

**LEASE OPTION AGREEMENT  
(Peralta Site)**

THIS LEASE OPTION AGREEMENT ("Agreement") is made and entered into as of the 1st day of August, 2013 ("Agreement Date"), by and between the ORANGE UNIFIED SCHOOL DISTRICT ("District" or "Lessor") and FF REALTY LLC, a Delaware limited liability company ("Lessee").

R E C I T A L S

A. Lessor owns fee title to certain real property 2190 North Canal Street in the City of Orange ("City"), County of Orange, State of California commonly known as the Peralta Site and more particularly described in Exhibit A attached hereto (the "Premises").

B. In connection with Lessee's response to a Request For Proposals circulated by Lessor, Lessee has been selected to develop the Premises.

C. Lessor and Lessee desire to enter into this Agreement pursuant to which Lessor grants Lessee an option to lease the Premises from Lessor on the terms and conditions set forth in this Agreement.

A G R E E M E N T

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

1. Grant of Option. Lessor hereby grants to Lessee an option (the "Option") to lease the Premises from Lessor for a term commencing on the "Lease Effective Date", as defined in the Lease and ending at midnight, Pacific time, on the day immediately preceding the ninety-nine (99) year anniversary of the Lease Effective Date in accordance with the terms and provisions of a Lease Agreement in the form attached to this Agreement as Exhibit B (the "Lease"), which terms and provisions include Lessee's development of a multi-family residential project upon the Premises.

2. Option Term.

2.1 Duration of Option Term. The term of the Option (the "Option Term") shall commence on the Agreement Date ("Option Effective Date") and expire on that date (the "Option Expiration Date") which is the earlier of (i) fifteen (15) days following, the Conditions Satisfaction Date (as defined below), or (ii) July 31, 2015 ("Outside Option Expiration Date"). For purposes hereof, the "Conditions Satisfaction Date" shall mean the first date upon which all conditions precedent to Lessee's exercise of the Option set forth in Section 3 below (the "Option Conditions") have been satisfied or waived by Lessee in writing, in Lessee's sole and absolute discretion. If by the Outside Option Expiration Date set forth above in this Section 2.1, despite Lessee's having used commercially reasonable efforts to

satisfy all of the Option Conditions, the Conditions Satisfaction Date has not occurred as a result of delays by the applicable governmental authorities in the processing of Lessee's applications for the Entitlements (as defined in Section 3 below) beyond normal entitlement processing periods including, without limitation, delays resulting from the commencement of litigation relating to the Entitlements under CEQA or other applicable law, ordinance, or regulation, relating to the Entitlements or relating to the parties' entering into this Agreement or the Lease ("Extraordinary Governmental Delays"), or as a result of Force Majeure (as defined in the Lease), then upon Lessee's written notice to Lessor, the Outside Option Expiration Date shall be extended one or more times for a period of the lesser of (a) six (6) months each, or (b) a period of time equivalent to the period of the subject Extraordinary Governmental Delays or Force Majeure delays, but in no event shall all extensions exceed twenty-four (24) months in the aggregate. Lessee shall not have the right to extend the Outside Option Expiration Date if Lessee is in material breach or default of this Option Agreement, beyond applicable notice and cure periods. From and after the Option Effective Date until the Lease Effective Date, or earlier termination of this Agreement, Lessor shall not solicit, entertain, and/or accept back-up offers to option, lease, purchase, sell, or otherwise transfer, acquire, or convey the Premises or any interest therein. During the term of this Agreement, without Lessee's prior written consent, Lessor shall be prohibited from (a) adding, modifying, or extending any new encumbrance against the Premises, (b) voluntarily transferring, conveying, leasing, directly or indirectly, all or any portion of the Premises, (c) causing or permitting any nuisance or committing or permitting any waste on the Premises, and (d) taking or consenting to any action or making any omission upon or relating to the Premises that would impair Lessee's ability to exercise the Option and/or proceed with the Development Work (as defined in the Lease) as contemplated under this Agreement or the Lease.

