the terms of the Option Agreement shall prevail. This Memorandum may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, this Memorandum of Option has been executed on the date set forth above effective as of the Effective Date.

OPTIONOR:

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

By: _____
Chair, Board of Directors

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

By: _____
Secretary, Board of Directors

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

By: _____
General Manager

OPTIONEE:

CONAM RE INVESTMENTS, LLC

By: _____

Its: _____



BOARD OF DIRECTORS REPORT

MEETING DATE:	SEPTEMBER 6, 2022	AGENDA ITEM: #11
DEPARTMENT:	PLANNING	
TYPE:	INFORMATIONAL	
PREPARED BY:	HILLARY BLACKERBY	_____ <i>Signature</i>
REVIEWED BY:	GENERAL MANAGER	_____ <i>Signature</i>
SUBJECT:	FISCAL YEAR 2021-22 ANNUAL RIDERSHIP & CUSTOMER SERVICE REPORT	

RECOMMENDATIONS:

Staff requests that the Board of Directors receive a report regarding annual ridership and customer service statistics for FY 2021-22.

DISCUSSION:

Staff will discuss factors affecting MTD's systemwide ridership in FY 2021-22. Staff will also discuss recent ridership trends and the continuing recovery and impacts from the COVID-19 pandemic. Customer service statistics from the fiscal year will also be discussed.

ATTACHMENT:

- Ridership Summary Report: FY 2021-22
- Customer Service Summary Report: FY 2021-22
- System Ridership Report: FY 2021-22

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FY 2021-22 ANNUAL RIDERSHIP PERFORMANCE REPORT

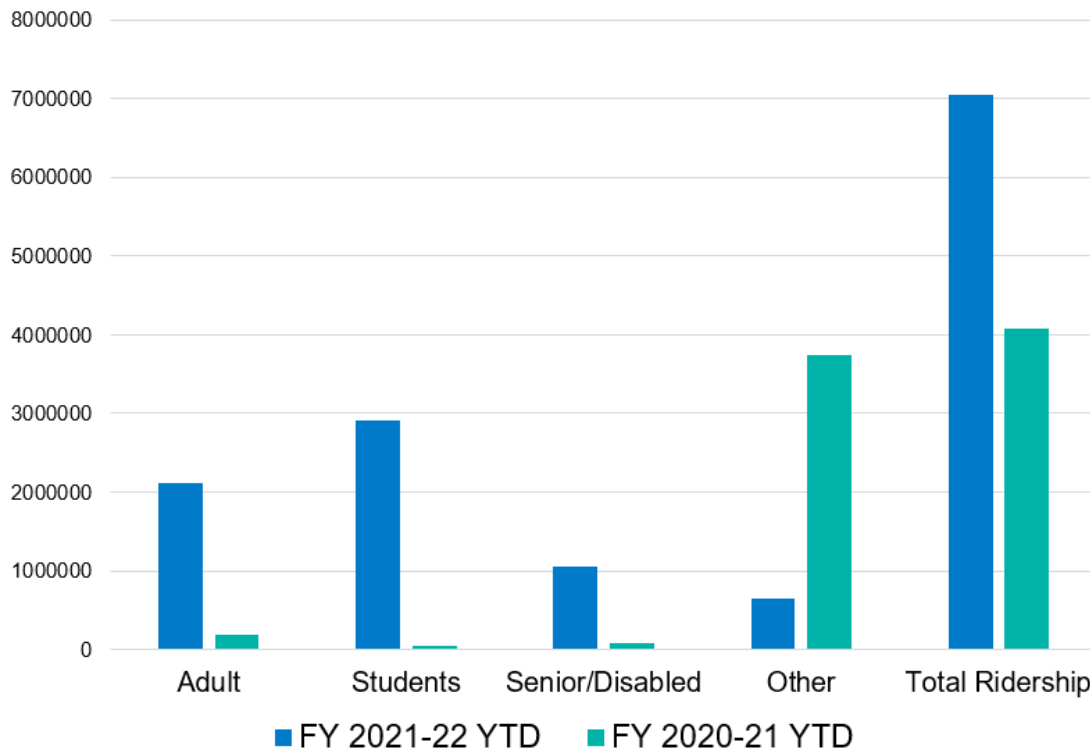
Ridership Summary

For the Twelve-Month Period Ending June 30, 2022

Ridership Performance Indicators

Systemwide ridership during the fourth quarter (April through June) of FY 2021-22 totaled 1,114,207 representing a 62.8% increase of approximately 467,166 riders from the same period of FY 2020-21. For the total FY 2021-22, total ridership was 4,082,287 representing a 71.6% increase over FY 2020-21. This represents a significant rebound from unprecedented impacts caused by the COVID-19 pandemic in 2020 and 2021.

Year-to-Date Ridership by Fare Category



In the fourth quarter, revenue hours and miles were down as compared to the same period in FY 2020-21. On April 25, 2022, due to a bus operator shortage, service was reduced by approximately 12.9%. This included reduction of frequency on several lines and the suspension of the Line 16 (SBCC Shuttle). This is compared to service in the 4th quarter

FY 2021-22 ANNUAL RIDERSHIP PERFORMANCE REPORT

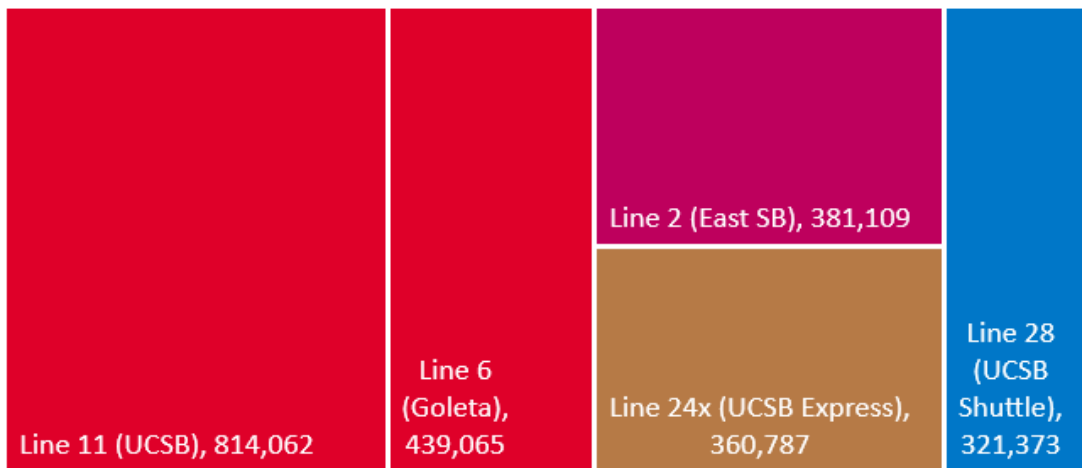
of 2020-21, where K-12 booster services were back in service, but Lines 15x, 16, and 28 remained suspended due to SBCC and UCSB campus closures. Despite a reduction in service over the same quarter in the prior year, we saw ridership grow by 62.8%.

Time Period	Total Passengers	Revenue Hours	Revenue Miles	Passengers per Revenue Hour	Passengers per Mile
FY 20-21 Q4	684,312	44,116	534,037	15.5	1.3
FY 21-22 Q4	1,114,207	43,755	533,186	25.5	2.1
FY 20-21 YTD	2,378,516	172,895	2,099,365	13.8	1.1
FY 21-22 YTD	4,082,287	182,936	2,237,671	22.3	1.8

The chart below shows the top 5 lines by ridership in FY 21-22. While the chart below is year-to-date, top lines by ridership in the fourth quarter alone were, in order from highest ridership, Lines 11, 6, 24x, 2, and 28.

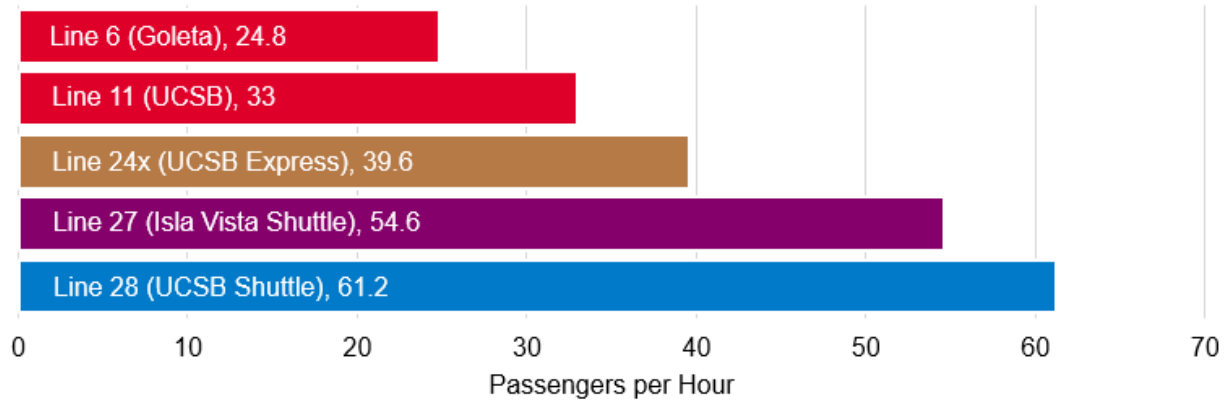
Top 5 Lines by Ridership, Year-to-Date

- Line 11 (UCSB)
- Line 6 (Goleta)
- Line 2 (East SB)
- Line 24x (UCSB Express)
- Line 28 (UCSB Shuttle)



As stated above, the systemwide average of passengers per revenue hour for the quarter is at 25.4 passengers per hour. Q4 saw an increase from Q3, which had 22 passengers per hour. The chart below shows the top 5 lines by passengers per hour in the fourth quarter, with the Line 28 (UCSB Shuttle) coming in first with 61.2 passengers per hour, followed by Line 27 (54.6), Line 24x (39.6), Line 11 (33), and Line 6 (24.8). All of these lines saw an increase in passengers per hour over the third quarter of FY 21-22.

Top 5 Lines by Passengers per Hour, 4th Quarter



The Fiscal Year Numbers At-A-Glance below show the numbers for the complete FY 2021-22 over FY 2020-21. In FY 2020-21, there were varying levels of capacity restrictions on board MTD buses.

