

RESOLUTION NO. 49

**RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF
THE FORMER MILPITAS REDEVELOPMENT AGENCY
APPROVING A LONG RANGE PROPERTY MANAGEMENT PLAN**

WHEREAS, the California State Legislature enacted Assembly Bill x1 26 to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code section 33000 et seq.), as amended by Assembly Bill 1484, Statutes of 2012, enacted June 27, 2012 (the "Dissolution Law"); and

WHEREAS, the Dissolution Law requires the Successor Agency to submit a long-range property management plan ("LRPMP") to the Department of Finance for approval no later than six months following the issuance of a finding of completion; and

WHEREAS, the Milpitas Successor Agency received its finding of completion from the Department of Finance on June 27, 2014; and

WHEREAS, the settlement agreement resulting from the litigation between the County of Santa Clara, the County Office of Education, the State of California, the Milpitas Successor Agency, the City of Milpitas, and the Milpitas Economic Development Corporation ("Settlement Agreement") provides that a jointly prepared LRPMP shall be submitted to the Oversight Board no later than ninety (90) business days following the satisfaction of certain requirements in the settlement agreement; and

WHEREAS, pursuant to section 34191.5(b) of the Dissolution Law, and the Settlement Agreement, the Successor Agency has prepared a LRPMP to address the disposition and use of the real properties of the Successor Agency, and has submitted it to the Oversight Board;

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board has considered the full record before it, which includes but is not limited to the accompanying staff report, testimony by staff and the public, and other materials and evidence provided to it.

BE IT FURTHER RESOLVED that the Oversight Board approves the LRPMP, as revised during the December 2, 2014, meeting, and in substantially the same form as attached hereto and incorporated herein by this reference.

BE IT FURTHER RESOLVED that the Oversight Board directs its staff to do all of the following:

- a. To revise the LRPMP prior to its submission to DOF in order to fully and accurately reflect the approval actions taken by the Oversight Board; and
- b. To submit the LRPMP, as approved by the Oversight Board, to DOF, and to take such other administrative actions as may be needed to comply with applicable laws.

BE IT FURTHER RESOLVED that the Oversight Board authorizes and directs Successor Agency staff to dispose of the real properties and related proceeds only as described in the LRPMP, provided that the following actions shall require Successor Agency, Oversight Board, and DOF consideration and approval:

- a. Requests for Proposals for the disposition of real property to be disposed of by the Successor Agency; and
- b. Actions by the Successor Agency to dispose of real property; and
- c. Compensation Agreements pursuant to section 34180 (f)(1) of the Dissolution Act.

PASSED AND ADOPTED this 2nd day of December, 2014, by the following vote:

AYES: Knopf, Medina, Mendizabal, McInerney, Williams

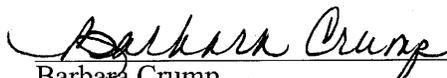
NOES: Karlen, Reliford

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:



Barbara Crump
Oversight Board Secretary



Marijel S. Medina
Oversight Board Chair

**SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
OF THE CITY OF MILPITAS**

LONG RANGE PROPERTY MANAGEMENT PLAN

Health and Safety Code §34191.5

**Property #1
86 N. Main Street
(Vacant Land)**

1. **Date of acquisition, its value at that time and estimated current value.**
Date of acquisition: 12/20/2004
Value at that time: \$401,689.68
Estimated current value: To be determined, appraisal is underway.
2. **Purpose for which property was acquired.**
Property was purchased for adjacent library acquisition and construction lay down site.
3. **Parcel data, including address, lot size, and current zoning.**
Address: 86 N. Main Street, Milpitas CA 95035
APN: 028-24-025
Size: 60.44' x 104.98'
Zoning: Mixed Use
4. **Estimate of current value of the parcel including any appraisal information.**
Appraisal of the Property is underway by the Oversight Board Task Force.
5. **Estimate of any lease, rental, or any other revenues generated by the property, and description of the contractual requirements for the disposition of those funds.**
Property is non-revenue generating, bare land with no current use.
6. **History of environmental contamination and any related studies or remediation efforts.**
Successor Agency (SA) is not aware of any environmental contamination of this site.
7. **Description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency.**
SA sees little potential for transit-oriented development of this site or how it might be utilized to advance the planning objectives of the SA because of its small size unless assembled with adjacent properties.
8. **A brief history of previous development proposals and activity, including the rental or lease of property.**

No known prior development proposals. Prior use as a lay-down site for Milpitas Library construction.

9. **Identify the use or disposition of the property.**
- a. Retained for governmental use
 - b. Retained for future development
 - c. Retained to fulfill enforceable obligation
 - e. Sell the property

The property will be sold through the Oversight Board-approved Request for Proposals (RFP) process. The RFP shall be issued not later than ninety (90) days following approval of the Long Range Property Management Plan by the Department of Finance (DOF), with responses required not later than sixty (60) days following issuance of the RFP. Closing shall be on an all-cash basis, not later than ninety (90) days following approval of the Buyer's offer by the Oversight Board.

Each of the properties designated for sale in the Long Range Property management Plan shall be sold through a Request for Proposal (RFP) process that maximizes the financial returns to the affected taxing entities in accord with section 3e of the Settlement Agreement. An RFP specific to each property designated for sale shall be prepared by Successor Agency staff as directed by the Oversight Board (OB) for the OB's subsequent approval prior to release of the RFP. All responses to each RFP that are received by the Successor Agency shall be forwarded to the Oversight Board for its review and determination and subsequent approval of the offer which best maximizes the financial returns to the affected taxing entities. All sales shall be approved by the Oversight Board and all proceeds distributed to the taxing entities pursuant to Health and Safety Code Section 34191.5(c)(2)(B).

Property #2
Alder Drive and Barber Lane
(Vacant Land)

1. **Date of acquisition, its value at that time and estimated current value.**
Date of acquisition: 8/2000
Value at that time: \$6,988,800.00
Estimated current value: To be determined, appraisal is underway.
2. **Purpose for which property was acquired.**
General economic development.
3. **Parcel data, including address, lot size, and current zoning.**
Address: Alder Drive and Barber Lane, Milpitas, CA 95035
APN: 086-02-086
Size: 3.34 Acres
Zoning: Industrial Park
4. **Estimate of current value of the parcel including any appraisal information.**
Appraisal of the Property is underway by the Oversight Board Task Force.

5. **Estimate of any lease, rental, or any other revenues generated by the property, and description of the contractual requirements for the disposition of those funds.**

There is no lease or rental agreement encumbering this property which is non-revenue generating, bare land.

6. **History of environmental contamination and any remediation efforts.**

SA is not aware of any environmental contamination associated with this site.

7. **Description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency.**

The SA would like to develop the site into a hotel because of the very high demand for hotel occupancy at this time in the region. SA would like to enter into a Development Agreement with a specific hotel developer to build a high end hotel facility (A-Loft Hotel) including restaurant and banquet facility. It is anticipated that the property would be conveyed to the developer at fair market value under a development agreement. Fair market value will be determined by an appraisal commissioned by the Oversight Board. Proceeds of the sale will be distributed to the affected taxing entities. Increased assessed valuation from bare land to high end hotel could create future long term benefit to the affected taxing entities.

Valley Transportation Agency (VTA) has expressed interest in co-operating with the Successor Agency to make available the adjoining 3.4 acre parcel for a combined mixed use transit-oriented development (TOD). Since the two abutting properties are adjacent to a VTA light rail station, this would be a prime TOD location for a medium to high density mix of commercial/residential development.

The State of California's General Services Administration has also expressed interest in the site as the location of a new Highway Patrol facility, to be purchased at fair market value.

8. **A brief history of previous development proposals and activity, including the rental or lease of property.**

The property was originally purchased as a potential hotel site. At one point in 2008 there was a proposal to build a hospital on this site. It did not make it to the formal application stage. No prior knowledge of any use for this bare land site.

9. **Identify the use or disposition of the property.**

- a. Retained for governmental use
- b. Retained for future development
- c. Retained to fulfill enforceable obligation
- e. Sell the property

The property will be sold through the Oversight Board-approved Request for Proposals (RFP) process. The RFP shall be issued not later than 120 days following approval of the Long Range Property Management Plan by the Department of Finance (DOF), with responses required not later than ninety (90) days following issuance of the RFP. Closing shall be on an all-cash basis, not later than one hundred eighty (180) days following approval of the Buyer's offer by the Oversight Board.

Each of the properties designated for sale in the Long Range Property management Plan shall be sold through a Request for Proposal (RFP) process that maximizes the financial returns to the affected taxing entities in accord with section 3e of the Settlement Agreement. An RFP specific to each property designated for sale shall be prepared by Successor Agency staff as directed by the Oversight Board (OB) for the OB's subsequent approval prior to release of the RFP. All responses to each RFP that are received by the Successor Agency shall be forwarded to the Oversight Board for its review and determination and subsequent approval of the offer which best maximizes the financial returns to the affected taxing entities. All sales shall be approved by the Oversight Board and all proceeds distributed to the taxing entities pursuant to Health and Safety Code Section 34191.5(c)(2)(B).

Property #3
230 N. Main Street
(Vacant Land)

1. **Date of acquisition, its value at that time and estimated current value.**
Date of acquisition: 8/20/2010
Value at that time: \$6,800,000.00
Estimated current value: To be determined, appraisal is underway.
2. **Purpose for which property was acquired.**
Property was purchased for development into a public park and historical museum site.
3. **Parcel data, including address, lot size, and current zoning.**
Address: 230 North Main Street, Milpitas, CA 95035
APN: 028-34-001 through 028-34-094
Size: Collective size: 1.609 Acres
Zoning: Park and Open Space
4. **Estimate of current value of the parcel including any appraisal information.**
Appraisal of the Property is underway by the Oversight Board Task Force.
5. **Estimate of any lease, rental, or any other revenues generated by the property, and description of the contractual requirements for the disposition of those funds.**
No current lease, rental or other revenue generated by this bare land site.
6. **History of environmental contamination and any remediation efforts.**
Historically the property was owned and operated by Standard Oil/Chevron as a bulk oil facility and fuel service station from at least 1920 to the mid 1970s, which had utilized underground and above ground storage tanks. A Soil Investigation Report dated 8/13/02 reported the Santa Clara Valley Water District had "closed" a former case of leaking underground storage tanks on 12/28/98 after remediation. A Phase I Environmental Assessment report dated 9/12/02 indicated prior remedial action had been taken and no further remedial action was recommended. A further Phase I Environmental Assessment report dated 8/18/04 also did not recommend any remedial action. A Soil Quality

Evaluation and Geophysical Survey Report dated 8/27/04 recommended remediation of arsenic impacted soil prior to site development.

7. **Description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency.**

There is the potential for transit oriented development at this site since it is adjacent to several bus lines, both on Main Street as well as Calaveras Blvd., which is nearby. The site is adjacent to the proposed BART line, although not near any proposed station. A public park or mixed use development of the site would be consistent with the planning objectives of the SA.

8. **A brief history of previous development proposals and activity, including the rental or lease of property.**

A private sector proposal to develop the property for Mixed use residential and neighborhood commercial was approved and map for Apton Plaza approved but project was never built as a result of financing difficulties incurred in the recession circa 2009. Thereafter, SA purchased the site for potential development of a Park and Historical Museum and incorporated such a proposal into its Park Master Plan and General Plan.

9. **Identify the use or disposition of the property.**

- a. Retained for governmental use
- b. Retained for future development
- c. Retained to fulfill enforceable obligation
- e. Sell the property

The property will be sold through the Oversight Board-approved Request for Proposals (RFP) process. The RFP shall be issued not later than 180 days following approval of the Long Range Property Management Plan by the Department of Finance (DOF), with responses required not later than ninety (90) days following issuance of the RFP. Closing shall be on an all-cash basis, not later than one hundred eighty (180) days following approval of the Buyer's offer by the Oversight Board.

Each of the properties designated for sale in the Long Range Property management Plan shall be sold through a Request for Proposal (RFP) process that maximizes the financial returns to the affected taxing entities in accord with section 3e of the Settlement Agreement. An RFP specific to each property designated for sale shall be prepared by Successor Agency staff as directed by the Oversight Board (OB) for the OB's subsequent approval prior to release of the RFP. All responses to each RFP that are received by the Successor Agency shall be forwarded to the Oversight Board for its review and determination and subsequent approval of the offer which best maximizes the financial returns to the affected taxing entities. All sales shall be approved by the Oversight Board and all proceeds distributed to the taxing entities pursuant to Health and Safety Code Section 34191.5(c)(2)(B).

Property #4
93 North Main Street
(County Health Center Parking Garage)

1. **Date of acquisition and its value at that time and estimated current value.**
Date of acquisition: 3/15/2005
Value at that time: \$3,798,883.75
Estimated current value: There is no current estimate of value.
2. **Purpose for which property was acquired.**
Acquired for economic development purposes and eventually to provide for general public parking and parking serving adjacent County Health Building.
3. **Parcel data, including address, lot size, and current zoning.**
Address: 93 North Main Street, Milpitas, CA 95035
APN: 022-08-003
Size: 1.005 Acres
Zoning: Institutional
4. **Estimate of current value of the parcel including any appraisal information.**
There is no current estimate of value.
5. **Estimate of any lease, rental, or any other revenues generated by the property, and description of the contractual requirements for the disposition of those funds.**
See the attached Ground Lease agreement with the County of Santa Clara.
6. **History of environmental contamination and any remediation efforts.**
The property is part of the Santa Clara County Health Center project and subject to a Development and Disposition Agreement (DDA) dated 8/29/06 with the County. The DDA provides the parcel be leased to the County, which would construct the Health Center garage pursuant to the conditions set forth in that certain Ground Lease entered into between the parties. An Environmental Impact Report (EIR #2004082131) for the North Main Street Development project which includes this parcel was certified by the City Council on 1/4/05, and contains a Mitigation Monitoring and Reporting Program (MMRP). The Ground Lease provides that the County shall comply with all environmental mitigation, monitoring, and reporting requirements applicable to the Health Center Garage pursuant to the MMRP. Environmental contamination reporting and/or remediation efforts therefore have been the responsibility of the County of Santa Clara. The DDA, Ground Lease, EIR, and MMRP are voluminous and available for review upon request.
7. **Description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency.**
The property is currently contractually committed to a long-term use as a parking facility for the County's health clinic and other public use.
8. **A brief history of previous development proposals and activity, including the rental or lease of property.**

Property purchased for economic development purposes and ultimately utilized for the County Health Clinic and other public parking.

9. **Identify the use or disposition of the property.**
 - a. Retained for governmental use
 - b. Retained for future development
 - c. Retained to fulfill enforceable obligation
 - e. Sell the property

The property will be retained for governmental use and transferred to the County of Santa Clara not later than 60 days following approval of the Long Range Property Management Plan by the Department of Finance (DOF). The County is already the long-term master lessee of the property and is responsible for its operations and maintenance. Transfer shall take place subject to all the same conditions and covenants currently in the lease regarding public parking and environmental monitoring.

