SANTA BARBARA MTD

BOARD OF DIRECTORS AGENDA

SPECIAL MEETING
of the
BOARD OF DIRECTORS
of the
SANTA BARBARA METROPOLITAN TRANSIT DISTRICT
A Public Agency
Tuesday, September 8, 2026
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), Paula Perotte (Director), Mónica Solórzano (Director), Arjun Sarkar (Director), Alberto Lapuz (Director).

3. REPORT REGARDING THE POSTING OF THE AGENDA

4. PUBLIC COMMENT
Members of the public may address the Board 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.

5. OTHER BUSINESS AND REPORTS - (INFORMATIONAL)
The Board will report on the other related public transit issues and committees.

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

PUBLIC COMMENT RELATED TO CLOSED SESSION ITEM WILL BE ALLOWED BEFORE THE RECESS

7. ADJOURNMENT

BOARD OF DIRECTORS REPORT

MEETING DATE: SEPTEMBER 8, 2026 **AGENDA ITEM #: 6**

TYPE: ACTION ITEM

PREPARED BY: GENERAL MANAGER JERRY ESTRADA

REVIEWED BY: GENERAL MANAGER JERRY ESTRADA

SUBJECT: **Authorize the General Manager to Execute First Amendment to Option Agreement and Lease Agreement Regarding MTD's Calle Real Property**

RECOMMENDATION:

Staff asks that the Board of Directors, per the *ad hoc* committee's recommendation, approve and authorize the General Manager to execute the attached First Amendment to Option Agreement and Lease Agreement ("First Amendment") with CA Calle Real Owner LLC ("ConAm").

DISCUSSION:

Property History

MTD owns approximately 18.93 acres of real property 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 project contemplated in the First Amendment facilitates the joint planning between MTD And ConAm of a transit-oriented development project adjacent to MTD's Service Line #7. 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 service throughout its service area.

MTD's participation in the joint development would be limited to the joint planning of the project. Through this joint planning effort, which has taken place over the past years, MTD and ConAm have agreed on the type of residential development, the number of units, the required level of affordability, and the required improvements and 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.

The Project

Through the joint planning completed by ConAm and MTD, the project will be a transit-oriented development with 360 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. The project would include onsite amenities for the residents and an after-school learning center. The project includes two new bus stops along Calle Real to facilitate increased ridership from the project and the surrounding areas. The project is adjacent to MTD's Service Line #7 and the new bus stops and improved access trails will allow easy access for new residents as well as provide the opportunity for MTD to expand its operations throughout its service area.

The project must be reviewed and approved by the County of Santa Barbara and other government agencies with jurisdiction over the property, which may result in minor changes to the overall 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. On September 6, 2022, MTD and ConAm RE Investments LLC entered into an Option Agreement ("Option") for the Property. ConAm RE Investments LLC then assigned its rights in the Option Agreement to ConAm, as permitted under the Option Agreement. The Option Agreement allowed ConAm time to investigate the Property, process the necessary entitlements, and secure the financing to develop the Project. 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. 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 secure the necessary financing. If ConAm is unable to obtain the necessary entitlements or cannot secure the necessary financing, it cannot exercise the option.

Ground Lease

If ConAm exercises its rights under the Option to enter the Ground Lease, it will have the right to develop, operate and maintain the Project. The Ground Lease term is 99-years, which is required for ConAm to obtain the necessary financing to develop the Project. For a discussion of the reasons MTD decided to enter a long-term ground lease rather than selling the Property or entering into a formal partnership with a developer, please refer to the Staff Report dated September 6, 2022.

FIRST AMENDMENT TO OPTION AGREEMENT AND LEASE AGREEMENT

MTD and ConAm agree that the Option Agreement needs to be amended so that ConAm can develop the Project in a financially sustainable manner and within a specific time period. Over the last several months, the parties have negotiated the First Amendment, which reflects the changes to the Option and Ground Lease that are needed to progress the Project through development to operation.