## 2.2 Due Diligence Period.

2.2.1 Inspection. Lessee shall have until 6:00 p.m. Pacific time on the seventy-fifth (75<sup>th</sup>) day following the Agreement Date ("Due Diligence Period") to perform its due diligence review to evaluate the physical qualities and economic prospects of the Premises. This review shall include such tests, inspections, and analyses as Lessee determines necessary and appropriate to evaluate the Premises and Lessee's contemplated development, use, and operation thereof and may include, but shall not be limited to, soil tests, hazardous waste tests, geotechnical reviews, and title searches, and evaluation of Lessee's prospects for obtaining the Entitlements. Lessor shall cooperate with Lessee throughout this process and make the Premises available to Lessee, in accordance with Section 7 of this Agreement, for testing and inspection. Within five (5) business days following the date of this Agreement, Lessor shall deliver to Lessee true, correct, and complete copies of all "Lessor Documents," which shall include all documents, materials and other information in Lessor's possession relating to the ownership, operation, physical condition, use and/or development of the Premises and/or otherwise relating to all or any part of the Premises, including, without limitation, (i) the Current Lease (as defined in Section 7.1 below), (ii) any service contracts, (iii) all property tax, utility and other operating expense bills and insurance policies relating to the ownership and operation of the Premises over the three-year period preceding the Agreement Date, (iv) any conditional use permits, variances and other governmental permits and/or approvals, (v) all plans, specifications, surveys, environmental reports, title information,

geotechnical tests, engineering reports, environmental and soils reports, studies, test results, architectural, design, other development information (e.g., site plans and drawings), correspondence with municipal zoning and planning departments and other governmental authorities and agencies, and any notices of violations of any governmental requirements, and (vi) materials relating to any litigation, condemnation, or other proceedings. Lessor acknowledges and agrees that Lessee may contact the city and any other government agency regarding the Premises, its condition, zoning or suitability for Lessee's intended use. Lessee will notify Lessor of any unacceptable title exceptions, or other aspects of the Premises which Lessee, in its sole discretion, deems to be impediments to the transaction contemplated hereby, prior to the expiration of the Due Diligence Period. Lessee shall have the absolute right to terminate the Agreement at any time within the Due Diligence Period, if, in its sole and absolute discretion, the results of its due diligence review are not satisfactory to Lessee.

#### 2.2.2 Title Review.

A. Title Insurance. Within five (5) business days after the Agreement Date, Escrow Holder shall deliver to Lessee a preliminary title report ("Preliminary Title Report") and legible copies of all underlying title documents referenced as exceptions to title therein. Within sixty (60) days following its receipt of the items described in the immediately preceding sentence, Lessee shall have the right to notify Lessor in writing of any matters shown in the Preliminary Title Report and, if applicable, encroachments or other items shown on the Survey (defined below), of which Lessee disapproves (each a "Title Defect"). Any Title Defect or other objection disclosed by the Preliminary Title Report (other than liens removable by the payment of money) or any ALTA survey procured by Lessee for the Premises ("Survey") which is not timely specified by Lessee in any written notice of Title Defects delivered to Lessor prior to the expiration of the Due Diligence Period shall be deemed approved by Lessee. Lessor shall notify Lessee in writing within five (5) business days of Lessee's delivery of notice of Title Defects whether or not Lessor elects to cure any Title Defect or other objection. If Lessor elects to cure, Lessor shall use diligent efforts to cure the Title Defects and/or objections as soon as reasonably possible, but no later than the Outside Option Expiration Date. If Lessor elects not to cure or if such Title Defects and/or objections are not cured, Lessee shall have the right, in lieu of any other remedies, to: (i) elect not to exercise the Option, terminate this Agreement and receive a return of the Year 1 Option Payment (as defined in Section 5.1 below), together with all interest accrued thereon; or (ii) waive such Title Defects and/or objections and proceed to exercise the Option. Without limiting the foregoing, prior to the Outside Option Expiration Date, Lessor shall, at its sole cost and expense, cause to be removed from title to the Premises any deed of trust, lien, security interest or other monetary encumbrance, except for any liens for non-delinquent taxes or assessments, whether or not Lessee affirmatively disapproves of such items in any notice to Lessor.