Property #5
540 South Abel Street
(Cracolice Building)

1. **Date of acquisition and its value at that time and estimated current value.**

Date of acquisition: 4/7/05
Value at that time: \$39,441.00
Estimated current value: To be determined, appraisal underway.
2. **Purpose for which property was acquired.**

Recreational purposes.
3. **Parcel data, including address, lot size, and current zoning.**

Address: 540 South Abel Street, Milpitas, CA 95035
APN: 086-10-025
Size: .71 Acres
Zoning: Mixed Use
4. **Estimate of current value of the parcel including any appraisal information.**

Appraisal of the Property is underway by the Oversight Board Task Force.
5. **Estimate of any lease, rental, or any other revenues generated by the property, and description of the contractual requirements for the disposition of those funds.**

Property is used for recreational programs and generates fees through those programs and is also rented for private events, which also creates revenue.
6. **History of environmental contamination and any remediation efforts.**

Unknown.
7. **Description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency.**

Located along Abel Street with bus lines operating regularly. This property could be utilized for transit-oriented development under the current mixed use zoning and is within the Midtown Specific Plan Area. However, the current use is as a community recreation facility. SA plans to continue this use but acknowledges that taxing entities may claim any “profit” from revenue sources should be distributed to the taxing entities. Revenues from the property do not exceed the cost of maintenance and utilities and SA will provide verification of this fact.

8. **A brief history of previous development proposals and activity, including the rental or lease of property.**

Property was used as a Senior Center and has been used for recreational purposes both through private provider (YMCA) and through current user and occupant, the City of Milpitas Recreation Department.

9. **Identify the use or disposition of the property.**

- a. Retained for governmental use
- b. Retained for future development
- c. Retained to fulfill enforceable obligation
- e. Sell the property

The property will be sold through the Oversight Board-approved Request for Proposals (RFP) process. The RFP shall be issued not later than 150 days following approval of the Long Range Property Management Plan by the Department of Finance (DOF), with responses required not later than ninety (90) days following issuance of the RFP. Closing shall be on an all-cash basis, not later than one hundred eighty (180) days following approval of the Buyer’s offer by the Oversight Board.

Each of the properties designated for sale in the Long Range Property management Plan shall be sold through a Request for Proposal (RFP) process that maximizes the financial returns to the affected taxing entities in accord with section 3e of the Settlement Agreement. An RFP specific to each property designated for sale shall be prepared by Successor Agency staff as directed by the Oversight Board (OB) for the OB’s subsequent approval prior to release of the RFP. All responses to each RFP that are received by the Successor Agency shall be forwarded to the Oversight Board for its review and determination and subsequent approval of the offer which best maximizes the financial returns to the affected taxing entities. All sales shall be approved by the Oversight Board and all proceeds distributed to the taxing entities pursuant to Health and Safety Code Section 34191.5(c)(2)(B).

GROUND LEASE

by and between the

REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

and the

COUNTY OF SANTA CLARA

Health Center Garage Site

[AUGUST 29, 2006]

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Exhibit A Land (legal description)
Exhibit B Title Exceptions
Exhibit C Form of Purchase and Sale Agreement
Exhibit D Form of Memorandum of Lease

THIS GROUND LEASE (this "Lease" or this "Agreement"), dated as of August 29, 2006 (the date upon which this Lease has been approved by the governing boards of the Agency and County, and hereafter the "Effective Date"), is entered into by and between the Redevelopment Agency of the City of Milpitas, a public agency (hereafter "Agency" or "Landlord") and the County of Santa Clara, a political subdivision of the State of California (hereafter "Tenant" or "County"). Agency and County are hereafter collectively referred to as the "Parties."

RECITALS

A. Agency is the owner of fee title to certain unimproved land consisting of approximately 1.005 acres, located at _____, in the City of Milpitas, California, commonly known as Santa Clara County Assessor's Parcel No. 022-08-003, and more particularly described on Exhibit A attached hereto (the "Land"). The Land is located in Redevelopment Project Area No. 1 ("Project Area") which was established pursuant to Milpitas City Council Resolution No. 192 adopted in 1976. The Project Area is governed by the redevelopment plan adopted by Resolution No. 192 (as subsequently amended, the "Redevelopment Plan"). The Property is also located within the area governed by the Midtown Specific Plan ("Specific Plan").

B. Concurrently with the execution of this Lease, the Parties have executed a Disposition and Development Agreement ("DDA") pursuant to which the Agency has agreed to convey certain property (as more particularly described in the DDA, the "Health Center Site") to the County for development of a primary care medical facility (the "Health Center") in accordance with the terms and conditions of the DDA.

C. The development of the Health Center requires concurrent development of parking to serve that facility, and County proposes to develop on the Land a parking garage (the "Health Center Garage") that will serve Health Center patrons.

D. In May 2003, the Milpitas City Council ("City Council") certified an Environmental Impact Report ("EIR") for the Redevelopment Plan as amended to include territory including the Health Center Site and the Land, as a Program EIR pursuant to Section 15168 of the California Environmental Quality Act ("CEQA") Guidelines. On January 4, 2005, the City Council certified a subsequent EIR for the North Main Street Development Project which addresses the potential environmental effects of the Health Center, the Health Center Garage, and other projects proposed to be developed in their vicinity.

E. The Agency has determined that the development of the Health Center and the Health Center Garage pursuant to the DDA and this Lease is consistent with the Specific Plan, the Redevelopment Plan and the Implementation Plan for the Project Area, will be of benefit to the Project Area, and will be consistent with and further the goals of California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*) and the Redevelopment Plan by assisting in the elimination of blight, increasing employment opportunities in the Project Area, and providing services to residents of the City and the Project Area.

F. The City Council and the Agency have each approved the lease of the Land as set forth in this Agreement, have followed all requisite procedures, and have adopted all requisite findings in connection with the foregoing, including without limitation the requirements of Sections 33431 and 33433 of the California Health and Safety Code.

G. Agency desires to lease to County, and County desires to lease from Agency the Land, upon the terms and conditions set forth in this Lease, for the development by County of the Health Center Garage as more particularly described herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agency and County hereby agree as of the Effective Date as follows.

ARTICLE I DEFINITIONS; DEMISE OF PROPERTY

1.1 **Definitions.** For purposes of this Lease, the following terms shall have the meanings set forth in this Section. Additional definitions are set forth in the Recitals and the text of this Agreement.

- (a) “**Applicable Laws**” is defined in Section 5.16.
- (b) “**Claims**” is defined in Section 3.2.
- (c) “**Commencement Date**” is defined in Section 2.1.
- (d) “**Construction Plans**” is defined in Section 5.10.
- (e) “**Due Diligence Period Termination**” is defined in Section 1.5.
- (f) “**Expiration Date**” is defined in Section 2.1.
- (g) “**Force Majeure**” is defined in Section 17.1.
- (h) “**Hazardous Materials**” is defined in Section 7.5.1.
- (i) “**Hazardous Materials Claims**” is defined in Section 7.1 (d).
- (j) “**Hazardous Materials Laws**” is defined in Section 7.5.2.
- (k) “**Impositions**” is defined in Section 3.1.
- (l) “**Improvements**” means the Health Center Garage and all other structures, fixtures, fences, walls, paving, driveways, walkways, plazas, landscaping, permanently affixed utility systems and equipment, and other improvements constructed or installed on the Land.
- (m) “**Indemnitees**” is defined in Section 3.2.

- (n) “**Land**” is defined in Recital A.
- (o) “**Lease Termination**” is defined in Section 2.1.
- (p) “**Personal Property**” is defined in Section 8.1.2.
- (q) “**Prevailing Wage Laws**” is defined in Section 5.12.
- (r) “**Private Use**” means use by a nongovernmental, for-profit entity that does not assist in the delivery of the County’s health care services.
- (s) “**Project**” means the development of the Health Center Garage and related Improvements as described in Section 5.1 and any replacement thereof pursuant to this Lease.
- (t) “**Property**” means the Land and all Improvements.
- (u) “**Remedial Work**” is defined in Section 7.1(f).
- (v) “**Rent**” is defined in Section 2.2.
- (w) “**Term**” is defined in Section 2.1.

1.2 Incorporation of Recitals. The Parties acknowledge the truth of the Recitals set forth above, and all such Recitals are hereby incorporated into this Agreement.

1.3 Creation of Ground Lease. Agency hereby leases to County, and County hereby leases from Agency, the Land for the Term subject to the terms and conditions and for the purposes set forth in this Lease.

1.4 Condition of Title. Agency leases the Land to County subject to all matters shown on an ALTA survey to be obtained by County, the title exceptions set forth in Exhibit B, and those encumbrances otherwise permitted pursuant to the provisions of this Lease (all of the foregoing, collectively the “**Permitted Title Exceptions**”). Following the Effective Date, Agency shall not cause or voluntarily agree to allow a lien or other encumbrance to attach to the Property without the prior consent of Tenant, which Tenant may withhold in its reasonable discretion.

1.5 Condition of Land.

1.5.1 Due Diligence; AS-IS Condition. Prior to 5:00 p.m. _____, 2006 (the date which is ninety (90) days following the Effective Date and hereafter referred to as the “**Due Diligence Period Termination**”) County shall have the right to perform due diligence to assess the condition of the Land, and unless the Parties agree otherwise in writing or the County elects to terminate this Agreement by written notice to Agency, County will lease the Land in its “AS IS” condition as such condition exists at the Due Diligence Period Termination. Prior to the Due Diligence Period Termination, County shall have the right, exercisable by giving written notice to Agency, to terminate this Agreement. If County fails to deliver notice of its election to terminate the Agreement by the Due Diligence Period Termination, County shall be deemed to

have conclusively approved the condition of the Land and to have agreed to lease the Land in its condition as of the Due Diligence Period Termination.

1.5.2 Studies, Reports and Investigations. Agency shall provide to County all information, studies, reports and investigations concerning or relating to the Land which are in Agency's possession or which are reasonably available to Agency, including without limitation surveys, studies, reports and investigations concerning the physical, environmental or geological condition of the Land or the presence or absence of Hazardous Materials in, on or under the Land and its compliance with Hazardous Materials Laws.

1.5.3 Right of Entry. During the Due Diligence Period, County and County's agents and employees shall have the right, upon reasonable notice to Agency, to enter upon the Land for the purpose of inspecting, examining, surveying and reviewing the Land. County's inspection, examination, survey and review of the Land shall be at County's sole expense. County shall obtain Agency's advance consent in writing to any proposed physical testing of the Land, which consent shall not be unreasonably conditioned, withheld or delayed. County shall repair, restore and return the Land to its original condition after such physical testing, at County's sole expense. County shall schedule any such physical tests during normal business hours unless otherwise approved by Agency. County agrees to indemnify, defend (with counsel reasonably acceptable to Agency) and hold Indemnitees harmless from and against all Claims resulting from or arising in connection with entry upon the Land by County or County's employees, consultants, contractors or agents, except to the extent that such Claim arises as a result of the gross negligence or willful misconduct of Indemnitees. Prior to County's entry upon the Land, County shall provide Agency with a certificate or other proof of insurance or self-insurance meeting Agency's current requirements. County shall provide Agency with copies of all environmental, geotechnical and other investigative reports undertaken in connection with County's investigation of the Land.

1.5.4 No Representations. County acknowledges that except as expressly set forth herein, Agency makes no representations or warranties expressed or implied regarding the condition of the Land or the fitness or suitability thereof for County's purposes, including but not limited to, the condition of the soil, its geology, topography, the presence or absence of fill, the presence or absence of Hazardous Materials, drainage, flood zone designation, access to public roads, or compliance with Hazardous Materials Laws, and no patent or latent defect or deficiency in the condition of the Land shall affect the rights of County or the Agency hereunder. County shall rely solely on its own independent investigation and judgment as to all matters relating to the Land. Agency shall have no responsibility to undertake any environmental remediation nor any responsibility for site preparation, demolition, or any other construction or pre-construction activity. County acknowledges and agrees that it shall, prior to the Due Diligence Termination, make such investigations of the Land, including without limitation such inquiries of governmental agencies, soils testing, tests and inspections as County deems necessary to determine the condition of the Land, and that if County does not terminate this Agreement by written notice prior to the Due Diligence Termination, County shall be deemed to have approved all such characteristics and conditions and shall lease the Land in its condition as of the Due Diligence Termination "AS-IS" "WHERE-IS" AND WITH ALL FAULTS.

If following the Due Diligence Period Termination County determines that the condition of the Property is not in all respects entirely suitable for the uses to which the Land will be put

pursuant to this Agreement, then it shall be the sole responsibility and obligation of County to, after the Commencement Date, correct any soil, subsurface or structural conditions, demolish any improvements, and otherwise put the Land in a condition suitable for the Project to be constructed pursuant to this Agreement. County hereby waives any right to seek reimbursement from the Agency for costs County incurs in connection with the correction of any physical condition on the Land except to the extent such costs are related to conditions known to Agency but not disclosed to County.

1.5.5 Agency's Covenants. Agency covenants that from the Effective Date and through the Commencement Date, Agency: (i) shall not permit any act of waste or act that would materially diminish the value of the Land for any reason, except that caused by ordinary wear and tear; and (ii) shall maintain the Land in its condition as of the Effective Date, ordinary wear and tear excepted, and shall manage the Land substantially in accordance with Agency's established practices.

ARTICLE II TERM OF LEASE; RENT

2.1 Term. The term of this Lease (the "**Term**") shall commence on the date upon which the Health Center Site is conveyed to County pursuant to the DDA ("**Commencement Date**"), and unless sooner terminated pursuant to the provisions hereof, shall expire on the seventy-fifth (75th) anniversary of the Commencement Date (the "**Expiration Date**"). The expiration of the Term or the sooner termination of this Agreement shall be referred to as "**Lease Termination.**" When the Commencement Date is established, the Parties shall execute and deliver to each other a Commencement Date Memorandum setting forth such date. If the DDA is terminated prior to conveyance of the Health Center Site to County, this Lease shall terminate effective as of the date of termination of the DDA. Unless expressly stated otherwise in this Lease, the Parties have no obligations hereunder prior to the Commencement Date. The Parties agree to execute and record a Memorandum of this Lease in the Official Records of Santa Clara County.

2.2 Rent. County shall pay to Agency, rent for the Land ("**Rent**") in the amount of One Dollar (\$1.00) per year. Rent for the entire seventy-five year Term shall be payable on or prior to the Commencement Date to Agency at the address shown in Section 17.5.2 or such other place as Agency may designate in writing.

2.3 Additional Rent; Rent Upon Private Sale or Lease of Health Center or Extension of Term.

2.3.1 Impositions and Utilities. As additional Rent, County shall pay and discharge when due, all Impositions described in Article III, all insurance premiums, utility costs and charges and all other liabilities and obligations which County assumes or agrees to pay or undertake pursuant to this Lease.

2.3.2 Sale or Lease of Health Center. If during the Term, the County determines to lease or sell the Health Center or the Health Center Site for Private Use and County does not exercise the option described in Section 4.6, the Parties agree to meet in good faith to renegotiate the Rent payable hereunder prior to such lease or sale, taking into consideration the use of the

land as a parking garage and the restrictions that apply to the Health Center Garage pursuant to this Lease.

2.3.3 Extension of Term. If the County does not exercise the Option described in Sections 4.1 and 4.2, and if the Parties mutually agree to extend the Term, the Parties agree to meet in good faith to negotiate the Rent payable during any extension of the Term.

ARTICLE III TAXES, ASSESSMENTS AND OTHER CHARGES

3.1 Impositions. Throughout the Term, County shall pay prior to delinquency, all real property taxes, possessory interest taxes, license and permit fees, sales, use or occupancy taxes, assessments whether general or special, ordinary or extraordinary, unforeseen, as well as foreseen, of any kind or nature whatsoever, pertaining to the Property or part thereof, including, but not limited to (i) any assessment, levy, imposition or charge in lieu of or in substitution for real estate taxes, and (ii) any assessment for public improvements or benefits which is assessed, levied, or imposed upon or which becomes due and payable and a lien upon (a) the Property or any part thereof or any personal property, equipment or other facility used in the operation thereof, (b) the rent or income received by County from subtenants or licensees, (c) any use or occupancy of the Property or part thereof, or (d) this transaction or any document to which County is a party creating or transferring an estate or interest in the Property or part thereof. All of the foregoing are hereinafter referred to as "**Impositions**." Nothing in this Section is intended to or shall be interpreted to require County to pay the cost of public improvements that the Agency is obligated to construct or install at Agency expense pursuant to the DDA or this Lease ("**Agency Improvements**"). Agency shall be responsible for payment of any assessment levied against the Property to the extent such assessment is applicable to Agency Improvements.