Fiscal Year Numbers At-A-Glance

Total
Ridership
+71.6%

At-Capacity
Loads
+161.4%

Too Full to
Board
Loads
-79.3%



9,793
wheelchairs
boarded
-11.5%



67,497
bicycles
carried
-15.3%

Service Days and Student Ridership

As shown in the table below, the total number of service days in the third quarter of FY 2021-22 was the same as FY 2020-21, with one more weekday and one less Saturday in FY 2021-22. K-12 schools, SBCC, and UCSB were all open to in-person learning for the third quarter, though SBCC had approximately 45% of classes on campus and the rest online. This is in comparison to Q3 in FY 21 where all campuses were closed for the entire quarter.

MTD SERVICE CALENDAR DAYS

SERVICE DAYS	FY 2022		FY 2021		Year to Date
	<u>Q4</u>	<u>YTD</u>	<u>Q4</u>	<u>YTD</u>	<u>Change</u>
Weekdays	64	251	64	249	2
Saturdays	13	54	13	56	(2)
Sundays	14	58	14	58	0
Total	91	363	91	363	0

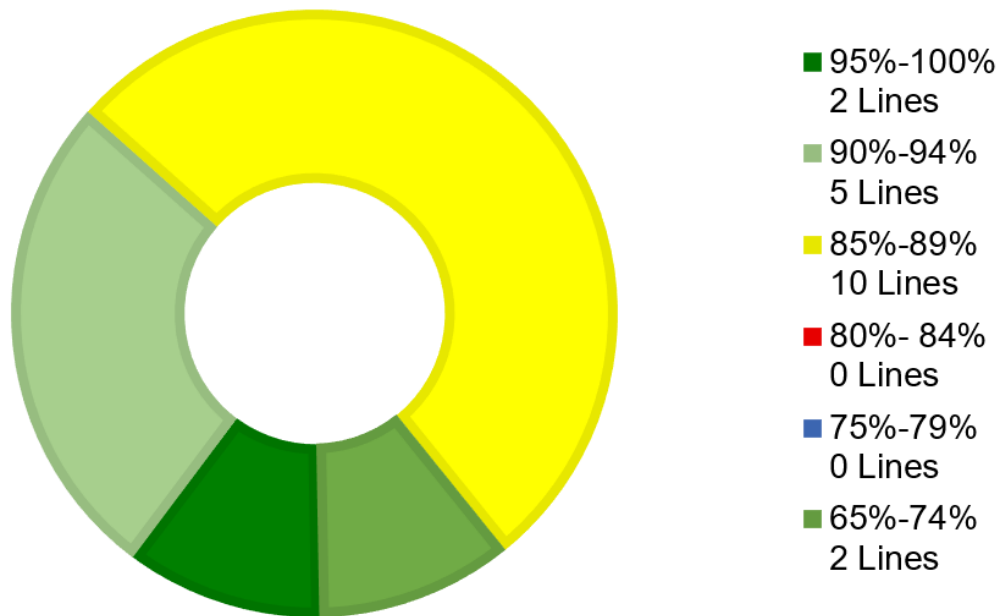
SCHOOL DAYS	FY 2022		FY 2021		Year to Date
	<u>Q4</u>	<u>YTD</u>	<u>Q4</u>	<u>YTD</u>	<u>Change</u>
SBCC	26	159	0	0	159
UCSB	50	169	0	0	169
Secondary	44	193	46	50	143

On-Time Performance Indicators

Since the acquisition and installation of the Clever Devices AVL system, Planning staff has been refining the tools used to measure on-time performance. MTD's standard is to aim for better than 80% on-time performance (OTP). "On-time" is defined as no more than 5 minutes late and no more than 1 minute early. Timeliness is tracked at scheduled timepoints on each line. The lines included in this assessment are all of MTD's fixed-route lines (not counting booster services) in operation during the fourth quarter of FY 2021-22.

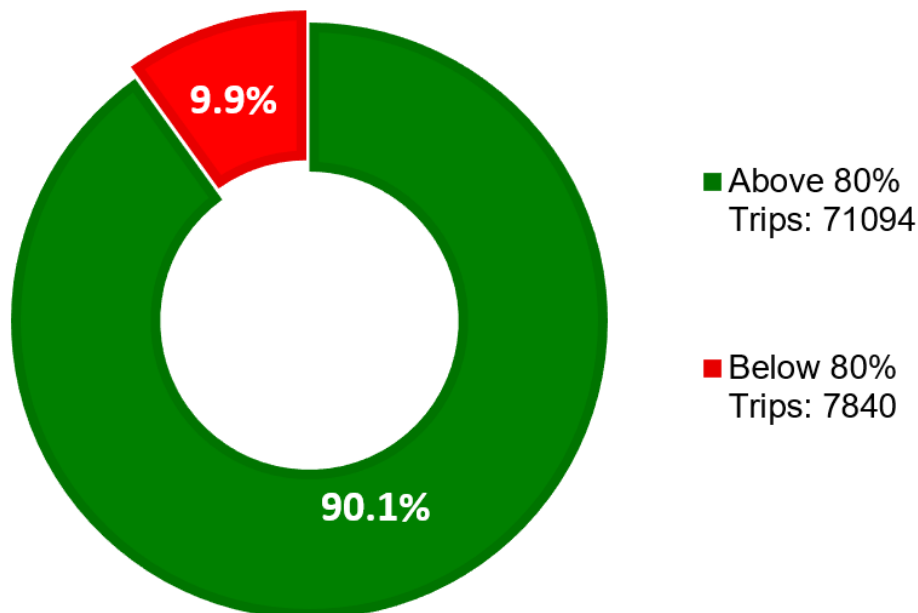
In the fourth quarter, two lines fell below the 80% mark. Seventeen lines experienced 90% or higher OTP. The two lines that experienced lower on-time performance were the Lines 20 (Carpinteria) and 27 (Isla Vista Shuttle). While staff is investigating the causes, some contributing factors are likely new freeway construction and heavy loads in Isla Vista, respectively. Variables that generally affect a line's on-time performance include extended road construction projects, high passenger loads, heavy congestion, and route detours lasting a number of days. This can vary based on time of day.

FY 21-22 4TH QUARTER ON-TIME PERFORMANCE



When assessing the amount of service on a particular line, we can measure the number of trips that a given line takes in a quarter. The graphic below displays the amount of service provided by the lines hitting MTD's goal of 80% or higher for on-time service in the fourth quarter of FY 21-22.