B. Supplemental Title Reports. If between the expiration of the Due Diligence Period and the Lease Effective Date, Escrow Holder shall issue any one

or more supplemental reports (each, a “Supplemental Report”) describing any new or modified exception(s) to title to the Premises, Lessee shall have ten (10) business days from Lessee’s receipt of each such Supplemental Report and each document underlying each such new and/or modified exception(s) to approve or disapprove of each such new and/or modified exception(s) by delivering written notice to Lessor. Lessee’s failure to deliver written notice to Lessor within ten (10) business days of Lessee’s receipt of any Supplemental Report shall be deemed Lessee’s approval of the new and/or modified exception(s) contained in such Supplemental Report. If after Escrow Holder issues one or more Supplemental Reports, Lessee timely delivers notice to Lessor of any one or more new and/or modified exception(s) contained in any such Supplemental Report of which Lessee disapproves, the provisions set forth above for Title Defects which Lessee notifies Lessor of prior to the expiration of the Due Diligence Period shall apply.

C. Miscellaneous Title Matters. If a search of title to the Premises discloses judgments, bankruptcies or other returns against other persons having names the same as or similar to that of Lessor, Lessor shall on request deliver to Lessee an affidavit stating, if true, that such judgments, bankruptcies or the returns are not against Lessor. Lessor further agrees to execute and deliver to Escrow Holder at Closing such documentation as Escrow Holder shall reasonably require including, without limitation, a Commercial Owner’s Affidavit on Escrow Holder’s form, to evidence that the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and that there are no mechanics’ liens on the Premises or parties are in possession of the Premises other than Lessor.

D. Title Policy. Effective as of the Lease Effective Date, Escrow Holder shall issue to Lessee an ALTA Leasehold Policy of title insurance, in a policy amount to be determined by Lessee in its sole and absolute discretion prior to the expiration of the Due Diligence Period, subject only to Escrow Holder’s standard printed exceptions and to any matters shown on schedule B to such title policy which are approved or deemed to have been approved by Lessee pursuant to this Section 2.2.2 (“Title Policy”).

### 2.3 Escrow.

2.3.1 Opening of Escrow. Within three (3) business days following the mutual execution and delivery of this Agreement by Lessor and Lessee, the Parties shall open an escrow (the “Escrow”) with First American Title Insurance Company (“Escrow Holder”), at its offices located at 18500 Von Karman Avenue, Suite 600, Irvine, CA 92612, Attn: Kristen Hueter, by causing an executed copy of this Agreement to be deposited with Escrow Holder. Escrow shall be deemed open on the date that a fully executed copy of this Agreement is delivered to Escrow Holder (the “Opening of Escrow”). Escrow Holder shall provide each of the parties with written confirmation of the date of the Opening of Escrow. Escrow Holder shall also provide title insurance services related to this Agreement (the “Title Company”).

2.3.2 Title and Escrow Costs. Escrow and title charges shall be allocated as follows: (1) Lessee shall pay the premium cost of an ALTA Leasehold Policy of title insurance, in a policy amount to be determined by Lessee in its sole and absolute discretion, and one-half of any escrow fee or similar charges; and (2) Lessor shall pay one-half of any escrow fees or similar charges. Any other costs and charges shall be allocated according to the custom in Orange County as of the Closing Date.

2.4 Early Termination of Agreement. The Agreement may be terminated at any time by Lessee with or without cause. Lessor may terminate the Agreement if the following milestone is not accomplished as and when specified: an application for the general plan amendment ("GPA") and rezoning of the Premises to permit the type of use contemplated by Lessee on the Premises is not submitted within six (6) months of the expiration of the Due Diligence Period. If the Agreement terminates or expires after the expiration of the Due Diligence Period for any reason without Lessee having exercised the Option, except as otherwise expressly set forth in this Agreement, any Option Fee (as defined in Section 5 below) that, as of the date of such termination, has been paid by Lessee shall be deemed non-refundable to Lessee, and neither party will have any further obligation to the other under the terms of this Agreement or the Lease. Additionally, if this Agreement terminates or expires after the expiration of the Due Diligence Period for any reason (other than Lessor's default), then upon written request from Lessor, at no cost to Lessor, Lessee shall deliver to Lessor copies of all third party reports, investigations and studies relating strictly to the physical condition of the Premises (collectively, the "Reports" and, individually, a "Report") prepared for Lessee in connection with its due diligence review of the physical condition of the Premises, including ALTA property surveys, environmental reports, and geotechnical reports, but expressly excluding any so-called *pro formas*, appraisals, economic assessments or analyses, internal evaluations or analyses, or other feasibility and/or economic analyses of the Premises and/or Lessee's proposed project to be developed thereon. The Reports shall be delivered to Lessor without representation or warranty as to the completeness, accuracy, or utility of the Reports or any other matter relating thereto whatsoever, or any liability on the part of Lessee and/or the preparers thereof) and Lessor and any successor or assign of Lessor may utilize and/or relay on the same at Lessor's (or such successor's or assign's) sole risk.