3.1.1 Installments. If by law any Imposition is payable, or may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), County may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same respectively become due and before any fine or penalty may be added thereto for the nonpayment of any such installment and interest. Any Impositions relating to tax years that are only partially included in the Term of this Lease shall be prorated between County and Agency.

3.1.2 Evidence of Payment. Upon request by Agency, County shall furnish, in form satisfactory to Agency, evidence of payment prior to delinquency of all Impositions payable by County.

3.2 County Right to Contest. County shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings, but such right shall not be deemed or construed in any way as relieving, modifying or extending County's covenant to pay any such Imposition at the time and in the manner required by law. Any such contest shall be conducted in accordance with and subject to the requirements of Applicable Law and otherwise in a manner that does not subject Agency's title to the Land to foreclosure or forfeiture. County shall indemnify, defend, and hold Agency and its elected and appointed officers, officials, employees, agents and representatives (all of the foregoing,

collectively the “**Indemnitees**”) harmless from and against all liabilities, losses, damages, fines, deficiencies, penalties, claims, demands, suits, actions, causes of action, legal or administrative proceedings, judgments, costs and expenses (including without limitation reasonable attorneys’ fees and court costs) (all of the foregoing, collectively “**Claims**”) arising as a result of or in connection with any such contest brought by County. During any contest of an Imposition, County shall (by payment of disputed sums, if necessary) prevent any advertisement of tax sale, foreclosure of, or any divesting of Agency’s title, reversion or other interest in the Land or the Improvements. Upon final determination of the amount or validity of any Imposition contested pursuant to this Section, County shall immediately pay such Imposition and all costs and expenses relating to such challenge.

3.3 County Duty to File. County shall have the duty of making or filing any declaration, statement or report which may be necessary or advisable in connection with the determination, equalization, reduction or payment of any Imposition which is or which may become payable by County under the provisions of this Article III, and Agency shall not be responsible for the contents of any such declaration, statement or report; provided however, Agency shall cooperate with County in connection with the foregoing, including joinder in any application pertaining thereto to the extent required under Applicable Law, all at no cost to Agency.

3.4 Utilities. Throughout the Term, County shall be responsible for all costs associated with the provision of utilities and services to the Property, including without limitation electricity, gas, water, sewer, waste disposal, trash collection, janitorial, repair and maintenance services, telephone or other communication service, or any other utility service used, rendered or supplied upon or in connection with the Property or the Improvements or any part thereof. County shall also obtain, or cause to be obtained, without cost to Agency, any and all necessary permits, licenses or other authorizations required for the lawful and proper installation and maintenance upon the Land of wires, pipes, conduits and other equipment for the supply of utilities to the Property. Notwithstanding the foregoing, County shall have the right to challenge the amount or validity of the foregoing charges, provided that doing so does not result in the Land or the Improvements being subjected to any lien or other encumbrance.

ARTICLE IV OPTION TO PURCHASE

4.1 Grant of Option. Agency hereby grants to County an option to purchase the Property (“**Option**”) on the terms and conditions set forth in this Article IV and in the Purchase and Sale Agreement attached hereto as Exhibit C and incorporated herein by reference (“**Purchase Agreement**”).

4.2 Term. The Option shall be exercisable by County at any time during the 12-month period prior to the Lease Termination Date (“**Option Term**”). The Option shall terminate on the Lease Termination Date.

4.3 Purchase Price. Provided that at the time of exercise of the Option, the Health Center Site and the improvements located thereon are not used for Private Use (nor for those uses described in Section 6.1.2 of the DDA), and provided further that County covenants not to use the Health Center Site and the improvements located or to be located thereon for Private Use

(nor for those uses described in Section 6.1.2 of the DDA) during County's ownership, then the purchase price payable by County for the Property ("**Purchase Price**") shall be One Million Nine Hundred Seventy-Nine Thousand Seven Hundred Seventy-Five Dollars (\$1,979,775) and the foregoing use restriction shall be included in the grant deed conveying the Land to County or other appropriate instrument. If the requirements set forth in this Section 4.3 are not met, then the Parties shall meet in good faith to negotiate the Purchase Price, taking into consideration the restrictions on the Health Center Site and/or the Property pursuant to this Lease and the DDA and the need for the Health Center Garage to provide parking for the Health Center Site.

4.4 Method of Exercise.

4.4.1 Notice of Exercise. To exercise the Option, County shall provide Agency with written notice of its intent to exercise ("**Notice of Exercise**") prior to the expiration of the Option Term.

4.4.2 No Assignment; Option Conditions. The Option is personal to County and may not be sold, hypothecated, assigned or otherwise transferred voluntarily, involuntarily, by operation of law or otherwise absent the written consent of Agency. The Option may be exercised only by County (and not by any assignee, sublessee, or other voluntary or involuntary transferee of County's interest in the Lease or the Property) and only if at the time of delivery of the Notice of Exercise: (i) County is not in default under this Lease, (ii) County is the fee owner of the Health Center Site, (iii) the Health Center Site is in use as a County-owned and operated health or other governmental facility, and (iv) the Health Center Site is not in use as a jail, detention center, probation offices, drug or alcohol rehabilitation or similar use.

4.4.3 Execution of Purchase Agreement. Upon exercise of the Option (i) the Purchase Agreement shall be dated as of the date of the Notice of Exercise, and (ii) the Parties shall each promptly execute and deliver two counterpart copies of the Purchase Agreement to each other.

4.4.4 Escrow and Closing. Upon exercise of the Option, County and Agency shall establish an escrow as set forth in the Purchase Agreement. Close of escrow shall occur within the time period set forth in the Purchase Agreement.

4.4.5 State of Title. At close of escrow, Agency shall by grant deed convey to County, fee simple title to the Property free and clear of all title defects, liens, encumbrances, deeds of trust, and mortgages, except (i) the Permitted Title Exceptions, (ii) nondelinquent real property taxes and assessments, (iii) such exceptions to title as have arisen due to County action or which have been approved by County, and (iv) easements permitted pursuant to Section 6.6.1.

4.6 Option Upon Sale or Lease of Health Center. If the County determines to lease or sell the Health Center or the Health Center Site for private use during the Term, County shall have an option to purchase the Property for its fair market value at the time of the purchase as determined by an appraisal paid for by County and by an appraiser reasonably acceptable to the County and the Agency. To exercise the option described in this Section 4.6, County shall provide Agency with no less than one month advance written notice. The purchase and sale shall be consummated pursuant to the Purchase Agreement and this Article IV except as otherwise stated in this Section 4.6. The option described in this Section 4.6 is personal to County and may not

be sold, hypothecated, assigned or otherwise transferred voluntarily, involuntarily, by operation of law or otherwise absent the written consent of Agency. The Option may be exercised only by County (and not by any assignee, sublessee, or other voluntary or involuntary transferee of County's interest in the Lease or the Property).

ARTICLE V DEVELOPMENT OF THE PROJECT

5.1 Design and Construction of Improvements. County shall construct the Health Center Garage on the Land in accordance with the terms and conditions set forth in this Agreement. The Health Center Garage shall be a three (3) level public parking facility which shall contain at least 275 parking spaces. The Health Center Garage shall be designed and constructed so that the exterior appearance is consistent in quality and appearance with the exterior appearance of the Health Center. The Health Center Garage shall include a plaza area on the corner of Calaveras and North Main Street which shall be compatible in design and materials with the streetscape for North Main Street. County shall consult with Agency regarding the design of the Health Center Garage and shall provide an opportunity for Agency review and comment on its security features and exterior design and appearance. Prior to commencement of construction of the Improvements, the City shall have the opportunity to review and approve the site plan for the Project for the purpose of ensuring adequate access for emergency vehicles.

5.2 Timing of Development; Termination Rights if Improvements Not Completed. County shall use reasonable efforts to complete construction of the Health Center Garage and related improvements as described in this Agreement by the time the Health Center opens for business except as such time period may be extended pursuant to Section 17.1 or otherwise as necessary to address unforeseen circumstances. The Parties agree that subject to Section 15.5 Agency shall have the right to terminate this Lease in accordance with Article XVI if County abandons the Project or fails to make reasonable progress toward completion of the Project. The County shall be deemed to be making "reasonable progress" if County has undertaken action to enforce its rights or pursue dispute resolution under the construction contract awarded for the Project.

5.3 Cost of Construction. Except as expressly set forth herein, all costs of site preparation, design, development, construction and operation of the Health Center Garage shall be borne solely by County and shall not be an obligation of the Agency or the City.

5.4 Utility Connections; Infrastructure. County shall design and construct at County's expense any lateral connections to public utilities which are necessary to provide water, sewer and storm drain service to the Health Center Garage and the Land. County will pay the City's utility connection charges for water, storm drain and sanitary sewer and the City's standard engineering fees attributable to the development and construction of the Health Center Garage. Such charges and fees will be payable in the amount of Twenty Five Thousand Nine Hundred and Twenty Dollars (\$25,920) based upon the estimated size of the structure as described in Section 5.1, and shall be payable on the Commencement Date. Agency shall ensure that appropriately sized City-owned infrastructure is available to serve the Health Center Garage at no additional cost to the County. All utility connections shall be designed and constructed in accordance with City standards.

5.5 Public Improvements; Landscaping. The Agency shall have responsibility for, and shall pay the cost of, installation and maintenance of the following off-site improvements related to the Health Center Garage: sidewalks, streetscape improvements, lighting, and landscaping in the public right-of-way. Throughout the Term, Agency and City shall have the right to enter upon the Property for the purpose of installing and maintaining the foregoing improvements. County shall have responsibility for, and shall pay the cost of installation and maintenance of landscaping, lighting and public amenities on the Health Center Garage Site, including without limitation the plaza area and walkway.

5.6 Planning Application and Processing Fees. County shall promptly pay all customary and reasonable City planning, administration and engineering fees and charges (collectively, “**Planning Fees**”) in connection with the coordination, review and approval of the emergency access, and on-site and off-site public utility components of the Health Center Garage; provided however, County shall in the aggregate be required to pay no more than a maximum of Twenty Thousand Dollars (\$20,000) for such fees and charges. Upon execution of this Agreement, County shall deposit with City an initial deposit in the amount of Ten Thousand Dollars (\$10,000) (“**Initial Deposit**”) which City shall be entitled to draw upon for such fees and charges, and County shall promptly replenish the Deposit within three (3) business days following Agency’s delivery of notice to County. County’s obligation to pay utility connection charges as set forth in Section 5.4 are not included within the aggregate limit described above. The balance of Planning Fees shall be due and payable on the Commencement Date.

5.7 Reserved.

5.8 Construction Plans; Permits and Approvals. In connection with construction of the Health Center Garage, County shall use the services of the County Building Department for plan check and permit issuance, in lieu of the City Building Department. Upon completion of the Health Center Garage, County shall, at County expense, provide City with a complete set of as-built plans in digital format for the Health Center Garage for use by City Fire Department in provision of emergency services.

5.9 Reserved.

5.10 Defects in Plans. Neither Agency nor City shall be responsible to County or to any third party for any defect in the construction plans for the Health Center Garage (the “**Construction Plans**”) or for any structural or other defect in any work done pursuant to the Construction Plans. County shall indemnify, defend (with counsel reasonably acceptable to Agency) and hold harmless the Indemnitees from and against any Claim for damage to property or injury to or death of any person arising out of or in any way relating to defects in the Construction Plans or defects in any work done pursuant to the Construction Plans.

5.11 Equal Opportunity. County shall not discriminate on the basis of race, religion, color, creed, religion, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction of the Health Center Garage, and County shall direct its contractors and subcontractors to refrain from discrimination on such basis.

5.12 Prevailing Wage Policy. County shall carry out and shall cause its contractors to carry out the construction of the Health Center Garage in conformity with all applicable laws and regulations, including without limitation, all applicable federal and state labor laws and standards. The County shall cause its contractor and the subcontractors to pay prevailing wages in the construction of the Health Center Garage as those wages are determined pursuant to California Labor Code Section 1720 et seq. and the regulations adopted pursuant thereto (collectively, the “**Prevailing Wage Laws**”) or in a Project Labor Agreement if applicable, and to comply with all other applicable provisions of the Prevailing Wage Laws. The County shall cause the contractor and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Prevailing Wage Laws. Copies of the currently applicable current per diem prevailing wages are available from the City Public Works Department. During the construction of the Health Center Garage, County shall cause the contractor to post at the construction site the applicable prevailing rates of per diem wages. County shall, and shall require the contractor and subcontractors to indemnify, hold harmless and defend (with counsel reasonably acceptable to Agency) the Indemnitees from and against all Claims arising out of the failure or alleged failure of any person or entity (including County’s contractor and the subcontractors) to pay prevailing wages as determined pursuant to Prevailing Wage Laws in connection with construction of the Health Center Garage or any other work undertaken in connection with the Property, the failure or alleged failure to comply with any applicable requirement of competitive bidding, or the failure or alleged failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws. It is further agreed that Agency does not, and shall not, waive any rights against County which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency, or the deposit with Agency, of any of the insurance policies described in this Agreement. The representations, warranties and covenants contained in this Section shall survive the expiration or termination of this Agreement.

5.13 Delays in Completion. In the event that completion of construction of the Health Center Garage is delayed, County agrees that it shall take all steps reasonably necessary to secure the construction site, protect the site from the elements and screen the site from public view, all in a manner reasonably acceptable to Agency.

5.14 Performance and Payment Bonds. Prior to commencement of construction, County shall purchase or shall cause County’s contractor to purchase, from a reputable corporate surety licensed to do business in California: (i) a performance bond in an amount of not less than 100% of the estimated cost of construction and installation of the Improvements, naming Agency and City as additional insureds, and (ii) a payment bond naming Agency and City as additional insureds in an amount of not less than 100% of the costs for labor and materials for the Improvements, and County shall deliver copies of each of the foregoing bonds to Agency.

County shall require all contractors performing work on behalf of County in connection with construction of the Health Center Garage to carry adequate insurance meeting the requirements of Sections 5.15 and 9.1, including without limitation the obligations to provide additional insured coverage for the Indemnitees, and to defend, indemnify and hold Indemnitees harmless from and against all liability for property damage or personal injury.

5.15 Insurance Requirements. Prior to the Commencement Date, County shall deliver to Agency reasonable evidence that County maintains self-insurance equivalent to a commercial general liability policy in the amount of Two Million Dollars (\$2,000,000) combined single limit, including contractual liability coverage. Such insurance shall be written on an occurrence basis and shall be maintained throughout the Term. Such self-insurance program also shall include coverage equivalent to that under a comprehensive automobile liability policy in the amount of Two Million Dollars (\$2,000,000), combined single limit. County shall maintain property insurance covering all risks of loss including flood (if required) for 100% of the replacement value of the Heath Center Garage, naming Agency as loss payee as its interests may appear.

Prior to the Commencement Date, County shall furnish Agency with certificates of insurance evidencing the required insurance coverage (or in the case of coverage carried by the County pursuant to its program of self-insurance, reasonable evidence that such program is in place and provides the required coverage). The third party certificates shall contain a statement of obligation on the part of the carrier to notify City and Agency of any cancellation, termination or nonrenewal of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation, termination or nonrenewal. Coverage provided by County shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by Agency or City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City and Agency. County shall furnish the required certificates to Agency prior to commencement of construction of the Health Center Garage, and shall provide Agency with copies of the required insurance policies upon request of Agency.