SYSTEMWIDE TRIP ON-TIME PERFORMANCE BY AMOUNT OF SERVICE ON LINES

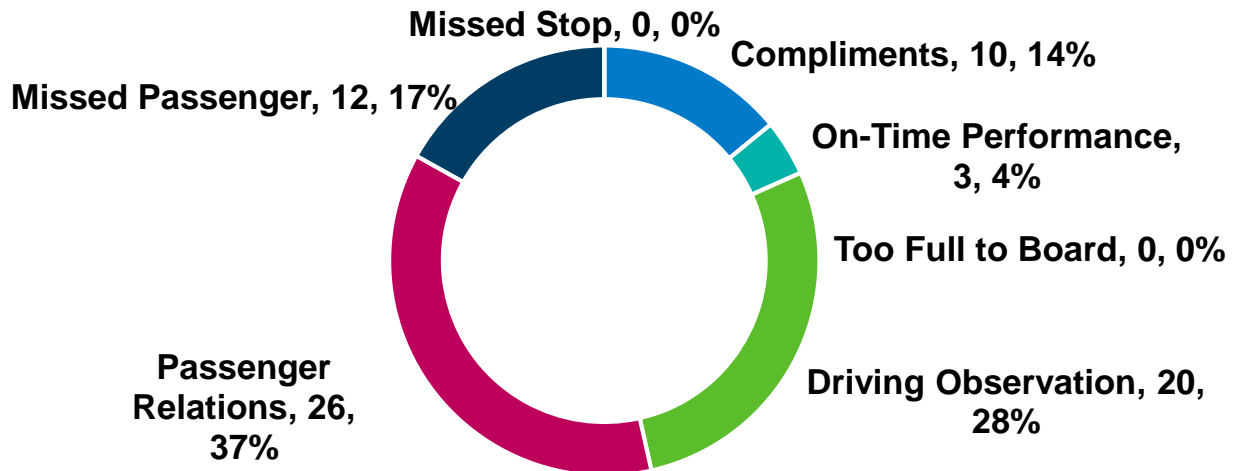




FY 2021-22 FOURTH QUARTER PERFORMANCE REPORTS

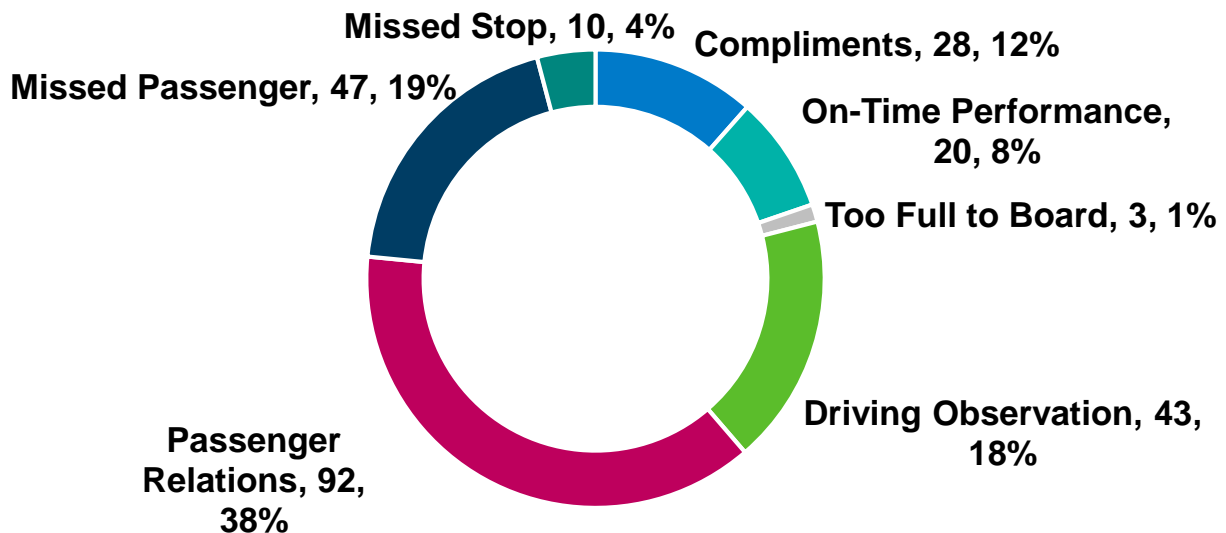
Customer Service Report

FY 2021-22 4th Quarter Customer Service Statistics



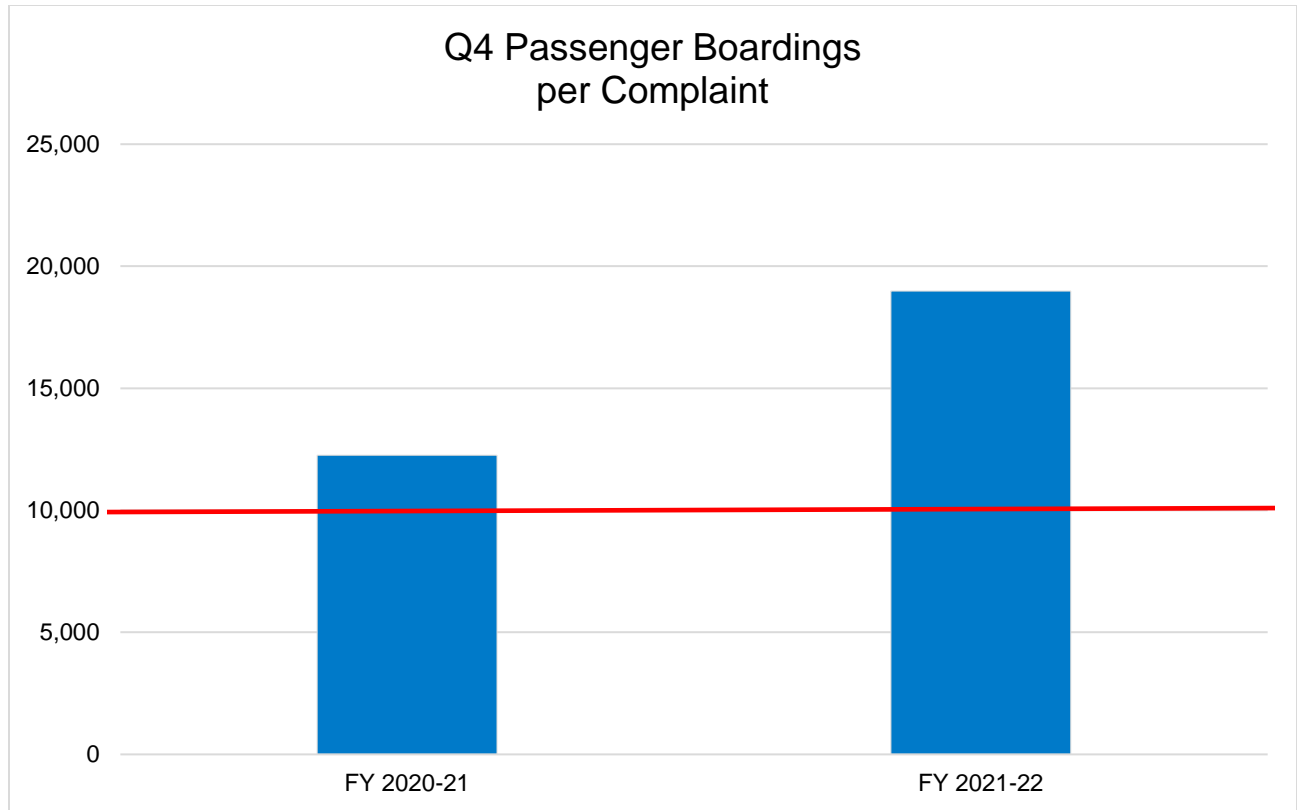
MTD Performance Standard: Passenger complaints shall average no more than 1 complaint per 10,000 MTD passenger boardings.

FY 2021-22 Year-to-Date Customer Service Statistics for the 12 Month Period Ending June 30, 2022



Compliments: Documented praise of MTD Employee's action; **On-Time Performance:** Complaints about buses running late; **Too Full to Board:** Complaints from passengers that could not board the bus; **Driving Observations:** Concerns regarding driving safety; **Passenger Relations:** Perceived negative treatment of passengers by an MTD Employee; **Missed Passengers:** Complaints that passengers were passed up at MTD authorized stops; **Missed Stop:** Complaint from passenger on board a bus where the driver did not stop at requested stop.

FY 2021-22 FOURTH QUARTER PERFORMANCE REPORTS



4th Quarter Compliments & Complaints



10 Compliments



49 Complaints

FY 2021-22 YTD Compliments & Complaints



28 Compliments



215 Complaints



FY 2021-22 System Ridership Report for 4th Quarter and for the Twelve-Month Period Ending June 30, 2022

Ridership by Fare Category (April 2022 – June 2022)

Fare Categories	Quarter			YTD		
	Apr 22 - Jun 22	Apr 21 - Jun 21	% Change	FY 2021 - 2022	FY2020 - 2021	% Change
General Fare	161,493	97,164	66.2%	641,593	97,210	560.0%
Transfers	68,386	42,256	61.8%	293,871	42,746	587.5%
Full Fare Prepaid ¹	194,176	95,685	102.9%	746,932	95,868	679.1%
Santa Barbara City College	35,124	1,918	1731.3%	132,127	2,128	6109.0%
Senior & Disabled Prepaid ²	129,120	61,680	109.3%	489,297	62,038	688.7%
Shuttle	-	-	0.0%	-	-	0.0%
UC Santa Barbara	364,575	16,255	2142.8%	1,132,050	16,443	6784.7%
Youth Prepaid ³	109,711	28,792	281.0%	442,882	29,119	1420.9%
Free	14,784	320,772	-95.4%	64,191	2,012,801	-96.8%
Special Pass Programs	543	369	47.2%	2,467	484	409.7%
Senior Cash	26,226	15,338	71.0%	100,404	15,432	550.6%
Persons with Disabilities Cash	3,901	2,793	39.7%	15,956	2,951	440.7%
Tokens	4,427	1,290	243.2%	15,149	1,296	1068.9%
Tap to Ride Transactions	1,741	-	100.0%	5,368	-	100.0%
Total	1,114,207	684,312	62.8%	4,082,287	2,378,516	71.6%

Source: MTD Passdat Program, MTD Transit Development Department, Planning Section

Revenue Hours and Revenue Miles (April 2022 – June 2022)

Metrics	Quarter			YTD		
	Apr 22 - Jun 22	Apr 21 - Jun 21	%Change	FY 2021 - 2022	FY2020 - 2021	% Change
Passengers	1,114,207	684,312	62.8%	4,082,287	2,378,516	71.6%
Revenue Hours	43,755	44,116	-0.8%	182,936	172,895	5.8%
Passengers per Revenue Hour	25.5	15.5	64.2%	22.3	13.8	62.2%
Miles	533,186	534,037	-0.2%	2,237,671	2,099,365	6.6%
Passengers per Mile	2.1	1.3	63.1%	1.8	1.1	61.0%

Source: MTD Passdat Program, MTD Transit Development Department, Planning Section

MTD System Ridership (April 2022 – June 2022)

		Quarter			YTD		
	LINE	Apr 22 - Jun 22	Apr 21 - Jun 21	% Change	FY 2021 - 2022	FY2020 - 2021	% Change
1	West Santa Barbara	59,863	63,395	-5.6%	241,923	223,790	8.1%
2	East Santa Barbara	97,527	92,086	5.9%	381,109	321,424	18.6%
3	Oak Park	31,710	28,926	9.6%	122,074	100,585	21.4%
4	Mesa / SBCC	18,230	16,257	12.1%	67,335	57,463	17.2%
5	Mesa / La Cumbre	17,516	16,403	6.8%	70,796	59,745	18.5%
6	Goleta	114,456	94,968	20.5%	439,065	334,066	31.4%
7	County Health / Fairview	51,239	42,558	20.4%	188,468	156,658	20.3%
10	Cathedral Oaks	-	-	0.0%	-	-	0.0%
11	UCSB	231,686	122,384	89.3%	814,062	435,920	86.7%
12x	Goleta Express	28,148	26,133	7.7%	122,581	91,624	33.8%
14	Montecito	14,102	12,483	13.0%	53,031	48,145	10.1%
15x	SBCC / UCSB Express	19,003	-	100.0%	71,574	-	100.0%
16	City College Shuttle	3,239	-	100.0%	24,193	-	100.0%
17	Lower West / SBCC	19,603	17,173	14.2%	73,504	59,030	24.5%
20	Carpinteria	69,594	69,134	0.7%	282,811	245,071	15.4%
23	Winchester Canyon	10,111	6,408	57.8%	34,098	20,611	65.4%
24x	UCSB Express	111,120	37,852	193.6%	360,787	122,798	193.8%
25	Ellwood	12,353	9,680	27.6%	44,911	35,330	27.1%
27	Isla Vista Shuttle	60,296	13,175	357.7%	168,484	50,362	234.5%
28	UCSB Shuttle	94,604	-	100.0%	321,373	-	100.0%
36	Seaside Shuttle	-	-	0.0%	-	-	0.0%
37	Crosstown Shuttle	-	-	0.0%	-	-	0.0%
90	West Goleta Amtrak Shuttle	-	-	0.0%	-	-	0.0%
91	East Goleta Amtrak Shuttle	-	-	0.0%	-	-	0.0%
92	Santa Barbara Amtrak Shuttle	-	-	0.0%	-	-	0.0%
	Booster Services	49,807	15,297	225.6%	200,108	15,894	1159.0%
System Subtotal		1,114,207	684,312	62.8%	4,082,287	2,378,516	71.6%
<i>Downtown Waterfront Shuttles</i>							
30	Downtown Shuttle	-	-	0.0%	-	-	0.0%
34	Waterfront Shuttle	-	-	0.0%	-	-	0.0%
<i>Unknown</i>							
		-			-		
System Total		1,114,207	684,312	62.8%	4,082,287	2,378,516	71.6%
<i>Related Routes</i>							
11, 24x, 27, 28 UCSB Lines		497,706	173,411	187.0%	1,664,706	609,080	173.3%
1, 2 East/West		157,390	155,481	1.2%	623,032	545,214	14.3%
4, 5, 15x, 16, 17 Mesa Lines		77,591	49,833	55.7%	307,402	176,238	74.4%
6, 11 State/Hollister		346,142	217,352	59.3%	1,253,127	769,986	62.7%

Source: MTD Passdat Program, MTD Transit Development Department, Planning Section

MTD Passengers per Revenue Hour (April 2022 – June 2022)