3. Option Conditions. In addition to any other conditions set forth in this Agreement, the exercise by Lessee of the Option and Lessee's entering into the Lease shall be subject to the satisfaction of the following conditions as of the dates set forth below (collectively, the "Option Conditions").

3.1 Issuance of Entitlements. All discretionary planning, zoning, land use, and other entitlements, permits, and approvals (including, without limitation, licenses, variances, certificates, consents, exemptions, decisions, actions, and/or approvals) of any governmental authorities and/or agencies which Lessee, in good faith, determines are required for Lessee's performance of the Development Work and use and operation of the Premises for the uses contemplated in the Lease on terms and conditions acceptable to Lessee in Lessee's sole and subjective discretion, excluding only building permits to be issued upon Lessee's provision of plans and specifications complying with applicable building codes and payment of statutory building permit fee (collectively, the "Entitlements");

3.2 Expiration/Resolution of Appeals. Any appeal period to administratively and/or legally contest the parties' entering into the Lease and/or the issuance of the Entitlements has lapsed with no such administrative and/or legal contest having been filed, or if filed, the same has been resolved to Lessee's sole and subjective satisfaction; and

3.3 No Litigation. There is no proceeding or litigation pending to appeal parties' entering into the Lease and/or the issuance of the Entitlements, or to enjoin or restrain either of the foregoing or the performance of the Development Work, or if such a proceeding or litigation has been pending, then the issuance of a dismissal, decision or judgment rendered thereon in favor of the validity of the parties' entering into this Lease, the Entitlements, and/or the Development Work, as applicable, which dismissal, decision or judgment is not subject to further appeal and is acceptable to Lessee in Lessee's sole and subjective discretion.

3.4 Representations and Warranties. Lessor's representations and warranties and representations under this Agreement shall be true and correct.

3.5 No Breach of Default. All material obligations of Lessor contained in this Agreement shall have been fully performed in all material respects and Lessor shall not be in default under any covenant, restriction, right-of-way or easement affecting the Premises.

3.6 Title to Premises. Lessor shall own fee simple title to the Premises, and Lessor shall deliver the Premises to Lessee in the same condition as existed as of the end of the Due Diligence Period, except for changes resulting from Lessee's acts.

3.7 No Encumbrances. The Premises being free and clear from any persons and entities, leases, temporary occupancy agreements, licenses, and all other third-party rights of use or occupancy of the Premises or any part thereof, except as permitted under the Permitted Exceptions. For purposes hereof, the Current Lease shall not be deemed to be a Permitted Exception, and the condition set forth in this Section 7.1 requires that the term of the Current Lease shall have expired (or been earlier terminated by mutual agreement of Lessor and the Current Tenant (as defined in Section 7.1 below)), and the Premises shall be free and clear from possession of any tenants, occupants, or other persons or entities whose possessory rights arose, directly or indirectly, under the Current Lease.

3.8 Title Policy. Escrow Holder shall have issued or committed to issue to Lessee the Title Policy, subject only to the Permitted Exceptions.

In the event that the conditions set forth in Sections 3.1, 3.2, and 3.3 above have not been satisfied by the Outside Option Expiration Date (as the same may be extended pursuant to Section 2.1 above), Lessee shall have the right, by written notice to Lessor, to terminate this Agreement, in which event the Option Fee paid by Lessee as of the date of such termination shall not be refunded to Lessee. In the event that the conditions set forth in Sections 3.4, 3.5, 3.6, 3.7, and 3.8 above are not satisfied by (a) the Outside Option Expiration Date (as the same may be extended pursuant to Section 2.1 above), or (b) Lessee has already exercised the Option, the Lease Effective Date, Lessee shall have the right, for such time as any one or more of such conditions remain unsatisfied, in addition to any other rights and remedies available to Lessee under this Agreement, at law, or in equity, exercisable by delivery of written notice to Lessor (i)