The key amendments to the Option Agreement are as follows:

1. The Project will include 360 rental units, 15% of which will be affordable to very-low, low, and moderate-income households, subject to recorded long-term affordability covenants.
2. The Project will include two new bus stops, one on each side of Calle Real.
3. The Project will include a dedicated location for after school and resident programming to be provided by ConAm or its qualified third-party provider.
4. The Project will include an expanded trail network and improved pedestrian access to MTD transit lines.
5. The Option term will expire on August 28, 2027 (“Initial Term”), which can be extended by two option extensions to December 31, 2029 (“Extension Term”) and December 31, 2030 (“Second Extension Term”).
6. During the Initial Term and Extension Term, ConAm will pay MTD $100,000 per quarter (“Option Payments”).
7. During the Second Extension Term, if exercised by ConAm, ConAm will pay MTD $118,750 per quarter.
8. If ConAm exercises the Option and enters the Ground Lease, it will be credited 50% of the Option Payments towards the Ground Lease rent, prorated over the first 4 years of the Ground Lease.
9. ConAm, at its election, may locate all affordable housing units on one, separate parcel; provided that all amenities within the entire project are available to all residents.
10. If ConAm fails to exercise its option and does not enter into the Ground Lease for any reason other than MTD’s uncured breach, ConAm will deliver to MTD, at no cost, all work product, excluding confidential, privileged and proprietary information, related to the Project. ConAm will also assign all third-party contracts related to the Project to MTD and MTD may, at its sole discretion, accept assignment of any, all or none of the third-party contracts.

The key amendments to the Ground Lease are as follows:

1. First Rent Period: From the effective date of the Ground Lease through the CO Date (as defined in the Ground Lease), the Annual Minimum Rent will be $475,000 per year.
2. Second Rent Period: From the end of the First Rent Period through the date on which 90% of the units are leased, the Annual Minimum Rent will be $712,500 per year.
3. Full Rent Period: From the end of the Second Rent Period the Annual Minimum Rent will be $950,000 per year, which will be adjusted every two years based on a formula provided in the Ground Lease.
4. The Percentage Rent (as defined in the Ground Lease) will be 8.5% of the Effective Gross Income for the current Operating Year.
5. ConAm does not have a right of first offer if MTD elects to sell or transfer the Property during the Lease Term.
6. ConAm will defend, indemnify, protect and save harmless MTD from any claims arising from ConAm’s compliance with California Labor Code.

ATTACHMENT:

Option to Ground Lease Amendment 1

FIRST AMENDMENT TO OPTION AGREEMENT AND LEASE AGREEMENT

(4678 Calle Real/149 North San Antonio Road)

THIS FIRST AMENDMENT TO OPTION AGREEMENT AND LEASE AGREEMENT ("**First Amendment**") is made and entered into as of the _ day of September, 2026 ("**Amendment Effective Date**"), by and between SANTA BARBARA METROPOLITAN TRANSIT DISTRICT ("**Optionor**," "**Lessor**," or "**MTD**") and CA CALLE REAL OWNER LLC, a Delaware limited liability company ("**Optionee**," "**Lessee**," or "**CONAM**"). Optionor and Optionee are sometimes referred to collectively as "Parties" and individually as "Party" herein.

RECITALS

A. On September 6, 2022, MTD and CONAM RE Investments LLC, a Delaware limited liability company ("**Original Optionee**") entered into that certain Option Agreement (the "**Agreement**") related to real property owned by MTD in Santa Barbara County, California, commonly known as 4678 Calle Real/149 North San Antonio Road (the "**Premises**").

B. Optionee is an affiliate of Original Optionee, formed for the purpose of exercising the rights and performing the obligations of Optionee under the Agreement.

C. Pursuant to an Assignment and Assumption of Option Agreement dated November 17, 2023, Original Optionee assigned to Optionee and Optionee accepted and assumed all of Original Optionee's right, title, interest and obligations under the Agreement.

D. The Agreement incorporates by reference that certain form of Lease Agreement (the "**Lease Agreement**"), which is attached as Exhibit B of the Agreement.

E. Section 12.6 of the Agreement allows for the amendment of the Agreement by a writing executed by the Parties.

F. The Parties wish to amend the Agreement and Lease Agreement, subject to the terms and conditions of this First Amendment.

AGREEMENT

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

A. AMENDMENTS TO AGREEMENT:

1. **<u>Recital A</u>.** Recital A is hereby amended in its entirety to state as follows: "MTD owns fee title to certain real property in Santa Barbara County, California, commonly known as 4678 Calle Real/149 North San Antonio Road, as more particularly described in Exhibit A attached hereto (the "**Premises**").