LINE		Quarter			YTD		
		Apr 22 - Jun 22	Apr 21 - Jun 21	% Change	FY 2021 - 2022	FY2020 - 2021	% Change
1	West Santa Barbara	23.2	22.6	2.7%	22.2	20.0	11.2%
2	East Santa Barbara	24.1	21.0	14.6%	22.4	18.5	21.4%
3	Oak Park	13.2	12.0	10.7%	12.8	10.5	22.0%
4	Mesa / SBCC	16.0	14.2	12.8%	14.9	12.7	17.1%
5	Mesa / La Cumbre	11.0	9.2	18.5%	10.3	8.5	21.7%
6	Goleta	24.8	18.5	34.4%	22.2	16.5	34.3%
7	County Health / Fairview	13.5	11.1	21.8%	12.4	10.3	20.5%
10	Cathedral Oaks	-	-	0.0%	-	-	0.0%
11	UCSB	33.0	15.7	110.0%	27.2	14.1	92.6%
12x	Goleta Express	17.5	14.6	19.5%	17.6	12.8	37.0%
14	Montecito	11.2	9.8	14.7%	10.6	9.6	10.5%
15x	SBCC / UCSB Express	17.5	-	100.0%	16.9	-	100.0%
16	City College Shuttle	17.5	-	100.0%	14.2	-	100.0%
17	Lower West / SBCC	23.1	20.1	15.3%	21.8	17.5	24.5%
20	Carpinteria	16.8	14.8	13.8%	15.7	13.2	19.2%
23	Winchester Canyon	16.7	10.8	55.7%	14.3	8.7	64.6%
24x	UCSB Express	39.6	12.1	227.5%	29.6	9.9	199.1%
25	Ellwood	17.2	14.1	22.0%	16.3	13.0	25.4%
27	Isla Vista Shuttle	54.6	11.8	361.9%	38.2	11.4	233.8%
28	UCSB Shuttle	61.2	-	100.0%	58.9	-	100.0%
36	Seaside Shuttle	-	-	0.0%	-	-	0.0%
37	Crosstown Shuttle	-	-	0.0%	-	-	0.0%
90	West Goleta Amtrak Shuttle	-	-	0.0%	-	-	0.0%
91	East Goleta Amtrak Shuttle	-	-	0.0%	-	-	0.0%
92	Santa Barbara Amtrak Shuttle	-	-	0.0%	-	-	0.0%
	Booster Services	69.5	22.3	211.8%	69.1	21.1	227.3%
System Subtotal		25.4	15.5	63.9%	22.3	13.8	62.0%
Downtown Waterfront Shuttles							
30	Downtown Shuttle	-	-	0.0%	-	-	0.0%
34	Waterfront Shuttle	-	-	0.0%	-	-	0.0%
Unknown							
		-	-	0.0%	-	-	0.0%
System Total		25.4	15.5	63.9%	22.3	13.8	62.0%
Related Routes							
11, 24x, 27, 28 UCSB Lines		39.9	14.4	176.8%	11.7	33.1	-64.8%
1, 2 East/West		23.7	21.6	9.8%	16.4	26.2	-37.1%
4, 5, 15x, 16, 17 Mesa Lines		16.0	13.2	21.0%	11.2	27.1	-58.8%
6, 11 State/Hollister		29.8	16.8	77.0%	13.9	29.0	-52.2%

Source: MTD Passdat Program, MTD Transit Development Department, Planning Section

MTD “At Capacity” Loads (April 2022 – June 2022)

LINE		Quarter			YTD		
		Apr 22 - Jun 22	Apr 21 - Jun 21	% Change	FY 2021 - 2022	FY2020 - 2021	% Change
1	West Santa Barbara	1	4	-75.0%	19	43	-55.8%
2	East Santa Barbara	19	5	280.0%	57	93	-38.7%
3	Oak Park	6	7	-14.3%	8	13	-38.5%
4	Mesa / SBCC	-	1	-100.0%	-	4	-100.0%
5	Mesa / La Cumbre	2	-	100.0%	3	1	200.0%
6	Goleta	15	10	50.0%	36	67	-46.3%
7	County Health / Fairview	1	1	0.0%	3	19	-84.2%
10	Cathedral Oaks	-	-	0.0%	-	-	0.0%
11	UCSB	146	19	668.4%	345	81	325.9%
12x	Goleta Express	1	-	100.0%	4	11	-63.6%
14	Montecito	4	1	300.0%	4	9	-55.6%
15x	SBCC / UCSB Express	55	-	100.0%	112	-	100.0%
16	City College Shuttle	-	-	0.0%	1	-	100.0%
17	Lower West / SBCC	-	4	-100.0%	-	14	-100.0%
20	Carpinteria	5	5	0.0%	13	50	-74.0%
23	Winchester Canyon	2	-	100.0%	3	-	100.0%
24x	UCSB Express	51	5	920.0%	128	7	1728.6%
25	Ellwood	-	-	0.0%	2	-	100.0%
27	Isla Vista Shuttle	37	1	3600.0%	76	6	1166.7%
28	UCSB Shuttle	34	-	100.0%	152	-	100.0%
36	Seaside Shuttle	-	-	0.0%	-	-	0.0%
37	Crosstown Shuttle	-	-	0.0%	-	-	0.0%
90	West Goleta Amtrak Shuttle	-	-	0.0%	-	-	0.0%
91	East Goleta Amtrak Shuttle	-	-	0.0%	-	-	0.0%
92	Santa Barbara Amtrak Shuttle	-	-	0.0%	-	-	0.0%
	Booster Services	48	2	100.0%	132	2	100.0%
System Subtotal		427	65	556.9%	1,098	420	161.4%
<i>Downtown Waterfront Shuttles</i>							
30	Downtown Shuttle	-	-	0.0%	-	-	0.0%
34	Waterfront Shuttle	-	-	0.0%	-	-	0.0%
<i>Related Routes</i>							
11, 24x, 27, 28 UCSB Lines		268	25	972.0%	701	94	645.7%
1, 2 East/West		20	9	122.2%	76	136	-44.1%
4, 5, 15x, 16, 17 Mesa Lines		57	5	1040.0%	116	19	510.5%
6, 11 State/Hollister		161	29	455.2%	381	148	157.4%
<i>Unknown/Miscellaneous</i>		-	-	0.0%	-	-	0.0%
System Total		427	65	556.9%	1,098	420	161.4%

*Classified as a 30-foot vehicle with 10 or more standees, or a **40-foot vehicle with 20 or more**.
Source: GFI Genfare, MTD Transit Development Department, Planning Section

MTD “Too Full to Board” Loads (April 2022 – June 2022)

		Quarter			YTD		
LINE		Apr 22 - Jun 22	Apr 21 - Jun 21	% Change	FY 2021 - 2022	FY2020 - 2021	% Change
1	West Santa Barbara	13	122	-89.3%	51	698	-92.7%
2	East Santa Barbara	22	224	-90.2%	119	1,627	-92.7%
3	Oak Park	4	59	-93.2%	10	616	-98.4%
4	Mesa / SBCC	-	1	-100.0%	1	39	-97.4%
5	Mesa / La Cumbre	-	2	-100.0%	3	65	-95.4%
6	Goleta	10	280	-96.4%	68	2,453	-97.2%
7	County Health / Fairview	-	31	-100.0%	-	302	-100.0%
10	Cathedral Oaks	-	-	0.0%	-	-	0.0%
11	UCSB	288	305	-5.6%	741	2,910	-74.5%
12x	Goleta Express	3	13	-76.9%	22	179	-87.7%
14	Montecito	1	4	-75.0%	3	206	-98.5%
15x	SBCC / UCSB Express	39	-	100.0%	68	-	100.0%
16	City College Shuttle	-	-	0.0%	-	-	0.0%
17	Lower West / SBCC	-	2	-100.0%	2	44	-95.5%
20	Carpinteria	1	234	-99.6%	36	1,777	-98.0%
23	Winchester Canyon	6	2	200.0%	12	20	-40.0%
24x	UCSB Express	178	27	559.3%	538	114	371.9%
25	Ellwood	-	1	-100.0%	1	26	-96.2%
27	Isla Vista Shuttle	181	9	1911.1%	283	180	57.2%
28	UCSB Shuttle	102	-	100.0%	320	-	100.0%
36	Seaside Shuttle	-	-	0.0%	-	-	0.0%
37	Crosstown Shuttle	-	-	0.0%	-	-	0.0%
90	West Goleta Amtrak Shuttle	-	-	0.0%	-	-	0.0%
91	East Goleta Amtrak Shuttle	-	-	0.0%	-	-	0.0%
92	Santa Barbara Amtrak Shuttle	-	-	0.0%	-	-	0.0%
	Booster Services	10	130	-92.3%	74	132	-43.9%
System Subtotal		858	1,446	-40.7%	2,352	11,388	-79.3%
<i>Downtown Waterfront Shuttles</i>							
30	Downtown Shuttle	-	-	0.0%	-	-	0.0%
34	Waterfront Shuttle	-	-	0.0%	-	-	0.0%
<i>Related Routes</i>							
11, 24x, 27, 28 UCSB Lines		749	341	119.6%	1,882	3,204	-41.3%
1, 2 East/West		35	346	-89.9%	170	2,325	-92.7%
4, 5, 15x, 16, 17 Mesa Lines		39	5	680.0%	74	148	-50.0%
6, 11 State/Hollister		298	585	-49.1%	809	5,363	-84.9%
<i>Unknown/Miscellaneous</i>		-	-	100.0%	1	-	100.0%
System Total		858	1,446	-40.7%	2,353	11,388	-79.3%

* Indicates that passengers were refused service because a vehicle was too full to safely board.
Source: GFI Genfare, MTD Transit Development Department, Planning Section

MTD Bicycles Carried (April 2022 – June 2022)