5.16 Compliance with Laws. County shall carry out the construction and operation of the Health Center Garage in conformity with all applicable state and federal laws and regulations, including without limitation, all applicable state and federal labor laws and standards, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, California Government Code Section 4450, *et seq.*, California Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, California Civil Code Section 51, *et seq.* County shall comply with City ordinances and regulations relating to the conduct of construction, including without limitation, City ordinances and regulations relating to noise, construction hours, and maintenance of the construction site. All of the foregoing state, federal and local laws, regulations and ordinances are hereafter referred to as the “**Applicable Laws.**”

5.17 Rights of Access. Agency representatives shall have the right of access to the Health Center Garage Site during normal construction hours for purposes of assuring compliance with this Agreement, so long as Agency representatives comply with all safety rules and do not unreasonably interfere with the progress of construction of the Improvements. Agency shall give County reasonable advance notice prior to exercising its rights pursuant to this Section except in the event of emergency in which case notice shall not be required. Agency representatives shall be escorted by County personnel.

5.18 Indemnity. In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the Parties pursuant to Government Code Section 895.6, or any

other statute, regulation or rule that may otherwise affect the terms of this Agreement, the Parties agree that all losses or liabilities incurred by a party shall not be shared pro rata, but instead the County and Agency agree to the following:

County shall defend (with counsel reasonably acceptable to Agency), indemnify and hold harmless the Indemnitees from and against any and all present and future Claims arising during the term of this Lease from or in connection with County's failure to comply with all applicable laws and regulations relating to the construction of the Health Center Garage, including without limitation, all applicable federal and state labor laws and standards, or in any other manner arising from or relating to the design, development, construction, or the operation or maintenance of the Health Center Garage and related Improvements, or County's activities or performance under this Agreement, whether such activity or performance is by County or by anyone directly or indirectly employed by or contracted with by County and whether such Claim shall be discovered before or after termination of this Agreement. County's indemnity obligations under this Section shall not extend to Claims to the extent they arise as a result of Indemnitees' gross negligence or willful misconduct.

At its sole discretion, Agency may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve the County of any obligation imposed by this Agreement. Agency shall notify County promptly of any claim, action or proceeding and cooperate fully in its defense.

Agency agrees to defend and indemnify the County, its agents, officers and employees (hereinafter referred to as "**County Indemnitees**") from any claim, action or proceeding against County Indemnitees, arising solely out of the acts or omissions of the Agency in the performance of this Agreement. At its sole discretion, County may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve the Agency of any obligation imposed by this Agreement. County shall notify Agency promptly of any claim, action or proceeding and cooperate fully in the defense.

5.19 Coordination of Construction. County and Agency each agree to comply with Section 5.17 of the DDA pertaining to coordination of construction the Health Center, the Senior Housing Development, the Library Improvements, the Midtown Garage East, the Health Center Garage and the North Main Street Improvements (each as defined in the DDA). If County fails to complete construction of the Health Center Garage prior to completion of the North Main Street Improvements and such delay results in physical damage to the North Main Street Improvements, County shall pay to Agency an amount equal to the cost to repair all such physical damage.

5.20 General Construction Standards. All work done in connection with the design or construction of Improvements on the Land, including any subsequent improvement, alteration or replacement, shall be performed by licensed contractors, engineers or architects, as applicable. All such work shall be conducted in a first class and workmanlike fashion in compliance with all Applicable Laws). County shall take all reasonably necessary measures to minimize any damage, disruption or inconvenience caused by such work and make adequate provision for the safety of all persons affected thereby. County shall have the sole responsibility for obtaining all

necessary governmental permits and approvals for the construction of the Improvements, at County's sole cost and expense.

5.21 Protection of Agency. Nothing in this Lease shall be construed as constituting the consent of the Agency, express or implied, to the performance of any labor or services, or the furnishing of any materials or any specific improvements, alterations of or repairs to the Property or any part thereof, by any contractor, subcontractor, laborer or materialman such as to give rise to any right of any such contractor, subcontractor, laborer or materialman to file a mechanic's lien or other claim against the fee title to the Land. Agency shall have the right at all reasonable times to post, and keep posted, on the Land any notices which Agency may deem necessary for the protection of Agency and the Land from mechanic's liens or other claims. County shall give Agency ten (10) days' prior written notice of the commencement of any work to be done on the Property to enable Agency to post such notices. In addition, County shall make, or cause to be made, timely payment of all monies due and legally owing to all persons doing any work or furnishing any materials or supplies to County or any of its contractors or subcontractors in connection with the Property.

5.22 Mechanic's Liens. Subject to County's right to contest the same prior to payment, County shall keep the Land and the Improvements free and clear of all mechanics' liens and other liens on account of work done by or for County. County shall indemnify, defend (with counsel reasonably acceptable to Agency) and hold Indemnitees harmless from and against all liability, loss, damages, costs and expenses (including reasonable attorney's fees) incurred by or brought against Agency for claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to County or persons claiming under it. In the event any lien is recorded, County shall, within twenty (20) days following such recordation, cause such lien to be removed of record by bonding or otherwise.

5.23 Notice of Completion. Upon completion of construction of any Improvement, County shall file or cause to be filed in the Official Records of Santa Clara County a Notice of Completion with respect to the subject work. Upon request of Agency, County shall make available to Agency following the completion of any structure or similar Improvements a full set of as-built plans for such Improvements.

ARTICLE VI MANAGEMENT, USE AND OPERATION OF THE PROPERTY

6.1 Permitted Uses. County may use the Property for the development and operation of a parking garage as described herein and for no other purposes without the prior written consent of Agency. County shall not use or permit the Property to be used in whole or in part during the Term of this Lease for any purpose other than as permitted pursuant to this Agreement or by Agency's written consent.

6.2 Management Agreement. County shall have the right to enter into an agreement with a third party for garage management services. The County will select a garage operator pursuant to a Request for Proposals ("RFP") which shall specify the required operator qualifications and

responsibilities. County shall provide Agency with a copy of the RFP for Agency review and comment prior to County's issuance of the RFP. County shall ensure that all persons or entities to which County has delegated responsibility for maintenance and operation of the Property comply with the provisions of this Agreement and all Applicable Laws. Any contracting of management services by County shall not relieve County of its primary responsibility for proper performance of management duties with respect to operation and maintenance of the Property.

6.3 License Agreements. Agency shall have the right to review all license and similar agreements affecting the Property or the Improvements, including without limitation any rooftop license agreement for communications equipment. All such agreements shall be in writing and: (i) shall be expressly subject to this Agreement, (ii) shall be terminable for cause, (iii) shall be for a term that does not exceed the Term of this Agreement and shall be terminable upon Lease Termination, (iv) shall require the licensee or permittee to provide proof of adequate insurance, and (v) shall require the licensee or permittee to indemnify, defend and hold Indemnitees harmless from and against all liability for property damage, personal injury or other Claim. No contract, license or permit entered into or granted by County shall purport to transfer or convey an interest in the Land or the Improvements.

6.4 Public Parking; Parking Fees. County shall make the Health Center Garage available for general public use at no cost during evenings, weekends, and holidays when the Health Center is not open for regular business. As of the Effective Date, the Health Center's regular business hours are 7:00 a.m. to 6:00 p.m. Monday through Friday. However, the Health Center's regular business hours are subject to change. The availability for general public use shall change according to the change in the Health Center's regular business hours and shall be subject to reasonable restrictions determined by the County to be necessary for the maintenance and security of the Health Center Garage. In addition, ninety (90) spaces on the first floor of the Health Center Garage shall be marked "Reserved" and available only to users of the Health Center at all times. County will not charge parking fees for use of the Health Center Garage, and neither Agency nor City will charge parking fees for use of the Midtown Garage East (defined in the DDA). The Parties acknowledge that it may be necessary for the County to install a validation system to ensure that the Health Center Garage is available to Health Center patrons during the Health Center's regular business hours. The Parties agree that if either determines that it is necessary or desirable to charge fees for parking, the Parties will meet and confer in good faith to develop mutually acceptable policies to ensure that the Midtown Garage East primarily serves the Library and the Health Center Garage primarily serves the Health Center. The Parties further agree that they will jointly develop a mutually acceptable policy for special event parking.

6.5 Nondiscrimination. County covenants that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, familial status, ancestry or national origin in the use, occupancy, or enjoyment of the Property or part thereof, nor shall County or any person claiming under or through County establish or permit any such practice or practices of discrimination or segregation with respect to the leasing, subleasing, transfer, use, tenure or enjoyment of the Property or part thereof or in the hiring, promotion, or employment of employees, consultants or contractors. County shall include such provisions in all leases, licenses, permits, contracts and

other instruments executed by County with respect to the Property, and shall diligently enforce the same.

6.6 Easements; Reservation of Rights.

6.6.1 Public Utility Easements. Agency reserves the right to locate and construct its own utilities and to grant nonexclusive easements across the Property for utility and other purposes including the installation, maintenance, repair and replacement of utilities; provided that the exercise of such rights do not unreasonably interfere with County's use of the Property for the purposes set forth herein. County shall have no right to grant easements, licenses or any other interest in or right to use the Property without Agency's prior written consent. Agency agrees to join in granting or dedicating such public or private utility or other easements as may be reasonably required for the development of the Project in accordance with this Lease. Agency will not unreasonably withhold its consent to County's grant of easements, permits to enter, rights of way, and similar property interests (including, without limitation, easements for telephone, electricity, water, access, and sanitary or storm sewers) that are useful or necessary for the construction of the Improvements or the County's use of the Property for the purposes permitted hereunder during the Term.

6.6.2 Public Access and Parking Rights. Agency hereby reserves public access and parking rights ("**Parking Rights**") providing Agency and members of the public with pedestrian and vehicular ingress, egress, access and parking rights in the Health Center Garage during evenings, weekends and holidays pursuant to Section 6.4 hereof and Section 7.3 of the DDA. If, during the Term of this Lease, the Health Center Garage is destroyed to the extent that it can not be utilized as a parking garage, the Parking Rights shall be suspended until such time that the Health Center Garage is repaired or replaced.

6.7 Maintenance and Inspection of the Property and the Project.

6.7.1 Maintenance. At County's sole cost and expense throughout the Term, County shall operate, maintain and manage the Property and the Improvements including all, landscaping and improvements thereon in good order and repair and in neat, clean sanitary and safe condition in compliance with all local, state and federal laws, statutes and regulations relating to the use, occupancy or operation of the Property. County shall ensure that the Health Center Garage is served by adequate lighting in accordance with applicable building codes. County shall promptly, at County's own cost and expense, make all necessary repairs, including replacements or renewals when necessary, and all such repairs shall be at least equal in quality to the original work, reasonable wear and tear accepted. County shall keep and maintain all portions of the Property in a clean and orderly condition, free of accumulation of dirt, rubbish, and graffiti. Subject to Section 15.5, County's failure to maintain the Property in accordance with this Agreement shall, in Agency's discretion, be grounds for termination of this Lease pursuant to Article XVI.

6.7.2 Inspection. At any time during the Term, upon reasonable advance notice and during normal business hours, Agency may inspect the Property to confirm that it is being properly maintained as required herein. Following its inspection, Agency may deliver to County written notification of any portions of the Property which Agency has determined are not being

properly maintained, and County shall promptly prepare and deliver to Agency County's proposed plan for remedying the indicated deficiencies. County's failure to deliver a remedial plan and to complete remedial work within a reasonable time as determined by Agency in its reasonable discretion shall be a default under this Lease.

The failure of Agency to inspect or to notify County of any deficiency shall not be a waiver of default or of Agency's right to enforce County's maintenance and repair obligations. County shall defend (with counsel reasonably acceptable to Agency), indemnify and hold Indemnitees harmless from and against any and all Claims arising out of County's failure to fully and timely fulfill its obligations to maintain and repair the Improvements as required hereunder.

6.8 Agency's Right to Perform County Obligations. If following notice and the expiration of any applicable cure period as set forth in Section 16.1(vi), County fails to perform its obligations to maintain the Property and the Improvements in accordance with the standards set forth in this Agreement, Agency shall have the right, but not the obligation, to perform such work upon delivery of written notice to County, and County shall reimburse Agency for all expenditures Agency incurs in connection with such work together with interest thereon at the Default Rate specified in Article XI. Agency's election to undertake such obligation shall not operate as a waiver of any other right or remedy Agency may have pursuant to this Agreement.

6.9 Agency Not Obligated to Perform Repairs. Notwithstanding any contrary provision herein, Agency shall not be obligated to make any repairs, alterations, additions, improvements or betterments to the Property during the term of this Lease nor shall Agency be obligated to maintain or operate the Property or the Improvements.

6.10 Waiver. County expressly waives the right to make repairs at the expense of the Agency and the benefit of Sections 1941 and 1942 of the California Civil Code.

6.11 Compliance with Laws. County, at its sole cost and expense, shall comply with all Applicable Laws pertaining to the use, operation, and management of the Property. County shall not itself, and shall use its best efforts to not permit any permittees, licensees, guests or invitees to use the Property or the Improvements for any unlawful purpose and shall not itself, and shall not permit any permittee, licensee, guest or invitee to perform, permit or suffer any act of omission or commission upon or about the Land or the Improvements which would result in a nuisance or a violation of law.

6.12 County Right to Contest. County shall have the right to contest by appropriate proceedings, in the name of County, and without cost or expense to Agency, the validity or application of any Applicable Law. If compliance with any Applicable Law may legally be delayed pending the prosecution of any such proceeding without the incurrance of any lien, charge or liability against the Land or County's interest therein, and without subjecting County or Agency to any liability, civil or criminal, for failure so to comply therewith, County may delay compliance therewith until the final determination of such proceeding. County shall indemnify, defend (with counsel approved by Agency), protect and hold Indemnitees harmless from and against all Claims arising in connection with any such contest brought by County. The foregoing indemnity obligation shall survive the expiration or earlier termination of this Lease.

ARTICLE VII
ENVIRONMENTAL MATTERS

7.1 County's Covenants. County hereby covenants and agrees that throughout the Term:

(a) County shall comply with all mitigation, monitoring and reporting requirements applicable to the Health Center Garage pursuant to the Mitigation Monitoring and Reporting Program attached as Exhibit J to the DDA.

(b) The Property, and the use and operation thereof, shall be in compliance with all Hazardous Materials Laws, and County shall not cause or permit the Property or any portion thereof to be in violation of any Hazardous Materials Laws.

(c) County shall not permit the Property or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials nor shall County permit the presence or release of Hazardous Materials in, on, under, about or from the Property with the exception of materials customarily used in construction, operation, use or maintenance of garage facilities, provided such materials are used, stored and disposed of in compliance with Hazardous Materials Laws.

(d) Upon receiving knowledge of the same, County shall immediately advise Agency in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against County, the Project, or the Property pursuant to any applicable Hazardous Materials Laws; (ii) any and all complaints, claims, citations, demands, inquiries, reports, or notices made or threatened by any third party against County, the Project or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; (iii) the presence or release of any Hazardous Materials in, on, under, about or from the Project or the Property; or (iv) County's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property classified as "Border Zone Property" under the provisions of California Health and Safety Code, Sections 25220 *et seq.*, or any regulation adopted in connection therewith, that may in any way affect the Property pursuant to any Hazardous Materials Laws or cause it or any part thereof to be designated as Border Zone Property. The matters set forth in the foregoing clauses (i) through (iv) are hereinafter referred to as "**Hazardous Materials Claims.**" The Agency shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claim, and to have its reasonable attorney's fees in connection therewith paid by the County.