2. **Recital I.** Recital I is hereby amended in its entirety to state as follows: "Optionee and MTD desire to jointly develop the Premises with a transit-oriented, residential community that is adjacent to MTD transit facilities and provides: (i) three hundred sixty (360) rental housing units at varying income levels, including without limitation no less than fifteen percent (15%) of the total number of units affordable to very-low, low-, and moderate-income households and subject to long-term affordability restrictions; (ii) two fully improved MTD transit stops to be constructed according to the standards attached hereto as Schedule I, one on each side of Calle Real in a location directly adjacent to the Project and approved by the County in consultation with MTD ("**Transit Stops**"); (iii) a dedicated location within the Project for after school and resident programming to be provided by Optionee or its qualified third-party provider of those services consistent with the programming and services offered at similar housing communities in southern California ("**After School and Resident Service Space**"); and (iv) an expanded trail network and improved pedestrian access to MTD's transit lines that fosters and improves transit use ("**Project**")."

   Within thirty (30) days of execution of this First Amendment, Optionee shall submit to the County of Santa Barbara a revised Project description consistent with the above terms and includes the Transit Stops and the After School and Resident Service Space (collectively, the "**Revised Project Description**"). The Parties hereby agree and acknowledge that the Revised Project Description is a material term of this First Amendment. Optionor has reviewed and approves the Revised Project Description.

3. **Period of Option Term.** Section 2(b) of the Agreement is hereby amended in its entirety to state as follows: "The Option shall be exercisable by Optionee during the period (the "**Option Term**"), which shall be until August 28, 2027. 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 of the Agreement) 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 Section 2(b) of the Agreement. If they are unable to agree within ten (10) 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.

Provided that there exists no default by Optionee under this Agreement nor any event that with the giving of notice and/or the passage of time would constitute a default, Optionee shall have the right and option (an "**Extension Option**") to extend the Option Term to December 31, 2029, exercisable in the following manner: Optionee shall give Optionor written notice of Optionee's intention to extend the Option Term not less than thirty (30) days prior to the expiration of the then current term of the Agreement ("**Optionee's Extension Notice**"), it being agreed that time is of the essence and that the Extension Option is personal to Optionee and is non-transferable to any transferee or other party. As consideration for the extension ("**Option Extension**"), Optionee shall deliver to Optionor One Hundred Thousand Dollars ($100,000) per quarter ("**Option Extension Payments**"), which shall be in lieu of (and not in addition to) the Option Payment during the Option Extension. The Option Extension Payments shall be prorated for any portion of a calendar quarter during the Option Extension.

The Option Extension Payments shall be non-refundable to Optionor, except in the event of a material, uncured breach by Optionor. The Option Extension Payment shall be deemed earned by Optionor at the time of payment by Optionee. Notwithstanding the foregoing, if Optionee exercises the Option during the Option Term, as may be extended by the Option Extension, and executes the Ground Lease Agreement pursuant to the terms of the Option and Ground Lease Agreement, Optionee shall be credited fifty percent (50%) of Option Extension Payments ("**Option Extension Payment Credit**"), which shall be applied in equal parts over the first four years of rent owed by Optionee (Lessee) pursuant to the Ground Lease Agreement. For illustration purposes only, if the Option Extension Payment Credit is $300,000, Optionor (Lessor) shall grant Optionee (Lessee) a credit of $75,000 for each of the first four years of the Ground Lease Agreement Term."

Section 2(c) is hereby added to the Agreement: "Provided that there exists no default by Optionee under this Agreement nor any event that with the giving of notice and/or the passage of time would constitute a default, Optionee shall have the right and option ("**Second Extension Option**") to extend the Option Term to December 31, 2030, exercisable in the following manner: Optionee shall give Optionor written notice of Optionee's intention to extend the Option Term not later than November 30, 2029 ("**Optionee's Second Extension Notice**"), it being agreed that time is of the essence and that the Second Extension Option is personal to Optionee and is non-transferable to any transferee or other party. As consideration for the extension ("**Second Option Extension**"), Optionee shall deliver to Optionor One Hundred Eighteen Thousand Seven Hundred Fifty Dollars ($118,750) per quarter ("**Second Option Extension Payment**"). The Second Option Extension Payment shall be prorated for any portion of a calendar quarter during the Second Option Extension.

The Second Option Extension Payment shall be non-refundable Optionor, except in the event of a material, uncured breach by Optionor. The Second Option Extension Payment shall be deemed earned by Optionor at the time of payment by Optionee and no amount shall be credited to future rent owed by Optionee under the Ground Lease.

4. **Conditions to Exercise of Option.** Section 3(iv) of the Agreement is hereby amended by adding the following at the end thereof: ", which may be satisfied by (among other things) documentary evidence that Optionee has entered into a letter of intent with a creditworthy counterparty with respect to the capitalization of the Project."