LINE		Quarter			YTD		
		Apr 22 - Jun 22	Apr 21 - Jun 21	% Change	FY 2021 - 2022	FY2020 - 2021	% Change
1	West Santa Barbara	526	480	9.6%	1,681	2,307	-27.1%
2	East Santa Barbara	1,056	1,491	-29.2%	4,276	6,134	-30.3%
3	Oak Park	2	2	0.0%	21	439	-95.2%
4	Mesa / SBCC	228	324	-29.6%	799	1,334	-40.1%
5	Mesa / La Cumbre	346	344	0.6%	1,382	1,795	-23.0%
6	Goleta	2,643	3,128	-15.5%	10,052	13,791	-27.1%
7	County Health / Fairview	1,390	1,420	-2.1%	4,964	5,697	-12.9%
10	Cathedral Oaks	-	2	-100.0%	-	2	-100.0%
11	UCSB	4,233	3,786	11.8%	15,919	18,657	-14.7%
12x	Goleta Express	1,240	1,453	-14.7%	5,302	6,183	-14.2%
14	Montecito	255	303	-15.8%	1,019	1,377	-26.0%
15x	SBCC / UCSB Express	376	-	100.0%	1,098	1	109700.0%
16	City College Shuttle	25	1	2400.0%	190	2	9400.0%
17	Lower West / SBCC	187	233	-19.7%	606	931	-34.9%
20	Carpinteria	1,978	2,228	-11.2%	7,202	9,516	-24.3%
23	Winchester Canyon	247	110	124.5%	694	663	4.7%
24x	UCSB Express	2,614	2,152	21.5%	9,589	8,900	7.7%
25	Ellwood	228	208	9.6%	761	1,049	-27.5%
27	Isla Vista Shuttle	196	182	7.7%	584	866	-32.6%
28	UCSB Shuttle	356	-	100.0%	1,210	-	100.0%
36	Seaside Shuttle	-	-	0.0%	-	-	0.0%
37	Crosstown Shuttle	-	-	0.0%	-	-	0.0%
90	West Goleta Amtrak Shuttle	-	-	0.0%	-	-	0.0%
91	East Goleta Amtrak Shuttle	-	-	0.0%	-	-	0.0%
92	Santa Barbara Amtrak Shuttle	-	-	0.0%	-	-	0.0%
	Booster Services	42	9	366.7%	148	9	1544.4%
System Subtotal		18,168	17,856	1.7%	67,497	79,653	-15.3%
<i>Downtown Waterfront Shuttles</i>							
30	Downtown Shuttle	-	-	0.0%	-	-	0.0%
34	Waterfront Shuttle	-	-	0.0%	-	-	0.0%
<i>Related Routes</i>							
11, 24x, 27, 28 UCSB Lines		7,399	6,120	20.9%	27,302	28,423	-3.9%
1, 2 East/West		1,582	1,971	-19.7%	5,957	8,441	-29.4%
4, 5, 15x, 16, 17 Mesa Lines		1,162	902	28.8%	4,075	4,063	0.3%
6, 11 State/Hollister		6,876	6,914	-0.5%	25,971	32,448	-20.0%
<i>Unknown/Miscellaneous</i>		-	4	100.0%	20	6	233.3%
System Total		18,168	17,860	1.7%	67,517	79,659	-15.2%

¹ MTD electric shuttles cannot carry bicycles.

Source: GFI Genfare, MTD Transit Development Department, Planning Section

MTD Wheelchairs Boarded (April 2022 – June 2022)

LINE		Quarter			YTD		
		Apr 22 - Jun 22	Apr 21 - Jun 21	% Change	FY 2021 - 2022	FY2020 - 2021	% Change
1	West Santa Barbara	248	250	-0.8%	837	972	-13.9%
2	East Santa Barbara	465	526	-11.6%	1,916	2,473	-22.5%
3	Oak Park	87	88	-1.1%	311	491	-36.7%
4	Mesa / SBCC	47	41	14.6%	170	138	23.2%
5	Mesa / La Cumbre	42	30	40.0%	170	112	51.8%
6	Goleta	404	363	11.3%	1,323	1,466	-9.8%
7	County Health / Fairview	358	301	18.9%	1,361	1,267	7.4%
10	Cathedral Oaks	-	-	0.0%	-	-	0.0%
11	UCSB	406	351	15.7%	1,451	1,806	-19.7%
12x	Goleta Express	75	81	-7.4%	319	324	-1.5%
14	Montecito	41	43	-4.7%	149	149	0.0%
15x	SBCC / UCSB Express	3	-	100.0%	12	-	100.0%
16	City College Shuttle	46	-	100.0%	240	-	100.0%
17	Lower West / SBCC	86	59	45.8%	248	107	131.8%
20	Carpinteria	330	327	0.9%	982	1,357	-27.6%
23	Winchester Canyon	5	7	-28.6%	15	17	-11.8%
24x	UCSB Express	65	44	47.7%	196	264	-25.8%
25	Ellwood	6	16	-62.5%	29	62	-53.2%
27	Isla Vista Shuttle	13	16	-18.8%	41	58	-29.3%
28	UCSB Shuttle	7	-	100.0%	16	-	100.0%
36	Seaside Shuttle	-	-	0.0%	-	-	0.0%
37	Crosstown Shuttle	-	-	0.0%	-	-	0.0%
90	West Goleta Amtrak Shuttle	-	-	0.0%	-	-	0.0%
91	East Goleta Amtrak Shuttle	-	-	0.0%	-	-	0.0%
92	Santa Barbara Amtrak Shuttle	-	-	0.0%	-	-	0.0%
	Booster Services	-	-	0.0%	5	-	100.0%
System Subtotal		2,734	2,543	7.5%	9,791	11,063	-11.5%
<i>Downtown Waterfront Shuttles</i>							
30	Downtown Shuttle	-	-	0.0%	-	-	0.0%
34	Waterfront Shuttle	-	-	0.0%	-	-	0.0%
<i>Related Routes</i>							
11, 24x, 27, 28 UCSB Lines		491	411	19.5%	1,704	2,128	-19.9%
1, 2 East/West		713	776	-8.1%	2,753	3,445	-20.1%
4, 5, 15x, 16, 17 Mesa Lines		224	130	72.3%	840	357	135.3%
6, 11 State/Hollister		810	714	13.4%	2,774	3,272	-15.2%
<i>Unknown/Miscellaneous</i>		-	1	0.0%	2	1	100.0%
System Total		2,734	2,544	7.5%	9,793	11,064	-11.5%

Source: GFI Genfare, MTD Transit Development Department, Planning Section



BOARD OF DIRECTORS REPORT

MEETING DATE:	SEPTEMBER 6, 2022	AGENDA ITEM: #12
DEPARTMENT:	GOVERNMENT RELATIONS	
TYPE:	ACTION ITEM	
PREPARED BY:	LILLY GOMEZ	_____ <i>Signature</i>
REVIEWED BY:	GENERAL MANAGER	_____ <i>Signature</i>
SUBJECT:	CONFLICT OF INTEREST CODE UPDATE	

RECOMMENDATION:

Staff and MTD's attorney request that the Board approve the recommended changes to the Conflict of Interest Code:

- Sec. 6.1.5 – Modifying amount for disclosure from \$470.00 to \$500.00
- Sec. 6.8.1 – Modifying amount for disclosure from \$470.00 to \$520.00
- Appendix C - Designated Employees title and names.

ATTACHMENT:

- Conflict of Interest Code

Santa Barbara Metropolitan Transit District

Conflict of Interest Code

Sec. 1 **Purpose and Applicability.**

As a governmental institution, the Santa Barbara Metropolitan Transit **District** (“**District**”) must be vigilant in its protection of the public trust. **Public officials** are bound to observe the highest standards of performance and to discharge faithfully the duties of their office, regardless of personal considerations. The members of the Board of Directors hold office for the benefit of the public and their offices must not be used for the purpose of private gain. This Conflict of Interest Code (“**Code**”) is intended to prescribe standards of conduct designed to ensure the honesty and integrity of those **persons** governing the operation of the **District**.

The Political Reform Act, Government Code section 81000, et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, California Code of Regulations, title 2, section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of California Code of Regulations, title 2, section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict of Interest Code of the Santa Barbara Metropolitan Transit District. Nothing set forth herein is intended to be inconsistent with the regulations adopted by the Fair Political Practices Commission.

Sec. 2 **Definitions.**

Unless expressly defined herein or in Appendix A, the definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (2 Cal. Code of Regs. sections 18100, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this Code. Terms defined in Appendix A hereto are printed in **bold** type in this Code.

Sec. 3 **Public Official.**

As used, herein “**public official**” means members and alternates of the Board of Directors, **designated employees** of **District**, and **consultants** to and contractors of **District** required to file disclosure statements pursuant to this Code.

Sec. 4 **Statements of Economic Interests.**

Sec. 4.1 **Designated Employees.** The **persons** holding positions of General Manager, Assistant General Manager, and Procurement Officer are **designated**

employees. All such employees have senior management positions. It has been determined that these individuals make or participate in decisions that may foreseeably have a material effect on **financial interests**. These individuals are listed in Appendix C.

Sec. 4.2 Place of Filing. All members of the Board of Directors and all **designated employees** shall file statements of economic interests with the Secretary of the Board of Directors. The Secretary shall review all statements and, after consultation with **District** General Counsel, report to the Board of Directors any potential conflicts noted in the statements. In addition:

Designated employees may file their statements online using eDisclosure, which will submit the Form 700 to the County Clerk, Recorder and Assessor. Statements will be made available for public inspection and reproduction (Government Code Section 81008). Your Department/Agency's filing official can give you access.

Designated employees who file using a paper Form 700 shall file with the Code Agency. Upon receipt of the Statement filed by the designated employee, a copy shall be retained with the Code Agency and the original shall be forwarded to the County Clerk, Recorder and Assessor.

Sec. 4.3 Time of Filing. Statements shall be filed according to the following schedule:

Sec. 4.3.1 Initial Statements. All members of the Board of Directors and all **designated employees** employed by **District** on the effective date of this Code shall file statements within 30 days of that effective date. Thereafter, each person already in a position subsequently designated by an amendment to this Code shall file an initial statement within 30 days after the effective date of the amendment.

Sec. 4.3.2 Assuming Office Statements. All **persons** assuming **designated employee** positions after the effective date of this Code shall file statements within 30 days after assuming the designated position.

Sec. 4.3.3 Annual Statements. All **designated employees** shall file statements no later than April 1st of each calendar year.

Sec. 4.3.4 Leaving Office Statements. All **persons** who leave **designated employee** positions shall file statements within 30 days after leaving office.

Sec 4.4 Statements for Persons Who Resign Prior to Assuming Office

Sec. 4.4.1 Any **person** who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file

an assuming officer statement, is not deemed to have assumed office of left office, provided he or she did not make or participate in the making of, or use his or her position to influence and decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such **persons** shall not file either an assuming or leaving office statement.

Sec. 4.4.2 Any **person** who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

- (1) File a written resignation with the appointing power; and
- (2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision, or receive, or become entitled to receive, and form of payment by virtue of being appointed to the position.

Sec. 4.5 Contents of Statements.

Sec. 4.5.1 Contents of Initial Statements. Initial statements shall disclose any reportable **investments, interest in real property, income** and business positions held on the effective date of the Code and **income** received during the 12 months prior to the effective date of the Code.

Sec. 4.5.2 Contents of Assuming Office Statements. Assuming office statements shall disclose any reportable **investments, interest in real property, income** and business positions held on the date of assuming office, and **income** received during the 12 months prior to the date of assuming office.