on one or more occasions, to extend the Outside Option Expiration Date and, if Lessee has already exercised the Option, the Lease Effective Date) until such time as the subject conditions have been satisfied; provided, however, that in no event shall Lessee have the right to extend the Outside Option Expiration Date and the Lease Effective Date for more than twenty-four (24) months in the aggregate pursuant to this sentence; and (ii) to terminate this Agreement. If Lessee delivers to Lessor written notice of Lessee's election to extend the Outside Option Expiration Date (or, if applicable, the Lease Effective Date) pursuant to the immediately preceding sentence, but following any such extensions each of the conditions set forth above in Sections 3.4, 3.5, 3.6, 3.7, and 3.8 above are not satisfied or waived by Lessee on or prior to any then-applicable Outside Option Expiration Date (or the Lease Effective Date, if Lessee has already exercised the Option) or if Lessee delivers Lessor written notice of Lessee's election to terminate this Agreement pursuant to the immediately preceding sentence, then this Agreement shall automatically terminate and the Option Fee shall immediately be returned to Lessee together with all interest, if any, accrued thereon, and neither party shall have any further claim against the other by reason of this Agreement, except with respect to any obligations which expressly survive the termination of this Agreement. The Option Conditions shall be for the sole benefit of Lessee, and Lessee shall have the right, in the exercise of its sole and absolute discretion, to waive one or more Option Conditions by written notice to Lessor.

4. Exercise of Option. The Option shall be exercisable by Lessee only by Lessee's strict satisfaction on or before the Option Expiration Date of the following terms and conditions (the "Exercise Requirements"): (i) Lessee shall notify Lessor in writing of its exercise of the Option ("Option Exercise Notice"); (ii) Lessee shall accompany the Option Exercise Notice described in the preceding clause with Lessee's execution and delivery to Lessor of the Lease with any additional terms provided in this Agreement (provided that, to the extent that any provisions of the Lease need to be updated completed or filled in (e.g., dates, references to the scope or description of the Development Work etc.), Lessor and Lessee shall cooperate in good faith and with diligence to complete such provisions, and the fact that the same have not been completed by the date on which Lessee exercises the Option shall in no way invalidate or otherwise prevent Lessee's exercise of the Option); and (iii) unless Lessee has previously provided the same to Lessor, Lessee shall accompany the Option Exercise Notice with evidence reasonably satisfactory to Lessor of Lessee having sufficient financial resources to complete the Development Work ("Evidence of Lessee Financial Capability"). Lessee shall have the right, but not the obligation, to provide the Evidence of Lessee Financial Capability to Lessor up to ninety (90) days prior to Lessee's delivering the Option Exercise Notice. Regardless of whether Lessee provides the Evidence of Lessee Financial Capability concurrently with or prior to Lessee's delivery of the Option Exercise Notice, Lessor shall notify Lessee of its approval of or objection of the Evidence of Lessee Financial Capability in writing within ten (10) business days of receipt thereof from Lessee; failure of Lessor to timely object in writing (which objection, to be valid, must set forth specific, reasonable grounds for its objection and specific proposed solutions or remedies which, if effectuated or provided by Lessee, would negate Lessor's objections), shall be deemed Lessor's approval of the Evidence of Lessee Financial Capability. Without limiting the foregoing, Lessor agrees that if Lessee's financial condition at the time of its exercise of the Option is reasonably sufficient to meet the "Annual Minimum Rent" requirements under the Ground Lease and construct the proposed Development Work, as evidenced by documentation demonstrating Lessee's financial viability, such as, by way of example but not limitation, letters of commitment from financial institutions or reasonable likelihood of Lessee's ability to obtain such financing,

financial commitments pursuant to the terms of any joint venture agreements with financially capable third parties (e.g., joint venture agreement or other agreements providing capital for the development of the Premises with entities such as pension funds, life insurance companies, or any affiliate or subsidiary of Brookfield Asset Management, and/or a corporate guaranty for the completion of the Development Work by Fairfield Residential Company LLC, a Delaware limited liability company (“FRC”), Fairfield Investment Company LLC, a Delaware limited liability company (“FIC”), or any other financially capable parent or affiliate of Lessee), which demonstrate reasonable likelihood of the availability of sufficient funds for the performance of the Development Work, Lessee shall be deemed to have met the Evidence Exercise Requirement set forth in clause (iii) of the immediately preceding sentence. Notwithstanding the foregoing, in the event of any adverse material change in Lessee’s financial condition subsequent to Lessee’s providing Evidence of Financial Capability, Lessee shall promptly provide written notification to Lessor detailing such change and Lessor shall have ten (10) business days of receipt thereof to notify Lessee of Lessor’s approval of or objection of the Evidence of Financial Capability as a result of said material adverse change in Lessee’s financial condition. For purposes hereof, “material adverse change” shall be defined as a 20% or greater decrease in the net worth or liquidity of Lessee from the financial statements submitted in connection with exercise of the Option. As soon as reasonably possible following Lessee’s proper and timely exercise of the Option, Lessor shall execute and deliver the Lease as soon as reasonably possible thereafter, but, in any event not later than twenty (20) days following the date of Lessee’s exercise of the Option.