(e) Without the Agency's prior written consent, which shall not be unreasonably withheld, County shall not take any remedial action in response to the presence of any Hazardous Materials in, on, under, or about the Property (other than in emergency situations or as required by governmental agencies having jurisdiction in which case the Agency agrees to provide its consent), nor enter into any settlement agreement, consent decree, or other compromise with respect to any Hazardous Materials Claim.

(f) If the presence of any Hazardous Material on the Property results in any contamination of the Property in violation of Hazardous Materials Laws, except to the extent

such contamination is caused by the City or the Agency, County shall promptly take all actions at its sole expense as are necessary to remediate the Property as required by law; provided that Agency's approval of such actions shall first be obtained, which approval may be withheld in Agency's reasonable discretion. All costs and expenses of any Remedial Work shall be paid by County, it being understood that Agency shall incur no cost, expense or liability in connection with any Remedial Work. Agency shall have the right, but no obligation, to join and participate in, as a party if it so elects at Agency's cost, any legal proceedings or actions initiated in connection with any Hazardous Material Claims. For purposes of this Agreement, "**Remedial Work**" means all investigation, testing, analysis, monitoring, restoration, abatement, detoxification, containment, handling, treatment, removal, storage, decontamination, clean-up, transport, disposal or other ameliorative work or response action required by (i) any Hazardous Materials Laws, (ii) any order or request of any federal, state or local governmental agency, or (iii) any judgment, consent decree, settlement or compromise with respect to any and all enforcement, clean-up, removal, remedial or other governmental or regulatory actions or agreements or orders threatened, instituted, or completed pursuant to any Hazardous Materials Laws or any actions, proceedings or claims by such entities or third parties relating to or arising out of the breach of any Hazardous Materials Laws or the presence or release of any Hazardous Material in, on, under or from the Property.

7.2 Release of Claims. County hereby waives, releases and discharges forever Indemnitees from all present and future Claims County may have arising directly or indirectly from the presence or alleged presence of Hazardous Materials on, under, in or about the Property; provided however, this release excludes and shall not apply to (i) any Hazardous Material that originates from any City- or Agency-owned property other than the Property and which migrates onto the Property after the Commencement Date, or (ii) any Hazardous Materials that are generated or caused by the Indemnitees' acts or omissions after the Commencement Date.

County is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

As such relates to this Section 7.2, County hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

County Initials

7.3 Environmental Indemnity. County shall indemnify, defend (with counsel reasonably acceptable to Agency) and hold Indemnitees harmless from and against all Claims arising during the Term of this Lease and resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, transport, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property during the Term of this Lease, (ii) the failure of County,

County's employees, agents, contractors, subcontractors, licensees, permittees, or any person acting on behalf of any of the foregoing to comply with Hazardous Materials Laws, or (iii) the breach by County of any of its covenants contained in this Article VII. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws and shall include, without limitation, Claims arising in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work ordered by a court or required by any federal, state, or local governmental agency or political subdivision. This Section 7.3 shall survive the expiration or earlier termination of the Lease.

7.4 Reserved.

7.5 Definitions.

7.5.1 Hazardous Materials. As used herein, "**Hazardous Materials**" means any substance, material, or waste which is or becomes regulated by any local, state or federal authority, agency or governmental body, including any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* (42 U.S.C. §6903); or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.*, as the foregoing statutes and regulations now exist or may hereafter be amended.

7.5.2 Hazardous Materials Laws. As used herein "**Hazardous Materials Laws**" means all federal, state and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials, including without limitation, the laws, statutes and regulations cited in the preceding Section 7.5.1, as any of the foregoing may be amended from time to time.

ARTICLE VIII SURRENDER AND RIGHT TO REMOVE IMPROVEMENTS

8.1 Ownership During Term.

8.1.1 Improvements. During the Term of this Lease, all Improvements constructed on the Land by County as permitted or required by this Lease shall, subject to the terms of this Lease, be and remain the property of County.

8.1.2 Personal Property. All personal property, furnishings, fixtures and equipment installed by County in, or on the Property which (i) are not attached to the Land so as to cause substantial damage upon removal, and (ii) are not necessary for the normal operation of the Project, shall be the personal property of County (the "**Personal Property**"). At any time during the Term, County shall have the right to remove the Personal Property provided County shall repair any damage caused by the removal of such Personal Property. Personal Property shall not include any portion or part of any building components or fixtures necessary for the operation of basic building systems for structures constructed on the Property including without limitation, restroom facilities (such as boilers, plumbing, electrical systems, lighting, sanitary fixtures and HVAC systems) which shall be deemed a part of the Improvements.

8.2 Ownership at Lease Termination.

8.2.1 Improvements. Upon the expiration or earlier termination of the Lease, at Agency's election, the Improvements shall unconditionally be and become the property solely of Agency, and no compensation therefor shall be due or paid by Agency to County for any part thereof, and this Lease shall operate as a conveyance and assignment thereof. Upon Lease Termination, County shall surrender to Agency the Land and the Improvements in good order, condition and repair, reasonable wear and tear excepted, free and clear of all liens, claims and encumbrances, subleases, other than the Permitted Title Exceptions or matters subsequently created or consented to by Agency. Subject to Section 5.18, the County shall surrender the Health Center Garage without representations, warranties, or liability regarding the design and/or construction of the Health Center Garage. Upon Lease Termination, at Agency's request County agrees to execute, acknowledge and deliver to Agency such recordable instruments as are necessary or desirable to confirm the termination of the Lease and all County's rights hereunder and to perfect Agency's right, title and interest in and to the Land and the Improvements.

8.2.2 Personal Property. Any Personal Property may be removed prior to Lease Termination by County; provided, however, the removal shall be with due diligence, and without expense to Agency, and any part of the Land damaged by such removal shall be promptly repaired. Any Personal Property which remains on the Land for thirty (30) days after the Lease Termination may, at the option of Agency, be deemed to have been abandoned and either may be retained by Agency as its property or may be disposed of in accordance with Applicable Law. If requested by Agency within a reasonable time but not less than six months prior to the termination of this Lease, upon Lease Termination County shall, at County's sole cost and expense, remove all Personal Property, or portions thereof specified by Agency.

8.3 Condition of Improvements at Lease Termination.

Agency has entered this Lease in reliance on the fact that, at Lease Termination, Agency will receive from County the Improvements in the condition described in Section 8.2.1.

8.4 Survival. The provisions of this Article VIII shall survive Lease Termination.

ARTICLE IX INSURANCE AND INDEMNITY

9.1 Insurance. County, at its sole cost and expense, throughout the Term shall keep and maintain the policies of insurance set forth in Section 5.15 and shall comply with all other requirements set forth in such Section. County shall ensure that its general contractor carries liability, property damage, workers' compensation, and builder's risk insurance throughout construction of the Improvements, naming Indemnitees as additional insureds and otherwise in compliance with all requirements set forth in Section 5.15.

9.2 Indemnity. County shall indemnify, defend (with counsel reasonably acceptable to Agency) and hold the Indemnitees harmless from and against any and all Claims arising during the Term of this Lease and arising from or in connection with any of the following: (i) the operation or management of the Property, (ii) any work or thing done on or in the Land or the Improvements, (iii) any condition of any Improvement constructed by County on the Land, (iv) any breach or default by County in the performance of any covenant or agreement to be performed by County pursuant to the terms of this Lease, (v) any negligence of County, or any of its agents, contractors, servants, employees, permittees, subtenants or licensees, (vi) any accident, injury or damage caused to any person occurring during the Term in or on the Land or the Improvements, and (vii) the furnishing of labor or materials by County or its contractors, subcontractors, employees, or agents. In the event any such action or proceeding is brought against Agency by reason of any such Claim, County, upon notice from Agency, covenants to defend such action or proceeding by counsel reasonably satisfactory to Agency. If an insurer under insurance required to be maintained by County hereunder shall undertake to defend the Agency under a reservation of rights with respect to ultimate coverage and Agency shall reasonably deem it necessary to retain independent counsel with respect to such matter, County shall pay the reasonable fees of such counsel. The obligations of County under this Article IX shall not apply to any Claim or other matter to the extent such arises as a result of the gross negligence or willful misconduct of Indemnitees. This Section shall survive the expiration or earlier termination of the Lease.

9.3 Bond Provisions. Notwithstanding the foregoing, until such time as either no Bonds (as defined in Section 15.5) are outstanding or, if sooner, County's leasehold interest no longer constitutes a portion of the premises subleased pursuant to a Financing Lease (as defined in Section 15.5), all insurance proceeds and condemnation proceeds shall be received and disbursed as provided in the Financing Lease. Any insurance provided by County with respect to the Property as required by such Financing Lease shall satisfy the requirements for insurance set forth herein, without duplication. To the extent the provisions with respect to insurance or condemnation contained herein conflict with the Financing Lease, the Financing Lease shall control.

ARTICLE X DAMAGE AND DESTRUCTION

10.1 Damage or Destruction. In the event of any damage to or destruction of the Improvements during the Term, County shall elect by written notice delivered to Agency within

sixty (60) days following the date of the occurrence of the damage to either remove the Improvements or restore and rebuild the Improvements as nearly as possible to their condition immediately prior to such damage or destruction, subject to any restrictions imposed by changes in Applicable Law. If County elects to restore the Improvements, County shall commence diligently and continuously to carry out such rebuilding to full completion as soon as possible and shall commence reconstruction of the Improvements within the earlier of ninety (90) days following the date of occurrence of the damage or the date upon which insurance proceeds are made available for such work. Upon the occurrence of damage or destruction, all insurance proceeds paid in respect of such damage or destruction shall be applied to the payment of the costs of the restoration and rebuilding required to be performed by County pursuant to this Lease. If County does not elect to restore the Improvements and County does not exercise its right to terminate this Lease pursuant to Section 10.4 within 120 days following the date of the occurrence of the damage, then at Agency's option this Lease shall terminate upon delivery of written notice to County; provided however, such termination shall not relieve County of its obligations pursuant to Sections 10.2 and 10.3. If County elects to restore the Improvements, County shall confer with Agency regarding the design and plans for such Improvements.

10.2 Notice Required. In the event of material damage to or destruction of the Improvements, or any part thereof, County shall promptly give Agency notice of such occurrence and take all actions reasonably required to protect against hazards caused by such damage or destruction. For purposes of this Article X, damage or destruction shall be deemed to be material if the estimated cost to repair equals or exceeds Fifty Thousand Dollars (\$50,000).

10.3 Removal of Debris. If this Lease shall terminate following the occurrence of damage to or destruction of the Improvements and at a time when County shall not have restored and rebuilt the Improvements, then County shall, at its cost and expense after the use of any insurance proceeds released for such purpose, remove the debris and damaged portion of Improvements (including without limitation all foundations) and restore the Land or the applicable portion thereof to a neat, clean and safe condition as good as or better than that existing prior to construction of the Improvements.

10.4 County's Right to Terminate. Notwithstanding any contrary provision of this Article X, County shall have the option to terminate this Lease and be relieved of the obligation to restore the Improvements where all or substantially all of the Improvements are substantially damaged or destroyed and such damage or destruction resulted from a cause not insured against by County nor required to be insured against by County under this Lease (an "Uninsured Loss"), and where all of the following occur:

10.4.1 No more than one hundred twenty (120) days following the Uninsured Loss, County shall notify Agency in writing of its election to terminate this Lease.

10.4.2 No more than sixty (60) days following the giving of the notice required by Section 10.4.1 or such longer time as may be reasonable under the circumstances, County shall, at County's expense after the use of any insurance proceeds released for such purpose, remove all debris and other rubble from the Land, secure the Land against trespassers, and at Agency's election, remove all remaining Improvements on the Land.

10.4.3 No more than thirty (30) days following County's termination notice, County shall deliver to Agency a quitclaim deed to the Land in recordable form, in form and content satisfactory to Agency and with such other documentation as may be reasonably requested by Agency or any title company on behalf of Agency, terminating County's interest in the Land.

ARTICLE XI AGENCY'S RIGHT TO PERFORM COUNTY'S COVENANTS

If County shall at any time fail to pay any Imposition or other charge payable by County to a third party as required by this Lease, or to comply with the requirements set forth in Section 5.15 pertaining to insurance, or to make any other payment or perform any other act on its part to be made or performed hereunder within the time permitted by this Lease, then Agency, after thirty (30) days' written notice to County and without waiving or releasing County from any obligation of County hereunder, may (but shall not be required to): (i) pay such Imposition or other charge payable by County; (ii) pay for and maintain the insurance policies required pursuant to this Lease, or (iii) make such other payment or perform such other act on County's part to be made or performed under this Lease; and Agency may enter upon the Property for such purpose and take all such action thereon as may be reasonably necessary therefor.

All sums paid by Agency and all costs and expenses incurred by Agency in connection with any such payment or the performance of any such act (together with interest thereon at the Default Rate from the respective dates of Agency's making of each such payment) shall constitute additional Rent payable by County under this Lease and shall be paid by County to Agency on demand. The "Default Rate" shall mean interest calculated at an annual rate equal to the lesser of ten percent (10%) or the maximum rate of interest permitted by law.

ARTICLE XII ALTERATIONS AND NEW CONSTRUCTION

12.1 Changes and Alterations. County shall not during the Term make any alteration or addition to the Improvements that would materially alter the function or exterior appearance of the Health Center Garage without review and consultation with Agency. All alterations and additions shall be made at County's sole cost and expense and shall comply with all of the following:

- (a) The change or alteration shall not materially impair the value or structural integrity of the Improvements.
- (b) The change or alteration shall be for a use which is permitted hereunder.
- (c) No change, alteration or addition shall be undertaken until County shall have obtained and paid for, so far as the same may be required from time to time, all required permits and authorizations of any federal, state or local government or departments or subdivisions of any of them, having jurisdiction.
- (d) Any change, alteration or addition shall be made in a good and workmanlike manner and in accordance with all applicable permits and all Applicable Laws.

(e) During the period of initial construction of the Improvements or the construction of any change, alteration or addition in, to or of, the Improvements, or the permitted demolition or new construction or any restoration, County shall comply with the insurance requirements set forth in Section 5.15, which policy or policies by endorsement thereto, if not then covered, shall also insure any change, alteration or addition or new construction, including all materials and equipment incorporated in, on or about the Improvements or the Land.

(f) County shall comply with Applicable Law and with all applicable provisions of Article V including without limitation all provisions relating to construction standards.

(g) Prior to commencement of any construction, change, alteration or repair County shall deliver to Agency not later than ten (10) business days written notice of the proposed work, a general description of the proposed work and sufficient information to permit Agency to post a notice of nonresponsibility on the Land.

12.2 No Right to Demolish. Notwithstanding any other provisions of this Article XII, County shall have no right to demolish any Improvement, once built, unless County shall have received the prior written consent of Agency.

ARTICLE XIII EMINENT DOMAIN

13.1 Definitions. The following definitions shall apply in construing the provisions of this Article XIII:

(a) “**Award**” means all compensation, damages or interest, or any combination thereof, paid or awarded for a taking, whether pursuant to judgment, by agreement, or otherwise.

(b) “**Notice of intended taking**” means any notice or notification on which a reasonably prudent person would rely and would interpret as expressing an existing intention of taking as distinguished from a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a written notice of intent to take.

(c) “**Partial taking**” means any taking that is not a total taking, a substantial taking, or a temporary taking.

(d) “**Substantial taking**” means the taking of so much of the Property that the remaining portion thereof would not be economically and feasibly usable by County for the then existing uses and purposes of the Property, in County’s reasonable judgment, but shall exclude a temporary taking.