Sec. 4.5.3 Contents of Annual Statements. Annual Statements shall disclose any reportable **investments, interest in real property, income** and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the Code or the date of assuming office, whichever is later.

Sec. 4.5.4 Contents of Leaving Office Statements. Leaving office statements shall disclose reportable **investments, interest in real property, income** and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

Sec. 5 Manner of Reporting.

Statements of economic interests shall be made on Form 700, attached hereto as Appendix B, and shall contain the following information:

Sec. 5.1 **Investment** and Real Property Disclosure. When an **investment** or an interest in real property is required to be reported, the statement shall contain the following:

Sec. 5.1.1 A statement of the nature of the **investment** or interest.

Sec. 5.1.2 The name of the business entity in which each **investment** is held, and a general description of the business activity in which the business entity is engaged.

Sec. 5.1.3 The address or other precise location of the real property.

Sec. 5.1.4 A statement whether the fair market value of the **investment** or **interest in real property** equals or exceeds Two Thousand Dollars (\$2,000.00), exceeds Ten Thousand Dollars (\$10,000.00), exceeds One Hundred Thousand Dollars (\$100,000.00), or exceeds One Million Dollars (\$1,000,000.00).

Sec. 5.1.5. If the interest is a leasehold interest, identify the number of years remaining on the lease.

Sec. 5.1.6. If the interest is a leasehold interest, identify the exact date the lease became effective or terminated if it did so during the period covered by the statement.

Sec. 5.2 Personal **Income** Disclosure. When personal **income** is required to be reported, the statement shall contain:

Sec. 5.2.1 The name and address of each **source of income** aggregating Five Hundred Dollars (\$500.00) or more in value, or Fifty Dollars (\$50.00) or more in value if the **income** was a **gift**, and a general description of the business activity, if any, of each source.

Sec. 5.2.2 A statement whether the aggregate value of **income** from each source, or in the case of a loan, the highest amount owed to each source, was One Thousand Dollars (\$1,000.00) or less, greater than One Thousand Dollars (\$1,000.00), greater than Ten Thousand Dollars (\$10,000.00), or greater than One Hundred Thousand Dollars (\$100,000.00).

- Sec. 5.2.3 A description of the consideration, if any, for which the **income** was received.
- Sec. 5.2.4 In the case of a **gift**, the name, address and business activity of the donor and any intermediary through which the **gift** was made; a description of the **gift**; the amount or value of the **gift**; and the date on which the **gift** was received.
- Sec. 5.2.5 In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.
- Sec. 5.3 Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported, the statement shall contain:
- (1) The name, address and a general description of the business activity of the business entity; and
 - (2) The name of every **person** from whom the business entity received payments if the filer's pro rata share of the gross receipts from such **person** was equal to or greater than ten thousand dollars (\$10,000.00).
- Sec. 5.4 Business Position Disclosure. When business positions are required to be reported, a **designated employee** shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the **designated employee's** position with the business entity.
- Sec. 5.5 Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an **investment** of an **interest in real property** was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

Sec. 6 Standards of Conduct for **Public Officials**.

There are numerous laws and regulations which govern the conduct of **public officials** and which are applicable to **District**. When in doubt as to the applicability of any law or regulation or provision of this Code to any particular situation, the potentially affected **person** should request an advisory opinion from counsel to **District**. All **persons** subject to this Code shall be familiar with its provisions, including the following provisions that govern the conduct of all **public officials**:

- Sec. 6.1 **Public officials** shall disqualify themselves from making, or participating in the making of, or in any way attempting to use their official position to influence, a **governmental decision** which they know or have reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:
- Sec. 6.1.1 Any business entity in which the public official has a direct or indirect investment worth Two Thousand Dollars (\$2,000.00) or more.
- Sec. 6.1.2 Any **interest in real property** in which the **public official** has a direct or indirect interest worth Two Thousand Dollars (\$2,000.00) or more.
- Sec. 6.1.3 Any **source of income**, other than **gifts** and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating Five Hundred Dollars (\$500.00) or more in value provided to, received by or promised to the **public official** within 12 months prior to the time the decision is made.
- Sec. 6.1.4 Any business entity in which the **designated employee** is a director, officer, partner, trustee, employee, or holds any position of management.
- Sec. 6.1.5 Any donor of, or any intermediary or agent for a donor of, a **gift** or **gifts** aggregating Five Hundred Dollars (\$500.00) or more provided to, received by, or promised to the **designated employee** within twelve months prior to the time when the decision is made.
- Sec. 6.2 **Public officials** shall not be financially interested in any contract made by them in their official capacity. They shall not be purchasers at any sale or vendors at any purchase made by them in their official capacity. A contract made in violation of provision within Section 6 of this Code may be voided by the Board of Directors.
- Sec. 6.3 **Public officials** shall not engage in any employment or activity for compensation that is inconsistent or incompatible or in conflict with his or her duties as a Board member or employee (that is, which would interfere with the official's ability to carry out official duties or exercise independent judgment on behalf of the public interest). **Public officials** shall not engage in outside employment or provide services for compensation where any part of those efforts will be subject to approval by the Board of Directors, or any other board, officer or employee acting on behalf of **District**.
- Sec. 6.4 No **public official** shall participate in a **governmental decision** in which he or

she has a close personal interest that would tend to impair the exercise of independent judgment in the public interest.

- Sec. 6.5 No **public official** shall hold another public office where the two offices are incompatible.
- Sec. 6.6 No **public official** of the **District** may solicit or accept, either directly or indirectly, any **gift**, gratuity, loan, or other item or service of value if either the discharge of his or her official duties would be influenced or he or she has been, is presently, or may in the near future be involved in any official act or action directly affecting the donor or lender.
- Sec. 6.7 Invitations, received from bidders or other parties involved in a pending procurement, for business lunches, parties, or similar functions shall be declined. This is intended to avoid any situation that may give an appearance of improper influence in **District** procurement activities.
- Sec. 6.8 No **public official** shall accept any honorarium from any source, if the **public official** would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Government Code section 89506.
- Sec. 6.8.1 No **public official** shall accept **gifts** with a total value of more than \$520 in a calendar year from any single source, if the **public official** would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.
- Sec. 6.9 Notwithstanding the above, this section shall not apply to the following:
- Sec. 6.9.1 An occasional non-pecuniary **gift** of nominal value accepted in the ordinary course of a business meeting.
- Sec. 6.9.2 Unsolicited advertising or promotional material of nominal intrinsic value.
- Sec. 6.9.3 A **gift**, gratuity, favor, loan, or other thing of value when circumstances make it clear that an obvious long-standing social or family relationship, rather than a business relationship, is the motivating factor.
- Sec. 6.10 No **public official** or **designated employee** shall disclose or otherwise use confidential information acquired by virtue of his or her position or employment with the **District** for his or her or another **person's** private gain. No Board member shall reveal information received in a lawful closed session

unless such information is required by law to be disclosed.

Sec. 7 **Legally Required Participation.**

No **public official** of **District** shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that the vote of a **designated employee** who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

Sec. 8 **Prohibitions Against the Use of Public Office for Personal Gain.**

No **public official** of **District** shall use for personal gain or advantage, **District** facilities, equipment, supplies, personnel or other things of value or his or her position or office to secure, for personal benefit, **gifts**, special privileges or exemptions.

Sec. 9 **Conduct When There May Be a Financial Interest.**

Public officials shall conduct themselves as follows whenever the Board member, employee or **consultant** has, or may have, a **financial interest** in making or participating in the making of, any **governmental decision**:

Sec. 9.1 Board of Directors' member: Unless his or her participation is legally required, when the matter comes up on the agenda, the Director shall disclose his or her interest, refrain from participating in any way in the decision making process, and withdraw from the room if the subject is being discussed in a closed session.

Sec. 9.2 During any **contract formation**, a Director may not have any **financial interest** in any contract made by the **District**. Board of Directors are conclusively presumed to be involved in the making of all contracts under their Board's jurisdiction. Any contract made when a Director has a financial interest will be void. Disclosure of any **financial interest** and disqualification of the Director from contract formation will not prevent the creation of a void contract. Directors may engage in contract formation only when: (1) they have no financial interest; (2) they have a **remote interest**, (3) they have a **noninterest**; and/or (4) the contract involves a necessity.

Sec 9.3 If **designated employee** has a **remote interest**, that employee shall not be deemed to be to have a **financial interest** in a contract entered into by the **District** if the fact of that interest is disclosed to the body of the Board of Directors, and is noted in the official records, and thereafter the Board of Directors authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote of the **designated employee** with the **remote interest**.

Sec. 9.4 Employees: The employee shall immediately report the nature of the matter and the existence of a conflict to his or her superior so that the work may be assigned to another employee.

Sec. 9.5 **Consultants:** The **consultant** shall immediately report the nature of the matter and the existence of the conflict to the General Manager, who shall determine the action to be taken.

Sec. 10 Contact with Vendors, Bidders, and Proposers.

Prior to the issuance of a procurement solicitation, informational and research contacts with prospective vendors may be made for the purpose of gathering needed data. However, in making such contacts, **District** employees, officers, and agents shall avoid any commitment, or implication thereof, of a possible future contract.

Accordingly, requests for substantial complimentary services or supplies which may imply an obligation on the part of **District** shall be avoided. Also to be avoided are requests for testing services, product samples or demonstrations, and free trips to examine vendor products.

Whenever a procurement is in process, e.g., during the solicitation, evaluation, negotiation, and award phases, all contacts with potential contractors or vendors shall be made through the Procurement Officer.

Sec. 11 Incompatible Uncompensated Activities.

Sec. 11.1 **Public officials** may participate in outside activities for which they are not compensated, but are discouraged from participating in such non-compensated activities when any of the following subsections applies:

Sec. 11.1.1 The activity involves a substantial commitment of time that interferes with the **public official's** ability to timely discharge his or her official duties.

Sec. 11.1.2 The activity involves matters which come regularly before the Board and would create a substantial conflict between private interest and the exercise of Board authority in the public interest.

Sec. 11.2 A director may disqualify himself or herself in matters coming before the Board where the director concludes that participation would create the appearance of a conflict of interest.

Sec. 12 Penalties for Violation.

This Code has the force and effect of law. **Designated employees** violating any provision of this Code are subject to the administrative, criminal and civil sanctions provided in the Political

Reform Act, Government Code sections 81000-91015. In addition, failure to adhere to the provisions of this Code shall constitute a violation of **District** policy and shall subject the violator to disciplinary action up to and including termination as deemed appropriate by the **District** General Manager and/or Board of Directors. Any decision affected by a violation of the disqualification provisions of this Code has occurred may be set aside as void.