5. **Option Fee.** Section 4 of the Agreement is hereby amended in its entirety to state as follows: "In consideration of Optionor's grant of the Option to Optionee, Optionee shall pay to Optionor One Hundred Thousand Dollars ($100,000) per quarter through the Option Term, commencing upon the execution of the First Amendment, in addition to any payments made by Optionee to Optionor under the Agreement prior to the execution of the First Amendment. All payments made to Optionor under this Section 4 shall be referred to as the "**Option Payment**." The Option Payment shall be prorated for any portion of a calendar quarter during the Option Term.

   The Option Payment shall be non-refundable to Optionor, except in the event of a material, uncured breach of this Agreement by Optionor. The Option Payment shall be deemed earned by Optionor at the time of payment by Optionee. Notwithstanding the foregoing, if Optionee exercises the Option during the Option Term, as may be extended by the Option Extension, and executes the Ground Lease Agreement pursuant to the terms of the Option and Ground Lease Agreement, Optionee shall be credited fifty percent (50%) of the Option Payment paid after execution of the First Amendment but not including the Second Option Extension Payment ("**Option Payment Credit**"), which shall be applied in equal parts over the first four years of rent owed by Optionee (Lessee) pursuant to the Ground Lease. For illustration purposes only, if the Option Payment Credit is $300,000, Optionor (Lessor) shall grant Optionee (Lessee) a credit of $75,000 for each of the first four years of the Ground Lease Term."

6. **Affordable Housing.** Optionee may, at its sole discretion, locate all affordable housing units, including without limitation housing affordable to very-low, low-, and moderate-income households, on one, separate Parcel; provided that all amenities within the Project, including without limitation pools, parks, gym facilities, trails, community rooms, and barbeque areas, shall be equally accessible and available to all residents of the Project.

7. **Failure to Exercise Option; Assignment of Work Product and Entitlements.**

   a. Assignment of Work Product. As part of the consideration for this First Amendment, in the event Optionee fails to exercise the Option and enter into the Ground Lease Agreement for any reason other than Optionor's material breach or default under this Agreement, then Optionee hereby grants, transfers, and assigns to Optionor all right, title, and interest in and to any and all work product, plans, drawings, renderings, specifications, studies, surveys, reports, analyses, entitlements, permits, approvals, applications, and all other materials and documents of any kind or nature prepared by or on behalf of Optionee (including third parties, whether owned by Optionee or otherwise) in connection with

Optionee's efforts to obtain the discretionary approvals and entitlements referenced in Section 6 of this Agreement (collectively, "**Work Product**"), excluding confidential, privileged, and proprietary materials. The assignment of Work Product shall be at no cost to Optionor and without representation or warranty of any kind by Optionee as to the accuracy, completeness, or fitness for any purpose of the Work Product, and Optionor shall rely on the Work Product at its own risk. Optionee shall execute and deliver such further instruments of assignment and transfer as Optionor may reasonably request to evidence or effectuate the assignment contemplated herein.

b. <u>Assignment of Third-Party Contracts</u>. In connection with the assignment of any Work Product, Optionee shall also assign to Optionor all of Optionee's right, title, and interest in and to any and all third-party contracts, agreements, and professional service agreements entered into by Optionee in connection with the Project or Optionee's efforts to obtain the discretionary approvals and entitlements referenced in Section 6, including without limitation contracts with architects, engineers, land use consultants, environmental consultants, and other design and entitlement professionals (collectively, "**Third-Party Contracts**"). Optionor shall have the right, but not the obligation, at its sole election, to assume any or all of the Third-Party Contracts so assigned. Optionee shall use commercially reasonable efforts to obtain any third-party consents required to effectuate such assignment. To the extent any Third-Party Contract is not assignable without third-party consent and such consent is not obtained, Optionee shall reasonably cooperate with Optionor to provide Optionor the practical benefit of such contract to the extent permitted by its terms. Any Third-Party Contracts assumed by Optionor shall be assumed subject to all liabilities and obligations arising under such contracts from and after the date of assumption; Optionor shall have no liability for obligations arising prior to the date of assumption.

8. . **Prevailing Wage.** A new Section 12.17 is hereby added to the Agreement: "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, Optionee 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 Optionee at the Premises or related to the Project. Optionee shall defend, indemnify, protect, and save harmless Optionor from any Claims arising out of or in connection with Optionee's compliance with the California Labor Code."