(e) “**Taking**” means any taking of or damage, including severance damage, to all or any part of the Property or any interest therein by the exercise of the power of eminent domain, or by inverse condemnation, or a voluntary sale, transfer or conveyance under threat of

condemnation in avoidance of the exercise of the power of eminent domain or while condemnation proceedings are pending.

(f) **“Temporary taking”** means the taking of any interest in the Property for a period of less than one (1) year.

(g) **“Total taking”** means the taking of all or substantially all of the Property, but shall exclude a temporary taking.

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

Agency and County each shall have the right to represent its respective interest in each proceeding or negotiation with respect to a taking or intended taking and to make full proof of their respective claims. No agreement, settlement, sale or transfer to or with the condemning authority shall be made without the mutual agreement of Agency and County. Agency and County each agree to execute, acknowledge and deliver to the other any instruments that may be reasonably required to effectuate or facilitate the provisions of this Lease relating to condemnation.

13.3 Total or Substantial Taking. In the event of a total or substantial taking of fee title to the Land, County’s interest in this Lease and all obligations of County subsequently accruing hereunder shall cease as of the date of the vesting of title in the condemning authority; provided, however, that if actual physical possession of all or part of the Property is taken by the condemning authority prior to such date of vesting of title, County’s obligations to pay rent and other sums under this Lease shall terminate as of such earlier date. In the event of a total or substantial taking of an interest in the Property other than fee title, at County’s option (exercisable by written notice to Agency), County’s interest in this Lease and all obligations of County subsequently accruing hereunder shall cease as aforesaid.

13.3.1 Award. In the event of a total or substantial taking, the award shall be apportioned as follows, in the following order:

(a) To the Bondholders to the extent necessary to pay off the bonds allocable to this Project;

(b) To Agency, that portion of the award equal to the fair market value of the Land taken, in an unimproved condition, but as encumbered by this Lease.

(c) To County, subject to Section 13.6, that portion of the balance of the award equal to the fair market value of the leasehold estate created by this Lease and the Improvements located on the Land (subject to Agency’s reversionary interest).

(d) To County, all damages awarded as severance damages related to the effect that the taking has on the Health Center Site.

(e) The balance, if any, shall be allocated between Agency and County respectively in that proportion in which (i) the fair market value of the Land and Agency's reversionary interest in the Improvements bears to (ii) the fair market value of the leasehold estate created by this Lease and the Improvements, exclusive of Agency's reversionary interest.

13.4 Temporary Taking. In the event of a temporary taking, County shall be entitled to the whole award, and this Lease shall remain in full force and effect.

13.5 Partial Taking. In the event of a partial taking, this Lease shall remain in full force and effect, covering the remainder of the Property, and County shall repair and restore any damage to the Improvements caused by such partial taking consistent with and subject to the provisions applicable to a restoration in the event of an insured casualty under Article X, so that after completion of the restoration the Improvements shall be, as nearly as possible, in a condition as good as the condition immediately preceding the partial taking. The award for any partial taking shall be deposited and disbursed in the same manner as insurance proceeds are disbursed for restoration pursuant to Article X, and upon completion of the restoration, any remaining portion of the award shall be allocated as set forth in Section 13.5.1.

13.5.1 Award on Partial Taking. In the event of a partial taking, the award shall be apportioned as follows, in the following order:

(a) To the Bondholders to the extent necessary to pay off the bonds allocable to this Project;

(b) To Agency, that portion of the award attributable to the fair market value of the portion of the Land taken in an unimproved condition, as encumbered by this Lease.

(c) To County, subject to Section 13.6, that portion of the balance of the award attributable to the fair market value of the leasehold estate created by this Lease and the Improvements located on the Land but only to the extent that the proceeds of the award are not used for restoration of the Improvements.

(d) To County, all damages awarded as severance damages related to the effect that the taking has on the Health Center Site.

(e) The balance, if any, shall be allocated between Agency and County respectively in that proportion in which (i) the fair market value of the Land as encumbered by this Lease and Agency's reversionary interest in the Improvements bears to (ii) the fair market value of the leasehold estate created by this Lease and the Improvements exclusive of the reversionary interest of Agency.

(f) Any severance damages awarded or payable because only a portion of the Property is taken by eminent domain shall be (a) paid to County during the first 15 years of this Lease, (b) equally divided between County and Agency during the next 10 years of this Lease (except to the extent needed to replace any Improvements taken by eminent domain with

equivalent Improvements on the remainder of the Land) and (c) paid to Agency during the remainder of the Term of this Lease.

No payments shall be made to County pursuant to this Section if any default by County hereunder has occurred and is continuing unless and until such default is cured.

13.5.2 Partial Taking in Last Five Years. If a partial taking occurs during the last five (5) years of Term and the reasonably estimated cost of reconstruction work exceeds twenty-five percent (25%) of the replacement value of the Improvements, County shall have the right and option to treat the same as a substantial taking by giving written notice thereof to Agency no later than the earlier of: (a) the date of vesting of title in the condemning authority of the portion of the Property taken, or (b) the date upon which the condemning authority takes physical possession of such portion of the Property. If County does give such notice the partial taking shall be considered as a substantial taking and the taking shall be subject to the provisions of Section 13.3.

13.6 Use of Condemnation Proceeds. County agrees that County shall use all condemnation proceeds County receives for the retirement of debt incurred with respect to the Improvements, the replacement, restoration of the Improvements, for the management and operation of the Improvements, and for costs and expenses incurred as a result of such condemnation.

13.7 No Apportionment of Award if County is Condemning Authority. Notwithstanding anything to the contrary set forth herein, in the event that the condemning authority for any total, substantial, or partial taking is the County or any agency or instrumentality thereof, then all condemnation awards and similar payments shall be paid and belong to Agency, except for any amounts awarded or paid specifically to County for the Improvements. Any such amount paid to County shall exclude the value of Agency's reversionary interest in the Improvements. It is expressly understood and agreed by County that except as otherwise stated in this Section, Agency shall be entitled to the entire award for any taking by County or any agency or instrumentality thereof.

ARTICLE XIV MORTGAGES

14.1 Leasehold Mortgages. Tenant shall have the right, at any time and from time to time during the Term, to encumber its leasehold interest hereunder with one or more leasehold mortgages ("**Leasehold Mortgage**"), provided that (a) no Leasehold Mortgage shall in any way impair (except as otherwise stated herein or as provided by law) the enforcement of Landlord's right and remedies herein and by law provided, (b) any such Leasehold Mortgage shall at all times be subject and subordinate to, and shall not affect or become a lien upon Landlord's right, title or estate in the Land or in this Lease, and (c) Tenant shall give Landlord prior written notice of any such Leasehold Mortgage, and shall accompany such notice with a true and correct copy of any such Leasehold Mortgage. Any Leasehold Mortgage shall be subject to the terms and conditions set forth in this Article XIV.

14.2 Rights of Leasehold Mortgagee.

14.2.1 Notices. If Landlord shall have been provided with written notice of the address of the holder of any Leasehold Mortgagee (“**Leasehold Mortgagee**”), Landlord shall mail to such Leasehold Mortgagee a copy of any notice under this Lease at the time of giving such notice to Tenant, and no such notice shall be effective against such Leasehold Mortgagee, and no termination of this Lease or termination of Tenant’s right of possession of the Land or reletting of the Land by Landlord predicated on the giving by Landlord of any notice shall be effective, unless Landlord gives to such Leasehold Mortgagee written notice or a copy of its notice to Tenant of such default or termination, as the case may be.

14.2.2 Right to Cure.

(i) In the event of any default by Tenant under the provisions of this Lease, the Leasehold Mortgagee shall have the right to remedy or cause to be remedied such default within the same cure period as afforded Tenant hereunder, extended by an additional ninety (90) days, which cure period shall commence as against the Leasehold Mortgagee upon the receipt by the Leasehold Mortgagee of the notice of default. Landlord shall accept such performance by the Leasehold Mortgagee as if the same had been done by Tenant.

(ii) The term “**incurable default**” as used herein means any default which cannot be reasonably cured by a Leasehold Mortgagee. The term “**curable default**” means any default under this Lease which is not an incurable default. Any failure to pay monetary sums shall at all times be deemed a curable default. In the event of any curable default under this Lease, and if prior to the expiration of the applicable grace period specified in Section 14.2.2 (i) the Leasehold Mortgagee shall give Landlord written notice that it intends to undertake the curing of such default, or to cause the same to be cured, or to exercise its rights to acquire the leasehold interest of Tenant by foreclosure or otherwise, and shall immediately commence and then proceed with diligence to do so, whether by performance on behalf of Tenant of its obligations under this Lease, by foreclosure or otherwise, then Landlord will not terminate or take any action to effect a termination of this Lease or re-enter, take possession of or relet the Land or similarly enforce performance of this Lease so long as the Leasehold Mortgagee is diligently and in good faith engaged in the curing of such default or effecting such foreclosure. The foregoing sentence shall not be deemed to extend the time period within which a default in the payment of money must be cured under other applicable Lease provisions. The Leasehold Mortgagee shall not be required to continue such possession or continue such foreclosure proceedings. Nothing herein shall preclude Landlord from terminating this Lease with respect to any additional default which shall occur during any period of forbearance and not be remedied within the cure period, if any, applicable to any such additional default, except that Leasehold Mortgagee shall have the same rights specified in this Article XIV with respect to any additional defaults.

(iii) If the default by Tenant pertains to the failure of Tenant to complete the construction of the Project within the time period required under this Lease, and if within one hundred twenty (120) days following written notice to Leasehold Mortgagee of such default Leasehold Mortgagee shall give Landlord written notice that it intends to undertake the curing of such default, or to cause the same to be cured, and to exercise its rights to acquire the leasehold

interest of Tenant by foreclosure or otherwise in order to effectuate such cure, and shall immediately commence and then proceed with diligence to do so, then Landlord will not terminate or take any action to effect a termination of this Lease or re-enter, take possession of or relet the Land or similarly enforce performance of this Lease so long as the Leasehold Mortgagee is diligently and in good faith engaged in the completion of the construction of the Project or effecting such foreclosure; provided, however, Landlord shall not be obligated to forebear from a termination or other enforcement of its rights under the Lease in response to such default beyond that date which is thirty (30) months following the date of Landlord's initial default notice to the Leasehold Mortgagee under this Section 14.2.2 (iii), subject to extension due to Force Majeure incurred by Leasehold Mortgagee in the completion of the construction of the Project, and subject to extension for any delay incurred by Leasehold Mortgagee as a result of legal limitations on its ability to foreclose upon the Tenant's leasehold interest.

14.2.3 Execution of New Lease. If this Lease is terminated by Tenant's trustee in bankruptcy, receiver, liquidator or other similar person on account of a default or if Tenant's interest under this Lease shall be sold, assigned or transferred pursuant to the exercise of any remedy of the Leasehold Mortgagee, or pursuant to judicial proceedings, and if (i) all monetary defaults of Tenant have been cured, and (ii) the Leasehold Mortgagee shall have arranged to the reasonable satisfaction of Landlord to cure any other curable default of Tenant under this Lease, then Landlord, within thirty (30) days (or such period as may reasonably be necessary to enable Landlord to comply with statutory requirements applicable to Landlord's lease of real property) after receiving a written request therefor, which shall be given within sixty (60) days after such termination or transfer and upon payment to it of all expenses, including attorneys' fees, incident thereto, will execute and deliver a new lease of the Land to the Leasehold Mortgagee or its affiliate or other nominee or to the purchaser, assignee or transferee, as the case may be, for the remainder of the Term, containing the same covenants, agreements, terms, provisions and limitations, as are contained herein.

(i) Upon the execution and delivery of a new lease, the new tenant, in its own name or in the name of Landlord may take all appropriate steps as shall be necessary to remove Tenant from the Land, but Landlord shall not be subject to any liability for the payment of fees, including attorneys' fees, costs or expenses in connection therewith, and the new tenant shall pay all such fees, including attorneys' fees, costs and expenses, on demand, and shall make reimbursement to Landlord of all such fees, including attorneys' fees, costs and expenses, incurred by Landlord. The new tenant shall indemnify and hold Landlord harmless from any claim, liability or damage (including attorney's fees) as a result of the action against Tenant.

(ii) Upon execution of any new lease, the new tenant named therein shall cure all uncured breaches hereunder, except that with respect to any breach which cannot be cured by the new tenant until it obtains possession, the new tenant shall not have to make such cure before it has a right to obtain possession. Any nonmonetary cure required of the new tenant shall be commenced within forty-five (45) days following the date the new tenant executes the new lease or the date the new tenant has a right to obtain possession, whichever is applicable (the "**Starting Date**"), and thereafter shall be diligently prosecuted to completion. All monetary defaults shall have been cured prior to the execution of the new lease and any monetary defaults occurring thereafter shall be cured within forty-five (45) days following the Starting Date. Any failure to comply with any of the foregoing requirements shall constitute a default under the new lease.

Notwithstanding anything to the contrary set forth herein, defaults relating to the payment of taxes, assessments or the maintenance of insurance required hereunder shall be cured within ten (10) days following the Starting Date.

(iii) Upon the Starting Date, the ownership of all Improvements shall be deemed to have been transferred directly to such transferee of Tenant's interest in this Lease and the provisions of Section 8.2.1 causing such Improvements to become the property of Landlord in the event of a termination of this Lease shall be ineffective as applied to any such termination. Landlord shall execute such quitclaim deed or other instrument of conveyance as may be reasonably requested, provided such instrument shall be expressly without warranty of any kind whatsoever and Landlord shall have no responsibility with regard to the state of title so conveyed.

14.2.4 Tenant Default Under Leasehold Mortgage. If Tenant defaults under a Leasehold Mortgage, the Leasehold Mortgagee may exercise with respect to the Property any right, power or remedy under the Leasehold Mortgage which is not in conflict with the provisions of this Lease.

14.2.5 No Merger. There shall be no merger of this Lease or any interest in this Lease, nor of the leasehold estate created hereby, with the fee estate in the Land, by reason of the fact that this Lease or such interest therein, or such leasehold estate may be directly or indirectly held by or for the account of any person who shall hold the fee estate in the Land, or any interest in such fee estate, nor shall there be such a merger by reason of the fact that all or any part of the leasehold estate created hereby may be conveyed or mortgaged in a Leasehold Mortgage to a Leasehold Mortgagee who shall hold the fee estate in the Land or any interest of the Landlord under this Lease.

14.2.6 Assumption of Obligations. For the purpose of this Article XIV, the making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder. The purchaser at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignee or transferee of this Lease and of the leasehold estate hereby created under any instrument or assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage, in order to be deemed to be an assignee or transferee and before the same shall be binding on Landlord, must assume in writing the performance of all of the terms, covenants, and conditions on the part of Tenant to be performed hereunder by an instrument, in recordable form, satisfactory to Landlord; provided however, that nothing contained herein shall be construed to require the purchaser, assignee or transferee as described above to be obligated to cure any default by Tenant. Although a purchaser, assignee or transferee shall not be obligated to cure any default, if any default is not cured, Landlord may exercise any remedy available under this Lease, including the termination of this Lease, if the default is not cured after the expiration of any applicable cure period.

14.2.7 Limitation of Leasehold Mortgagee Liability for Tenant Defaults.

Notwithstanding any contrary provision hereof: (i) no Leasehold Mortgagee shall be required to pay any liens or charges that are extinguished by the foreclosure of its Leasehold Mortgage; (ii) any incurable default shall be, and shall be deemed to have been waived by Landlord upon completion of foreclosure proceedings or acquisition of Tenant's interest in this Lease by any purchaser at a foreclosure sale, or any entity who otherwise acquires Tenant's interest from the Leasehold Mortgagee. Any entity acquiring the interest of Tenant in the Property and in this Lease as a result of the foreclosure of a Leasehold Mortgage (or an assignment or deed in lieu thereof) shall be liable to perform the obligations of Tenant under this Lease only during the period such entity retains ownership of the interest of Tenant in the Property and in this Lease.