Sec. 13 Transportation Passes and Discounts.

Other than indicated below, the **District** may not grant, and Directors and/or **designated employees** may not receive, free passes or discounts for transit. The acceptance of a pass or discount by a **public official**, other than a Public Utilities Commissioner, shall work a forfeiture of that office. The Board of Directors or other employees may receive passes or discounts if such passes or discounts are provided to assist or enable them to perform a part of their official duties.

Sec. 14 Post Employment Restrictions.

Sec. 14.1 Post Employment Restriction for Board Members. The **District** shall not employ or retain under contract for compensation any individual who has served as a Board member within the previous two years. No Board member who leaves his or her office and accepts a position of employment with, or as a contractor or **consultant** for, a current or future **District** contractor/**consultant** may participate in a project or provide any goods or services to the **District**, through the contractor or **consultant**, for a period of two years.

Sec. 14.2 Post Employment Restrictions for Employees. No employee who leaves his or her **District** position and accepts a position of employment with, or as a contractor of **consultant** for, a current or future **District** contractor (**consultant**, vendor, developer, etc.) may participate in a project or provide any goods or services to the **District** through the contractor, for a period of two years. The General Manager may, when it is in the overall best interests of the **District**, make exceptions in the case of employees who have retired.

Appendix A

DEFINITIONS

1. **CONTRACT FORMATION:** The following actions constitute involvement in contract formation: (1) Any involvement in preliminary discussions, reasoning, negotiations, planning, drawing or plans or specifications and solicitations of bids relating to a contract; or (2) participation in decisions to modify, extend or renegotiate an existing contract, including exercise of an option.
2. **CONSULTANT:** Consultant shall be defined pursuant to 2 Cal. Code Regs. § 18700(a)(2) for purposes of this code. A consultant is an individual who, pursuant to contract with a state or local agency:
 - (A) Makes a governmental decision whether to:
 - (i) Approve a rate, rule, or regulation;
 - (ii) Adopt or enforce a law;
 - (iii) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
 - (iv) Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract which requires agency approval;
 - (v) Grant agency approval to a contract which requires agency approval and in which the agency is a party or the specification for such a contract;
 - (vi) Grant approval to a plan, design, report, study or similar item;
 - (vii) Adopt, or grant agency approval or, policies, standards, or guidelines for the agency, or for any subdivision thereof;
 - or
 - (B) Serves in a staff capacity with the agency and in that capacity performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code.

Consultants shall be included in the list of **designated employees** and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:

The Executive Director may determine in writing that a particular consultant, although a “designated position,” is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant’s duties and, based upon that description, a statement of the extent of disclosure requirements. The Executive Director’s determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

3. **DESIGNATED EMPLOYEE:** Any official of the **District** whose position is designated in this Code.
4. **DISTRICT:** The Santa Barbara Metropolitan Transit **District**.
5. **FINANCIAL INTEREST:** For the purposes of Article IV of this Code, a **designated employee** has a **financial interest** in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, or on any significant segment thereof, within the **jurisdiction**, on:
 - (a) Any business entity in which the **designated employee** has a direct or indirect **investment** worth more than Two Thousand Dollars (\$2,000.00).
 - (b) Any real property in which the **designated employee** has a direct or indirect interest worth more than Two Thousand Dollars (\$2,000.00).
 - (c) Any **source of income**, other than loans by a commercial lending institution in the regular course of business, aggregating Five Hundred Dollars (\$500.00) or more in value received by or promised to the **designated employee** within twelve (12) months prior to the time when the decision is made; or
 - (d) Any business entity in which the **designated employee** is a director, officer, partner, trustee, employee or holds any position of management.
 - (e) Indirect **investment** or interest, as used to define **financial interest**, means any **investment** or interest owned by the spouse or dependent child of the **designated employee**, by any business entity controlled by the **designated employee** or by a trust in which the business entity is controlled by a **designated employee** if the **designated employee** has a substantial interest. A business entity is controlled by a **designated employee** if the **designated employee**, his or her agents, spouse and dependent children hold more than Fifty Percent (50%) of the ownership interest in the entity. A **designated employee** has a substantial interest in a trust when the **designated employee**, his or her spouse and dependent children have a present or future interest worth more than Two Thousand Dollars (\$2,000.00).
6. **GIFT:** Any payment to the extent that the consideration of equal or greater value is not received. Any **person**, other than a defendant in a criminal action, who claims that a

payment is not a **gift** by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value. The term “**gift**” does not include informational material such as books, reports, pamphlets, calendars or periodicals. No payment for travel or reimbursements for any expenses shall be deemed “informational material.”

7. **INCOME:**

- (a) **Income** means, except as provided in subsection (b), **income** of any nature from any source, including but not limited to any salary, wage, advance, payment, dividend, interest, rent, capital gain, return of capital, **gift**, including any **gift** of food or beverage, loan, forgiveness or payment of indebtedness, discount in the price of anything of value unless the discount is available to members of the public without regard to official status, rebate, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any **person** other than an employer, and including any community property interest in **income** of a spouse. **Income** of an individual also includes a pro rata share of any **income** of any business entity or trust in which the individual or spouse owns, directly, indirectly, or beneficially, a Ten Percent (10%) interest or greater.
- (b) **Income** does not include:
 - (1) **Income**, other than a **gift**, from any source outside the **jurisdiction** and not doing business within the **jurisdiction**, not planning to do business within the **jurisdiction**, or not having done business within the **jurisdiction** during the two years prior to the time any statement or other action is required under this Code.
 - (2) Campaign contribution required to be reported under Chapter 4 of the Political Reform Act of 1974.
 - (3) Salary and reimbursement for expenses or per diem received from a state or local government agency and reimbursement for travel expenses and per diem received from a bona fide educational, academic or charitable organization.
 - (4) **Gifts** of informational material, such as books, pamphlets, reports, calendars or periodicals.
 - (5) **Gifts** which are not used and which, within thirty (30) days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for **income** tax purposes.
 - (6) **Gifts** from an individual’s spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle or

first cousin or the spouse of any such **person**; provided that a **gift** from any such **person** shall be considered **income** if the donor is acting as an agent or intermediary for any **person** not covered by this paragraph.

- (7) Any devise or inheritance.
- (8) Interest, dividends or premiums on a time or demand deposit in a financial institution, shares in a credit union or any insurance policy, interest credited on employees' contributions to public retirement plans, payments received under any insurance policy, or any bond or other debt instrument issued by any government or government agency.
- (9) Dividends, interest or any other return on a security which is registered with the Securities & Exchange Commission of the United States Government.
- (10) The value of **gifts** of hospitality including food, beverages or lodging provided to any **person** filing a statement of economic interest if such hospitality has been reciprocated within the filing period. "Reciprocity" as used in this paragraph includes the providing by the filer to the host of any consideration, including entertainment or a household **gift** of a reasonably similar benefit or value.
- (11) **Income** from a source which is a former employer if all **income** from the employer was received by or accrued to the **designated employee** prior to the time he or she became a **designated employee**; the **income** was received in the normal course of the previous employment; and there was no expectation by the **designated employee** at the time he or she assumed a designated position or resumed employment with the former employer.

8. **INTEREST IN REAL PROPERTY** includes any leasehold, beneficial or ownership interest or option to acquire such an **interest in real property** within the **jurisdiction** if the fair market value of the interest is equal to or greater than Two Thousand Dollars (\$2,000.00). **Interests in real property** of an individual include a pro rata share of **interests in real property** of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a Ten Percent (10%) interest or greater. For the purposes of Articles II and III of this Code, "**Interest in Real Property**" does not include the principal residence of the filer.

9. **INVESTMENT:** Any **financial interest** in or security issued by a business entity, including but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and any partnership or other ownership interest, if the business entity or any parent, subsidiary or otherwise related business entity has an **interest in real property** within the **jurisdiction**, or does business or plans to do business within the **jurisdiction** of the **District**, or has done business within the **jurisdiction** at any time during the two

years prior to the time any statement or other action is required under this Code. No asset shall be deemed an **investment** unless its fair market value exceeds Two Thousand Dollars (\$2,000.00). **Investment** does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, any employee's contribution to a public retirement plan or any bond or other debt instrument issued by any government or government agency. **Investments** of an individual include a pro rata share of **investments** of any business entity or trust in which the individual or spouse owns, directly or beneficially, a Ten Percent (10%) interest or greater.

10. **LEGALLY REQUIRED PARTICIPATION:**

- (a) A **designated employee** is not legally required to make or to participate in the making of a **governmental decision** within the meaning of paragraph 4.5 of this Code unless there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.
- (b) Whenever a **designated employee** who has a **financial interest** in a decision is legally required to make or to participate in making such a decision, he or she shall:
 - (1) Disclose as a matter of official public record the existence of the **financial interest**.
 - (2) Describe with particularity the nature of the **financial interest** before he or she makes or participates in making the decision.
 - (3) Attempt in no way to use his or her official position to influence any other **public official** with respect to the matter.
 - (4) State the reason there is no alternative source of decision-making authority.
 - (5) Participate in making the decision only to the extent that such participation is legally required.
- (c) This regulation shall be construed narrowly, and shall not be construed to permit voting to break a tie.

11. **MAKING GOVERNMENTAL DECISIONS:** A **designated employee** makes **governmental decisions**, except as provided in subsection (f)(1) herein, when he or she, acting within the authority of his or her duties:

- (a) Votes on a matter.
- (b) Appoints a **person**.

- (c) Obligates or commits the **District** to any course of action.
- (d) Enters into any contractual agreement on behalf of the **District**.
- (e) Determines not to act, within the meaning of subparagraphs (a) through (d) above, unless such determination is made because of his or her **financial interest**. When the determination not to act occurs because of his or her **financial interest**, the **designated employee's** determination not to act must be accompanied by disclosure of the **financial interest** in the manner prescribed in Section 4.3 of the Article IV of this Code.
- (f) The making of a **governmental decision** shall not include:
 - (1) Actions of **designated employees** which are solely ministerial, secretarial, manual or clerical.
 - (2) Appearances by a **designated employee** as a member of the general public before an agency in the course of its prescribed governmental function to represent himself on matters related solely to his or her personal interests.
 - (3) Actions by **designated employees** or their representatives relating to their compensation or the terms or conditions of their employment or contract.