B: AMENDMENTS TO GROUND LEASE AGREEMENT

1. **<u>Premises</u>.** The first WHEREAS provision is hereby amended in its entirety to state as follows: Lessor owns fee title to certain real property in Santa Barbara County, California, commonly known as 4678 Calle Real/149 North San Antonio Road, consisting of three legal parcels, as more particularly described in Exhibit A attached hereto ("**Premises**").

2. **<u>Project</u>.** The ninth **WHEREAS** provision is hereby amended in its entirety to state as follows: "Lessee and MTD desire to jointly develop the Premises with a transit-oriented, residential community that is adjacent to MTD transit facilities and provides: (i) three hundred sixty (360) rental housing units at varying income levels, including without limitation no less than fifteen percent (15%) of the total number of units affordable to very-low, low- and moderate-income households and subject to long-term affordability restrictions; (ii) two fully improved MTD transit stops to be constructed according to the standards attached hereto as Schedule I, one on each side of Calle Real in a location directly adjacent to the Project and approved by the County in consultation with MTD ("**Transit Stops**"); (iii)) a dedicated location within the Project for after school and resident programming to be provided by Lessee or its qualified third-party provider of those services consistent with the programming and services offered at similar housing communities in southern California ("**After School and Resident Service Space**"); and (iv) an expanded trail network and improved pedestrian access to MTD's transit lines that fosters and improves transit use ("**Project**")."

3. **<u>First Rent Period</u>.** Section 4.2.1.1 is hereby amended in its entirety to state as follows: "During the period from the Effective Date through the CO Date, Annual Minimum Rent shall be Four Hundred and Seventy-Five Thousand Dollars ($475,000.00) per year (the "**First Rent Period**"). Lessee shall provide written notice to Lessor of the CO Date promptly upon the occurrence thereof."

4. **<u>Second Rent Period</u>.** Section 4.2.1.2 is hereby amended in its entirety to state as follows: "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 be 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 Annual Minimum Rent 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 Annual Minimum Rent in the First Rent Period 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."

5. **<u>Full Rent Period</u>.** Section 4.2.1.3 is hereby amended in its entirety to state as follows: "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 be 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 2029 is $1,500,000.00 and the Total Rent paid in Operating Year 2030 is $2,000,000.00, the Annual Minimum Rent for Operating Year 2031 at the Adjustment Date would be $1,575,000.00."

6. **Option Payment Credit and Option Extension Payment Credit.** A new Section 4.2.1.3 is hereby added to state as follows: "Lessee shall be credited the Option Payment Credit and the Option Extension Payment Credit, as those terms are defined in the Option, during the first four (4) years of this Lease."

7. **Percentage Rent.** The first sentence of Section 4.2.2 is hereby amended in its entirety to state as follows: "For the purposes of this Lease, "**Percentage Rent**" for any given Operating Year shall be the sum of the following:
Eight- and One-Half Percent (8.5%) of the Effective Gross Income for the current Operating Year."

8. **Right of First Offer.** Section 7 is here deleted in its entirety.

9. **Prevailing Wage.** Section 17.6 is hereby amended in its entirety to state as follows: "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. Pursuant to Section 8, Lessee shall defend, indemnify, protect, and save harmless Lessor and its Indemnitees from any Claims arising out of or in connection with Lessee's compliance with the California Labor Code."

C. MISCELLANEOUS TERMS.

1. **Amendment Controls.** In the event of any conflict between any term or provision contained in this First Amendment with any term or provision contained in the Agreement or Lease Agreement, this First Amendment shall control.

2. **Interpretation.** All capitalized terms used herein that are defined in the First Amendment shall have the same meaning for purposes herein as defined and/or used in the Agreement or Lease Agreement.

3. **Ratification and Confirmation.** The Agreement, as herein amended and modified, is hereby ratified and confirmed and, except as expressly amended and modified herein, all terms, covenants and conditions of the Agreement shall remain unchanged and in full force and effect.

4. **<u>Counterparts</u>.** This First Amendment may be executed in counterparts, each of which shall be deemed an original and all of which, taken together, shall be one and the same instrument, binding on each signatory.

IN WITNESS WHEREOF, this First Amendment is executed as of the date first written above.

OPTIONOR/LESSOR:

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

By: ____________________________

Its: ____________________________

OPTIONEE/LESSEE:

CA CALLE REAL OWNER LLC, a

Delaware limited liability company

By: ___________________________

Its: ___________________________

4907-6373-6781, v. 1