14.3 Non-Subordination of Fee. Nothing in this Lease shall be construed as an agreement by Landlord to subordinate its fee interest in the Land or its right to rent payments hereunder or any other right of Landlord herein. Except as expressly set forth in this Article XIV, no Leasehold Mortgage shall impair Landlord's ability to enforce its rights and remedies under this Lease or provided by law. Landlord shall have no obligation to encumber or otherwise subordinate its fee interest in the Land or in this Lease to the interest of any Leasehold Mortgagee in this Lease or in Tenant's leasehold estate.

14.4 Reserved.

14.5 Landlord's Rights Under Leasehold Mortgages.

14.5.1 Notice of Tenant's Default. Tenant shall use commercially reasonable efforts to ensure that every Leasehold Mortgage secured by a deed of trust on Tenant's leasehold estate in the Land shall expressly provide that:

(a) the lender shall give Landlord contemporaneous notice of any default by Tenant thereunder, if the failure to cure such default might result in acceleration of the maturity of the debt secured by the Leasehold Mortgage; provided however, that lender's failure to give notice shall not affect the lender's rights or ability to timely pursue all applicable remedies. In addition, within three (3) business days following Tenant's receipt of any notice of default under any financing document affecting the Property, Tenant shall provide Landlord with a copy of such notice.

(b) Landlord shall have the reasonable right, but not the obligation, to cure any default by Tenant (but without obligation to do so); and

(c) If Landlord shall tender payment in full of all sums required to be paid under the Leasehold Mortgage or the note secured thereby (disregarding any acceleration of maturity thereunder, but including any costs or expenses arising as a result of such default) on or before ninety (90) calendar days from the date of such notice of default from the lender to Tenant, then the lender shall accept such payment and rescind the acceleration, if any. Any sums paid by Landlord pursuant to this Section 14.5.1 shall become immediately due and payable from Tenant to Landlord as Rent due under this Lease.

14.6 Purchase by Landlord. Landlord shall have the right and option (but not the obligation), during the period described in the last sentence of this Section 14.6, by notice in writing to the

lender, to purchase any Leasehold Mortgage, the note secured thereby, and any other instruments securing or guaranteeing such note or otherwise evidencing any obligation secured by the Leasehold Mortgage. The purchase price therefor shall be the full amount due and owing to the lender thereunder, including any costs, expenses, and penalties payable in accordance with the terms thereof. The sale and assignment by the lender shall be without recourse or warranty by the lender, except that such lender has good title to the note (or is authorized to obtain payment or acceptance on behalf of one who has good title) and that the transfer to Landlord vests in Landlord good title to the note or notes and in all security interests securing the same, free and clear of all claims and interests of third parties. The right granted by this Section 14.6 may be exercised by Landlord at any time after the lender has declared the entire sum secured by any Leasehold Mortgage to be due and payable or has commenced proceedings to foreclose any Leasehold Mortgage or, has requested a new Lease, whichever shall first occur, and such right shall terminate ninety (90) days following receipt by Landlord of a request that Landlord exercise such right given in writing from the lender after the date such right shall first arise as above provided. This Section 14.6 shall not apply to any Financing Lease.

14.7 No Voluntary Surrender/Modification.

14.7.1 No Modification. So long as any Leasehold Mortgage encumbers Tenants' leasehold interest in the Land, this Lease shall not be modified by Landlord and Tenant without the consent of the holders of such Leasehold Mortgages.

14.7.2 No Voluntary Surrender. So long as Tenant is not in default hereunder, Landlord shall not accept a voluntary surrender of the Tenant's leasehold estate without the prior written consent of all holders of any Leasehold Mortgage then in effect.

14.8 Financing Lease Not to Constitute a Leasehold Mortgage. Notwithstanding anything to the contrary contained herein, the Financing Lease (as defined in Section 15.5 below) shall not be deemed to constitute a Leasehold Mortgage and shall not be subject to the provisions of this Article XIV.

ARTICLE XV ASSIGNMENT, TRANSFER, SUBLETTING

15.1 Restrictions on Transfer, Assignment and Encumbrance. Nothing in this Lease shall be construed as an agreement by Agency to subordinate its fee interest in the Land or its right to rent payments hereunder or any other right of Agency herein. Agency shall have no obligation to encumber or otherwise subordinate its fee interest in the Land. Except as provided in Article XIV, or in Section 6.6.1, County shall have no right to sell, transfer, sublet, assign, encumber, hypothecate or otherwise convey ("**Transfer**") its leasehold interest hereunder or any portion of its interest in the Land, the Improvements or this Lease voluntarily, involuntarily, by operation of law, or otherwise, without Agency's prior written consent which shall not be unreasonably withheld. No voluntary or involuntary assignee, subtenant, or successor in interest of County

shall acquire any rights or powers under this Lease absent such consent. Agency shall not withhold its consent to an assignment of this Lease in connection with the sale or lease of the Health Center Site provided that the Health Center Site is not used for the purposes described in Section 6.1.2 of the DDA.

15.2 No Involuntary Transfers. Without limiting any other restrictions on transfer contained in this Lease, no interest of County in this Lease, the Property or part thereof shall be assignable or transferable: (i) pursuant to any voluntary or involuntary proceeding under federal or state bankruptcy or insolvency law; (ii) pursuant to any assignment of County's assets for the benefit of its creditors; or (iii) pursuant to any order of attachment, garnishment, receivership, or similar action.

Any transfer described in this Section 15.2 shall constitute a breach under this Lease by County, and Agency shall have the right to terminate this Lease pursuant to Article XVI as a result of any such transfer taking place, in which case this Lease shall not be treated as an asset of County.

15.3 Assumption Agreement and Release. No permitted Transfer shall be effective until any curable default hereunder shall have been cured and there shall have been delivered to Agency an assumption agreement, executed by the transferor and the proposed transferee, whereby such transferee expressly assumes such obligations as arise and/or accrue at any time after such Transfer takes place; and whereby such transferee assumes liability for the Lease obligations.

15.4 Sale by Agency. Nothing contained in this Lease shall be deemed in any way to limit, restrict or otherwise affect the right of Agency to sell, transfer, assign or convey all or any portion of the right, title and estate of Agency in the Land and in this Lease; provided, however, that in each such instance any such sale, transfer, assignment or conveyance shall be subject to this Lease, and County's other rights arising out of this Lease shall not be affected or disturbed in any way by any such sale, transfer, assignment or conveyance. At such time as Agency shall sell, transfer, assign or convey the entire right, title and estate of Agency in the Land and in this Lease, all obligations and liability on the part of Agency arising under this Lease after the effective date of such sale, transfer, assignment or conveyance shall terminate as to Agency, and thereupon all such liabilities and obligations shall be binding upon the transferee.

15.5 Bond Financing. Agency hereby acknowledges, consents and agrees to the sublease of the Land by County to County of Santa Clara Financing Authority (the "**Authority**") and the sublease of the Land and the Improvements by the Authority back to County (such subleases herein being referred to collectively as a "**Financing Lease**") for the purpose of securing lease revenue bonds. The proceeds of such lease revenue bonds will finance the Improvements and may also finance other facilities of County. Such lease revenue bonds and any obligations issued in connection therewith or to refund such lease revenue bonds or other obligations or issued in substitution or subrogation therefor shall be collectively referred to herein as the "**Bonds**." Notwithstanding anything to the contrary contained herein, the following provisions shall control until all of the Bonds are retired or provision for their payment in full has been made in accordance with their terms:

15.5.1 Notwithstanding anything to the contrary contained herein, County shall have the right to encumber, hypothecate, sublease, assign, rent or otherwise transfer any interest in the leasehold estate created hereby in order to finance the Improvements pursuant to the method described in Section 15.5.

15.5.2 Notwithstanding anything to the contrary contained herein, Agency shall not exercise any remedies interfering with or denying County the use and occupancy and quiet enjoyment of the Land while any Bonds issued to finance the Improvements are outstanding. Until all such Bonds are retired or provision for payment of all Bonds has been made, all rights of Agency are subordinate to the rights of bondholders and Agency shall take no action that adversely affects the interests of the bondholders.

15.5.3 Notwithstanding anything to the contrary contained herein, Agency shall not agree to any mutual termination nor accept any surrender of this Lease, nor shall Agency consent to any amendment or modification of this Lease without the prior written consent of Authority.

15.5.4 Notwithstanding any default by County in the performance or observance of any agreement, covenant or condition of this Lease on the part of County to be performed or observed, Agency shall have no right to terminate this Lease; provided, however, that nothing contained in this Section shall prevent Agency from initiating the enforcement of its other remedies hereunder, provided further that prior to the exercise thereof; (a) Agency shall have given Authority written notice of any event of default, and (b) Authority shall have failed to remedy such default within ninety (90) days or commenced the remedy thereof within such time period; provided however, this shall not impair the Agency's rights under Article XI.

15.5.5 The Authority shall have the right, but not the obligation, at any time prior to payment of the Bonds and without payment of any penalty, to pay all of the rents due hereunder, to effect any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any other act or thing required of County hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent default under this Lease. All payments so made and all things so done and performed by Authority shall be as effective as the same would have been if made, done and performed by County instead of by Authority.

15.5.6 Notwithstanding anything to the contrary contained herein, should any Event of Default by County under this Lease occur, Authority shall have ninety (90) days after receipt of notice from Agency setting forth the nature of such Event of Default, and, if the default is such that it cannot reasonably be remedied within such ninety day period, a reasonable time after the expiration of such ninety (90) day period, within which to remedy such default; provided however, this shall not impair the Agency's rights under Article XI.

15.5.7 Provided that Agency has been furnished in writing with the name and address of the Authority, Agency shall deliver to the Authority a duplicate copy of any and all notices which Agency may from time-to-time give to County pursuant to the provisions of this Lease, and such copy shall be delivered to Authority simultaneously with the delivery of the same to County. No notice by Agency to County hereunder shall be deemed to have been given unless and until a copy thereof shall have been delivered to the Authority as herein set forth.

15.5.8 Should Agency desire to terminate this Lease by reason of an Event of Default by County hereunder and the Authority agrees to such termination, Agency shall, upon written request by Authority given within ninety (90) days after such termination, immediately execute and deliver a new lease of the Property to the Authority, or its nominee, purchaser, assignee or transferee, for the remainder of the term of this Lease with the same agreements, covenants and conditions (except for any requirements which have been fulfilled by County prior to termination) as are contained herein and with priority equal to that hereof; provided, however, that Authority shall promptly cure any defaults of County susceptible to cure by Authority.

15.5.9 Agency and County shall cooperate in including in this Lease by suitable amendment from time-to-time any provision which may be reasonably requested by the Authority, or may otherwise be reasonably necessary, to implement the provisions of this Section 15.5; provided, however, that any such amendment shall not in any way affect the term hereby demised nor the rental due hereunder, nor shall any such amendment impose additional material obligations on Agency.

ARTICLE XVI BREACHES, REMEDIES AND TERMINATION

16.1 Event of Default. County shall be in default under this Lease upon the occurrence of any of the following (“**Events of Default**”):

(i) Monetary Obligation. County at any time is in default hereunder as to any monetary obligation (including without limitation, County’s obligation to pay taxes and assessments due on the Property or part thereof, subject to County’s rights to contest such charges pursuant to Section 3.2), and such default continues for thirty (30) days after the date upon which Agency shall have given County Notice of Breach (as defined in Section 16.2.1);

(ii) Insurance. County fails to obtain and maintain any insurance required pursuant to Section 5.15 of this Lease, and County fails to cure such default within ten (10) days following receipt of Notice of Breach;

(iii) Failure to Complete Construction. County fails to proceed in good faith to make reasonable progress on the construction of the Health Center Garage or abandons or suspends construction of the Health Center Garage prior to completion of all construction for a period of one hundred eighty (180) days after written notice.

(iv) Abandonment. County abandons the Property and ceases to use it for the purposes authorized hereby for a period of one hundred eighty (180) days or more or as established pursuant to Section 1951.3 of the California Civil Code except when prevented by Force Majeure.

(v) Transfer. A voluntary or involuntary Transfer of all or any portion of County’s interest in this Lease, the Property or part thereof occurs in violation of the provisions of Article XV;

(vi) Non-Monetary Obligations. County defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation

enumerated in this Section 16.1, and unless a shorter cure period is specified for such default, the default continues for sixty (60) days after the date upon which Agency shall have given written notice of the default to County; provided however, if the default is of a nature that it cannot be cured within sixty (60) days, an Event of Default shall not arise hereunder if County commences to cure the default within sixty (60) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than one hundred and eighty (180) days after receipt of notice of default.

(vii) Bankruptcy. County files a voluntary petition in bankruptcy or files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of County or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof, or makes any general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due;

(viii) Reorganization. A court of competent jurisdiction enters an order, judgment or decree approving a petition filed against County seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days from the first date of entry thereof, or any trustee receiver or liquidator of County or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof is appointed without the consent or acquiescence of County and such appointment remains unvacated and unstayed for an aggregate of sixty (60) days, such sixty (60) day period to be extended in all cases during any period of a bona fide appeal diligently pursued by County;

(ix) Attachment. A writ of execution or attachment or any similar process is issued or levied against all or any part of the interest of County in the Property and such execution, attachment or similar process is not released, bonded, satisfied, or vacated or stayed within sixty (60) days after its entry or levy, such sixty (60) day period to be extended during any period of a bona fide appeal diligently pursued by County;

(x) Liens. County's failure to satisfy the requirements of Section 5.22 hereof within the time periods specified therein.

16.2 Notice and Opportunity to Cure.

16.2.1 Notice of Breach. Upon the occurrence of a default hereunder, the non-breaching party shall deliver a notice to the nonperforming party (the "**Notice of Breach**"), stating the nature of the obligation which such nonperforming party has failed to perform, and stating the applicable period of time, if any, permitted to cure the default.

16.2.2 Failure to Give Notice; No Waiver. Failure to give, or delay in giving, Notice of Breach shall not constitute a waiver of any obligation, requirement or covenant required to be performed hereunder. No failure or delay by either party in asserting any rights and remedies as

to any breach shall operate as a waiver of any breach or of any such rights or remedies. Delay by either party in asserting any of its rights and remedies shall not deprive such party of the right to institute and maintain any action or proceeding which it may deem appropriate to protect, assert or enforce any such rights or remedies.

16.3 Remedies Upon Default.

16.3.1 Agency's Remedies. Upon the occurrence of any Event of Default and in addition to any and all other rights or remedies of Agency hereunder and/or provided by law, Agency shall have the right to terminate this Lease and/or County's possessory rights hereunder, in accordance with applicable law to re-enter the Land and take possession thereof and of the Improvements, and except as otherwise provided herein, to remove all persons and property therefrom, and to store such property at County's risk and for County's account, and County shall have no further claim thereon or hereunder. Agency's re-entry or taking of possession of the Property shall not be construed as an election on Agency's part to terminate this Lease unless Agency shall have given written notice of such intention to County. In no event shall this Lease be treated as an asset of County after any final adjudication in bankruptcy except at Agency's option so to treat the same but no trustee, receiver, or liquidator of County shall have any right to disaffirm this Lease. Agency's remedies under this Section are subject to Section 15.5.2, and Agency shall not take any action which would impair the security for the bonds or the bondholder's interest in the Lease.