12. **NONINTEREST:**

- (a) An officer or employee of the District shall not be deemed to be interested in a contract if his other interest is any of the following:
 - (1) The ownership of less than 3 percent of the shares of a corporation for profit, provided the total annual income to him or her from dividends, including the value of stock dividends, from the corporation does not exceed 5 percent of his or her total annual income, and any other payments made to him or her by the corporation do not exceed 5 percent of his or her total annual income.
 - (2) That of an officer in being reimbursed for his or her actual and necessary expenses incurred in the performance of official duty.
 - (3) That of a recipient of public services generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the board.
 - (4) That of a landlord or tenant of the contracting party if such contracting party is the federal government or any federal department or agency, this state or an

adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial, or other public district of this state or an adjoining state unless the subject matter of such contract is the property in which such officer or employee as such interest as landlord or tenant in which event his or her interest shall be deemed a **remote interest** within the meaning of, and subject to, the provisions of Section 1091.

- (5) That of a tenant in a public housing authority created pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code in which he or she serves as a member of the board of commissioners of the authority or of a community development commission created pursuant to Part 1.7 (commencing with Section 34100) of Division 24 of the Health and Safety Code.
- (6) That of a spouse or an officer or employee of a public agency in his or her spouse's employment or officeholding if his or her spouse's employment or officeholding has existed for at least one year prior to his or her election or appointment.
- (7) That of a nonsalaried member of a nonprofit corporation, provided that such interest is disclosed to the body or board at the time of the first consideration of the contract, and provided further that such interest is noted in its official records.
- (8) That of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that such interest is noted in its official records. For purposes of this paragraph, an officer is "noncompensated" even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing duties for his or her office.
- (9) That of compensation for employment with a governmental agency, other than the governmental agency that employs the officer or employee, provided that the interest is disclosed to the body or board at the time of consideration of the contract, and provided further that the interest is noted in its official record.
- (10) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an

ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.

- (11) Except as provided in subdivision (b), that of an officer or employee of or a **person** having less than a 10 percent ownership interest in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor, or creditor.
 - (b) An officer or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his or her sole interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor.
- 13. **PERSON:** An individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, associations, committee and any other organization or group of **persons** acting in concert.
- 14. **PUBLIC OFFICIAL:** As used herein, **public official** means members and alternates of the Board of Directors, **designated employees** of **District**, and **consultants** to and contracts of **District** required to file disclosure statements pursuant to this Code.
- 15. **REMOTE INTEREST:** As used in this article, **remote interest** means any of the following:
 - (a) That of an officer or employee of a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Government Code section 1091.5.
 - (b) That of an employee or agent of the contracting party, if the contracting party has 10 or more other employees and if the officer was an employee or agent of that contracting party for at least three years prior to the officer initially accepting his or her office. For purposes of this paragraph, time of employment with the contracting party by the officer shall be counted in computing the three-year period specified in this paragraph even though the contracting party has been converted from one form of business organization to a different form of business organization within three years of the initial taking of office by the officer. Time of employment in that case shall be counted only if, after the transfer or change in organization, the real or ultimate ownership of the contracting party is the same or substantially similar to that which existed before the transfer or change in organization. For purposes of this paragraph, stockholders, bondholders, partners, or other **persons** holding an interest in the contracting party are regarded as having the “real or ultimate ownership” of the contracting party.
 - (c) That of an employee or agent of the contracting party, if all of the following conditions are met:

- (1) The agency of which the person is an officer is a local public agency located in a county with a population of less than 4,000,000.
 - (2) The contract is competitively bid and is not for personal services.
 - (3) The employee or agent is not in a primary management capacity with the contracting party, is not an officer or director of the contracting party, and holds no ownership interest in the contracting party.
 - (4) The contracting party has 10 or more other employees.
 - (5) The employee or agent did not directly participate in formulating the bid of the contracting party.
 - (6) The contracting party is the lowest responsible bidder.
- (d) That of a parent in the earnings of his or her minor child for personal services.
 - (e) That of a landlord or tenant of the contracting party.
 - (f) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of 10 percent or more in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.
 - (g) That of a member of a nonprofit corporation formed under the Food and Agricultural Code or a nonprofit corporation formed under the Corporations Code for the sole purpose of engaging in the merchandising of agricultural products or the supplying of water.
 - (h) That of a supplier of goods or services when those goods or services have been supplied to the contracting party by the officer for at least five years prior to his or her election or appointment to office.
 - (i) That of a person subject to the provisions of Section 1090 in any contract or agreement entered into pursuant to the provisions of the California Land Conservation Act of 1965.
 - (j) Except as provided in subdivision (b) of Section 1091.5, that of a director of or a person having an ownership interest of 10 percent or more in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor or creditor.

- (k) That of an engineer, geologist, or architect employed by a consulting engineering or architectural firm. This paragraph applies only to an employee of a consulting firm who does not serve in a primary management capacity, and does not apply to an officer or director of a consulting firm.
 - (l) That of an elected officer otherwise subject to Section 1090, in any housing assistance payment contract entered into pursuant to Section 8 of the United States Housing Act of 1927 (42 U.S.C. Sec. 1437f) as amended, provided that the housing assistance payment contract was in existence before Section 1090 became applicable to the officer and will be renewed or extended only as to the existing tenant, or, in a jurisdiction in which the rental vacancy rate is less than 5 percent, as to new tenants in a unit previously under a Section 8 contract. This section applies to any person who became a public official on or after November 1, 1986.
16. **SOURCE OF INCOME:** **Source of income**, as used in subparagraph c of paragraph No. 3 of this Appendix “A” shall not include a former employer if all **income** from the employer was received by or accrued to the **designated employee** prior to the time he or she became a **designated employee**, the **income** was received in the normal course of the previous employment, and there was no expectation by the **designated employee** at the time he or she began employment or assumed office or renewed employment with the former employee.

Appendix B

See Form 700 attached hereto.

Appendix C

Designated Employees

Designated Employees:

General Manager: Jerry Estrada

Assistant General Manager: Mary Gregg

Director of Finance and Administration: Nancy Tillie

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To: MTD Board of Directors
From: Jerry Estrada, General Manager
Date: September 6, 2022
Subject: General Manager's Report

We have a brand new Bus Operator in Training that will be going through his onboarding with MTD this coming Monday. We welcome Nathaniel Hansen, and wish him a very long and safe career with MTD. Additionally, our newest Operator in Training, James Arnold, successfully completed all of his training and has assumed his bid shift.

Our Verification of Transit Training is set for the week of September 12. This is compulsory continuing education required for those of us that hold a Class B Commercial License with a passenger endorsement. These classroom sessions are scheduled over a 4-day period, at different times, to accommodate all of our operators various work schedules.

Southern California Edison's (SCE) general contractor, Cal Pacific, began construction on SCE's portion of the Charge Ready Bridge project. Currently, the contractor is installing disconnect switches at each charger location and running conduit from those disconnects to where new switchgear will be located.

As a result of potential production delays, staff requested extensions to Grant Agreements between MTD and various entities that committed funding to MTD's New Flyer battery electric bus (BEB) build. The total grant funding anticipated for the project is almost \$1.5 million. Each funding organization approved MTD's extension request, ensuring all grant monies awarded to MTD for the New Flyer BEB can be utilized.

MTD's California Energy Commission (CEC) Blueprint Grant project team, which includes individuals from CALSTART and the City of Santa Barbara, completed and submitted two more deliverables to the CEC. The two deliverables, a Summary of Medium- and Heavy-Duty Zero Emission Vehicle Infrastructure Development and Deployment and an Outreach Plan, were submitted in late-July and mid-August, respectively. The Summary of Medium- and Heavy-Duty Zero Emission Vehicle Infrastructure Development and Deployment provides a summary of electric vehicle charging and hydrogen fueling infrastructure throughout Santa Barbara and plans for future deployments. The Outreach Plan details the project team's plans for reaching out to community members to discuss various elements of the Blueprint Grant project and the City's various climate and energy policies and actions.

Staff has entered into negotiations with a firm that responded to MTD's Request for Qualifications (RFQ) for On-Call Construction Management Services. If awarded a contract, the firm will provide support and expertise for MTD's growing portfolio of construction projects. The firm will be able to perform constructability reviews, develop and track project schedules, draft detailed and accurate cost estimates, oversee complex construction activities, and much more.

The team developing MTD's Zero-Emission Bus Rollout Plan met with representatives from Southern California Edison (SCE), Santa Barbara Clean Energy (SBCE), and Central Coast

Clean Energy (CCCE) in mid-July. The meetings provided critical information about electric vehicle (EV) charging rates (including demand chargers) and incentives for fleet electrification from SCE and the two local Community Choice Aggregation programs. The information allows Stantec to project fuel costs as MTD transitions away from renewable diesel and draws more electricity from energy suppliers like SCE, SBCE, and CCCE.

Staff submitted the required quarterly Federal Financial Reports and Milestone Progress Reports for the April to June quarter to FTA for MTD's open federal awards. Staff also submitted the required monthly Ridership Activity reports and Safety and Security reports to FTA for the National Transit Database for June and July.

Staff attended a Zoom meeting of the Technical Transportation Advisory Committee (TTAC) of the Santa Barbara County Association of Governments (SBCAG) on August 4. TTAC recommended that the SBCAG Board approve the fiscal year 2021/22 Local Surface Transportation Program (LSTP) apportionments and Amendment 13 to the 2021 Federal Transportation Improvement Program (FTIP). TTAC reviewed and provided comments on the Draft 2023 FTIP, received updates on activities of the California Transportation Commission, SBCAG's Broadband Strategic Plan, and regional bike planning.

General Manager Estrada executed two FTA Awards. The first was the FFY 2022 Section 5307 Urbanized Area Formula Program award for a total of nearly \$8.6 million. The second was for approximately \$164,000 in FFY 2019 Section 5339(a) Buses and Bus Facilities Formula Program funds that were originally apportioned to the City of Lompoc. Lompoc was unable to obligate the funds, and FTA and Caltrans agreed to allow MTD to program the funds to avoid the loss of the funds to the County.

Staff attended the "Understanding of the Uniform Grants Guidance Webinar" presented by Federal Grants Training earlier this month. Next month staff is scheduled to attend the National Transit Institute's four day training session on the National Transit Database. Staff is in the process of closing out FY2021-22 and progressing with the financial audit.

Risk Department has completed all of the District's FY2022-23 Insurance renewals. Currently preparing for the upcoming FY2023-24 insurance policy renewals.

Bickmore's Actuarial Study of the District's self-insured workers' compensation program is now complete. The programs reported losses were less than expected. Total case reserves decreased by over \$200K since the prior evaluation. Average claim size for FY2021-22 is currently projected to be 38% less than that of the average of the four prior years.