16.3.2 Remedies Upon Abandonment. If County should breach this Lease and abandon the Property, Agency may, at its option, enforce all of its rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder. Additionally, Agency shall be entitled to recover from County all costs of maintenance and preservation of the Property, and all costs, including attorneys' and receiver's fees incurred in connection with the appointment of and performance by a receiver to protect the Property and Agency's interest under this Lease.

16.3.3 Agency Right to Continue Lease. In the event of any default under this Lease by County (and regardless of whether or not County has abandoned the Property), this Lease shall not terminate (except by an exercise of Agency's right to terminate under Section 16.3.1) unless Agency makes such election by the giving of any notice (including, without limitation, any notice preliminary or prerequisite to the bringing of legal proceedings in unlawful detainer) to terminate County's right to possession. For so long as this Lease continues in effect, Agency may enforce all of Agency's rights and remedies under this Lease, including, without limitation, the right to recover all rent and other monetary payments as they become due hereunder. For the purposes of this Lease, the following shall not constitute termination of County's right to possession: (a) acts of maintenance or preservation or efforts to relet the Property; or (b) the appointment of a receiver upon initiative of Agency to protect Agency's interest under this Lease.

16.3.4 Right to Injunction; Specific Performance. In the event of a default by County under this Lease, Agency shall have the right to commence an action against County for damages, injunction and/or specific performance. County's failure, for any reason, to comply with a court-ordered injunction or order for specific performance shall constitute a breach under this Lease.

16.3.5 Right to Receiver. Following the occurrence of an Event of Default, if County fails after receipt of a Notice of Breach to cure the default within the time period set forth in this Lease, Agency, at its option, may have a receiver appointed to take possession of County's interest in the Property with power in the receiver (a) to administer County's interest in the Property, (b) to collect all funds available in connection with the operation of the Property, and (c) to perform all other acts consistent with County's obligations under this Lease, as the court deems proper.

16.4 Remedies Cumulative. No remedy specified in this Article XVI shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy provided hereunder or now or hereafter existing at law or in equity or by statute, and every power and remedy provided by this Lease may be exercised from time to time and as often as occasion may arise or as may be deemed expedient, subject to any limitations set forth herein.

16.5 No Election of Remedies. The rights given in this Article XVI to receive, collect or sue for any rent or rents, moneys or payments, or to enforce the terms, provisions and conditions of this Lease, or to prevent the breach or nonobservance thereof, or the exercise of any such right or of any other right or remedy hereunder or otherwise granted or arising, shall not in any way affect or impair or toll the right or power of Agency upon the conditions and subject to the provisions in this Lease to terminate County's right of possession because of any default in or breach of any of the covenants, provisions or conditions of this Lease beyond the applicable cure period.

16.6 Survival of Obligations. Nothing herein shall be deemed to affect the right of Agency under Article IX of this Lease to indemnification for liability arising prior to the termination of the Lease for personal injuries or property damage, nor shall anything herein be deemed to affect the right of Agency to equitable relief where such relief is appropriate. No expiration or termination of the Term by operation of law, or otherwise, and no repossession of the Land or any part thereof shall relieve County of its previously accrued liabilities and obligations hereunder, all of which shall survive such expiration, termination or repossession.

ARTICLE XVII GENERAL PROVISIONS

17.1 Force Majeure; Extension of Times of Performance. Subject to the limitations set forth below, performance by either Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Party, acts or failures to act of any public or governmental agency or entity (other than the Parties which shall not excuse delay in performance), or any other cause beyond the affected Party's reasonable control (all of the foregoing "**Force Majeure**"). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the

other Party within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Party within ten (10) days of receipt of the notice. Neither Party shall unreasonably withhold consent to an extension of time pursuant to this Section.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of County (acting in the discretion of the County Executive) and Agency (acting in the discretion of its Executive Director unless he or she determines in his or her discretion to refer such matter to the governing board of the Agency). Agency and County acknowledge that adverse changes in economic conditions, either of the affected Party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing to complete the work of Improvements shall not constitute grounds of enforced delay pursuant to this Section. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

17.2 Reserved.

17.3 Agency's Right to Enter the Land. Agency and its agents may enter the Land and the Improvements from time to time with reasonable notice, except in the case of emergency in which case no notice shall be required, to inspect the same, to post notices of nonresponsibility and similar notices, and to discharge County's obligations hereunder when County has failed to do so within a reasonable time after written notice from Agency.

17.4 Representations of Agency and County.

17.4.1 County hereby represents and warrants that all of the following are true and correct as of the Effective Date:

(a) County has taken all requisite action in connection with the execution of this Lease and the undertaking of the obligations set forth herein. This Lease constitutes the legally valid and binding obligation of County, enforceable against County in accordance with its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally; and

(b) The execution of this Lease and the acceptance of the obligations set forth herein do not violate any court order or ruling binding upon County or any provision of any indenture, agreement or other instrument to which County is a party or may be bound. Neither the entry into nor the performance of this Lease will violate, be in conflict with or constitute a default under any charter, bylaw, partnership agreement, trust agreement, mortgage, deed of trust, indenture, contract, judgment, order or other agreement, charge, right or interest applicable to County.

17.4.2 Agency hereby represents and warrants that all of the following are true and correct as of the Effective Date:

(a) Agency has taken all requisite action in connection with the execution of this Lease and the undertaking of the obligations set forth herein. This Lease constitutes the legally valid and binding obligation of Agency, enforceable against Agency in accordance with

its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

(b) The execution of this Lease and the acceptance of the obligations set forth herein do not violate any court order or ruling binding upon Agency or any provision of any indenture, agreement or other instrument to which Agency is a party or may be bound. Neither the entry into nor the performance of this Lease will violate, be in conflict with or constitute a default under any charter, bylaw, partnership agreement, trust agreement, mortgage, deed of trust, indenture, contract, judgment, order or other agreement, charge, right or interest applicable to Agency.

17.5 Miscellaneous.

17.5.1 Severability. If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

17.5.2 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Lease shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
- (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;
- (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

Agency: Redevelopment Agency of the City of Milpitas
 455 East Calaveras
 Milpitas, CA 95035
 Attention: Executive Director
 Facsimile: (408) 586-3056

With copy to: Meyers Nave

555 12th Street, Suite 1500
Oakland, CA 94607
Attention: Agency Counsel, Milpitas Redevelopment Agency
Facsimile: (510) 444-1108

County: County of Santa Clara
70 West Hedding Street, 11th Floor
San Jose, California 95110
Attn: County Executive
Facsimile: (408) 293-5649

County of Santa Clara
70 West Hedding Street, 9th Floor
San José, California 95110
Attn: County Counsel
Facsimile: (408) 292-7240

17.5.3 Captions; Construction. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Lease. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree that since both Parties have participated in the negotiation and drafting of this Agreement with the advice of counsel, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

17.5.4 Successors and Assigns. Subject to the restrictions on transfer set forth in Article XV, this Lease shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. Any reference in this Lease to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement as if in every case so expressed.

17.5.5 Short Form of Lease. A memorandum of lease substantially in the form attached hereto as Exhibit D shall be executed by Agency and County and recorded in the Official Records of Santa Clara County upon the request of either Party.

17.5.6 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of California.

17.5.7 Attorney's Fees. If either Party commences an action against the other to enforce any obligation contained herein, or to interpret any provision hereof, the prevailing party shall be entitled to recover from the other Party reasonable counsel fees, costs and necessary disbursements, as determined by the court having jurisdiction over the action.

17.5.8 Indemnity Includes Defense Costs. In any case where either Party is obligated under an express provision of this Lease, to indemnify and to save the other Party harmless from any damage or liability, the same shall be deemed to include defense of the indemnitee by the indemnitor, such defense to be through legal counsel reasonably acceptable to the indemnitee.

17.5.9 No Third-Party Beneficiaries; Disclaimer of Partnership, Lender/Borrower Relationship. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties any rights or remedies hereunder. The relationship of the parties under this Lease is solely that of landlord and tenant, and it is expressly understood and agreed that Agency does not as a result of this Lease in any way nor for any purpose become a partner of County or a joint venturer with County in the conduct of County's business or otherwise. This Lease is not intended to, and shall not be construed to, create the relationship of principal and agent, partnership, joint venture, or association as between Agency and County. It is further expressly understood and agreed that this Lease is not intended to, and shall not be construed to create the relationship of lender and borrower, and Agency does not, solely as a result of this Lease, become a lender to County.

17.5.10 Entire Agreement. This Lease, together with Exhibits A through C which by this reference are hereby incorporated herein, the DDA, and the documents which are exhibits to the DDA, contains the entire agreement between the Parties relative to the transactions covered hereby. All previous correspondence, communications, discussions, agreements, understandings or proposals and acceptances thereof between the Parties or their representatives, whether oral or written, are deemed to have been integrated into and superseded by this Lease and are of no further force and effect except as expressly provided in this Lease.

17.5.11 Waiver; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any subsequent breach of the same or any other covenant or provision hereof. No waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party. This Agreement may be amended or modified only by a written instrument executed by the Parties.

17.5.12 Time is of the Essence. Time is of the essence of this Lease and of each provision hereof.

17.5.13 Counterparts. This Lease may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

17.5.14 Action by the Parties. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the Agency in its capacity as Lessor hereunder is required or permitted under this Lease, such action shall be in writing, and such action may be given, made or taken by the Agency's Executive Director or by any person who shall have been designated by the Executive Director, without further approval by the Agency Board of Directors unless the Executive Director determines in his or her discretion that such matter requires consideration by the Agency Board. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by County is required or permitted under this Lease, such action shall be in writing, and such action may be given, made or taken by the County Executive or by any person who shall have been designated by the County Executive, upon review and approval of County Counsel, without further approval by the County Board of Supervisors unless the County Executive determines in his or her discretion that such matter requires consideration by the Board of Supervisors.

17.5.15 Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of Agency or City shall be personally liable to County or its successors in interest in the event of any default or breach by Agency or for any amount which may become due to County or County's permitted successors in interest pursuant to this Agreement.

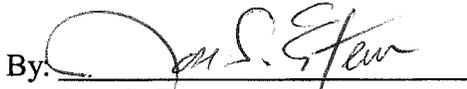
SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, Agency and County have entered into this Lease as of the Effective Date.

COUNTY OF SANTA CLARA

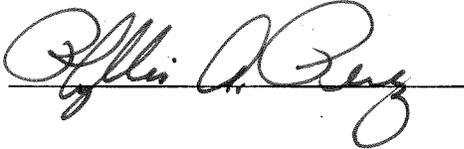
**REDEVELOPMENT AGENCY OF
THE CITY OF MILPITAS**

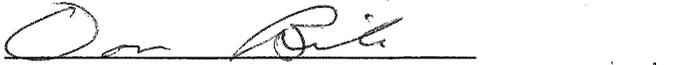
By: 
James T. Beall, Jr., Chairperson
Board of Supervisors

By: 
Jose S. Esteves, Chair

ATTEST: Phyllis A. Perez, Clerk
Board of Supervisors

ATTEST: Mary Lavelle, Clerk




Donna Biles, Deputy City Clerk

APPROVED AS TO FORM AND
LEGALITY:

APPROVED AS TO FORM:


Deputy County Counsel

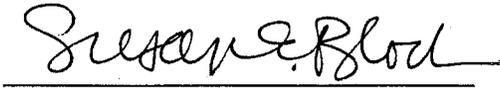

Agency Counsel

Exhibit A

LAND

(Attach legal description.)

HEALTH CENTER GARAGE SITE

Legal Description

Commencing at an iron pipe at the intersection of the Southwesterly line of the San Jose and Oakland Road with the Northerly line of that certain 5.22 acre tract described in the Deed from A. A. Dempsey et al, to Cambrian Gateway, a partnership, dated July 26, 1963, recorded on July 30th, 1963 in Book 6125 Official Records, page 601, Santa Clara County Records; thence South $10^{\circ}27'49''$ East 164.00 feet; thence South $68^{\circ}36'56''$ West 30.55 feet TO THE TRUE POINT OF BEGINNING; thence South $68^{\circ}36'56''$ West 287.42 feet; thence along a curve to the right, from a tangent bearing North $65^{\circ}21'49''$ West, with a radius of 90.00 feet and a central angle of $141^{\circ}18'30''$, a distance of 221.97 feet; thence North $75^{\circ}56'41''$ East 215.28 feet; thence along a tangent curve to the right with a radius of 20.00 feet and a central angle of $93^{\circ}35'30''$, a distance of 32.67 feet; thence South $10^{\circ}27'49''$ East 102.53 feet to the True Point of Beginning.



LONG-RANGE PROPERTY MANAGEMENT PLAN CHECKLIST

Instructions: Please use this checklist as a guide to ensure you have completed all the required components of your Long-Range Property Management Plan. Upon completion of your Long-Range Property Management Plan, email a PDF version of this document and your plan to:

Redevelopment_Administration@dof.ca.gov

The subject line should state “[Agency Name] Long-Range Property Management Plan”. The Department of Finance (Finance) will contact the requesting agency for any additional information that may be necessary during our review of your Long-Range Property Management Plan. Questions related to the Long-Range Property Management Plan process should be directed to (916) 445-1546 or by email to Redevelopment_Administration@dof.ca.gov.

Pursuant to Health and Safety Code 34191.5, within six months after receiving a Finding of Completion from Finance, the Successor Agency is required to submit for approval to the Oversight Board and Finance a Long-Range Property Management Plan that addresses the disposition and use of the real properties of the former redevelopment agency.

GENERAL INFORMATION:

Agency Name: **Successor Agency to the Redevelopment Agency of the City of Milpitas**

Date Finding of Completion Received: June 27, 2014

Date Oversight Board Approved LRPMP: December 2, 2014

Long-Range Property Management Plan Requirements

For each property the plan includes the date of acquisition, value of property at time of acquisition, and an estimate of the current value.

Yes No [Appraisals are underway and will be available prior to disposition of the properties]

For each property the plan includes the purpose for which the property was acquired.

Yes No

For each property the plan includes the parcel data, including address, lot size, and current zoning in the former agency redevelopment plan or specific, community, or general plan.

Yes No

For each property the plan includes an estimate of the current value of the parcel including, if available, any appraisal information.

Yes No [Appraisals are underway and will be available prior to the disposition of the properties]

For each property the plan includes an estimate of any lease, rental, or any other revenues generated by the property, and a description of the contractual requirements for the disposition of those funds.

Yes No

For each property the plan includes the history of environmental contamination, including designation as a brownfield site, any related environmental studies, and history of any remediation efforts.

Yes No

For each property the plan includes a description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency.

Yes No

For each property the plan includes a brief history of previous development proposals and activity, including the rental or lease of the property.

Yes No

For each property the plan identifies the use or disposition of the property, which could include 1) the retention of the property for governmental use, 2) the retention of the property for future development, 3) the sale of the property, or 4) the use of the property to fulfill an enforceable obligation.

Yes No

The plan separately identifies and list properties dedicated to governmental use purposes and properties retained for purposes of fulfilling an enforceable obligation.

Yes No

ADDITIONAL INFORMATION

- If applicable, please provide any additional pertinent information that we should be aware of during our review of your Long-Range Property Management Plan.

Agency Contact Information

Name:

Name:

Title:

Title:

Phone:

Phone:

Email:

Email:

Date:

Date:

Department of Finance Local Government Unit Use OnlyDETERMINATION ON LRPMP: APPROVED DENIED

APPROVED/DENIED BY: _____ DATE: _____

APPROVAL OR DENIAL LETTER PROVIDED: YES DATE AGENCY NOTIFIED: _____