5. Option Fee. Subject to the remaining provisions of this Section 5, Lessee shall pay to Lessor the following “Year One Option Payment” and “Year Two Option Payment” (collectively, the “Option Fee”). Except as otherwise expressly set forth in this Agreement, the Option Fee shall be nonrefundable upon the expiration of the Due Diligence Period.

5.1 Year One Option Payment. The total “Year One Option Payment” amount shall be Seventy-Five Thousand Dollars (\$75,000). Lessee shall deposit Fifty Thousand Dollars (\$50,000) of the Year One Option Payment into Escrow within three (3) business days of the Option Effective Date (“Deposit”). Unless Lessee elects to terminate this Agreement by written notice delivered to Lessor no later than 4:00 p.m. Pacific time October 15, 2013, (i) Twenty-Five Thousand Dollars (\$25,000) of the “Bid Security” previously paid by Lessee to Lessor under the terms of the Exclusive Negotiating Agreement dated November 15, 2012 shall be applied to the Year One Option Payment, and (ii) the Year One Option Payment shall be non-refundable to Lessee (except as otherwise set forth in this Agreement), and the Deposit shall be released to Lessor by Escrow Holder without further instruction to Escrow Holder. If Lessee terminates the Option prior to the expiration of the Due Diligence Period, then the Deposit shall be immediately returned to Lessee by Escrow without further instruction to Escrow. If the Option is exercised on or prior to the one (1) year anniversary of the Option Effective Date, the Year One Option Payment shall be credited to the monthly base rent due after the Lease becomes effective.

5.2 Year Two Option Payment. Unless this Agreement has been earlier terminated, no later than 5:00 p.m. Pacific time on August 1, 2014, a “Year Two Option Payment” in the amount of One Hundred Thousand Dollars (\$100,000) shall be deposited by Lessee into Escrow, and the Year Two Option Payment shall be non-refundable to Lessee (except as otherwise set forth in this Agreement). If the Option is exercised prior to the expiration of the Option Term, the Year Two



Option Payment shall be credited to the monthly base rent due after the Lease becomes effective pursuant to Section 4.2.1.1 of the Lease.

5.3 Return of Option Fee to Lessee. Notwithstanding any provision of this Agreement that calls for the Option Fee, or any portion thereof to be returned to Lessee, in all events a portion of the Option Fee equal to One Hundred Dollars (\$100) shall be paid to or, if applicable, retained by Lessor as non-refundable consideration for Lessor's entering into this Agreement.

6. Entitlements and Plan Preparation During Option Term.

6.1 Obtaining Entitlements. Subject to Lessee's rights to terminate this Agreement during the Option Term as otherwise set forth in this Agreement, during the Option Term, Lessee shall use its commercially reasonable and diligent efforts to obtain the Entitlements prior to the Outside Option Expiration Date. Such efforts shall include Lessee's expenditure of such funds, including, without limitation, application fees, travel costs, and design and architectural fees as Lessee reasonably deems necessary to procure the Entitlements. Additionally, Lessee's efforts to obtain the Entitlements shall include, without limitation, taking such steps as are reasonably necessary to comply with the requirements of the California Environmental Quality Act ("CEQA").

6.2 Lessor Cooperation. Lessor shall cooperate with and assist Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the Entitlements. Such cooperative efforts may include Lessor's joinder in any application for the Entitlements, where joinder therein by Lessor is required or helpful; provided, however, that Lessee shall reimburse Lessor for Lessor's actual, reasonable, out-of-pocket costs incurred in connection with such joinder or cooperative efforts.

6.3 Plans and Specifications for Development Work. Lessor acknowledges that the City and its applicable subdivisions, in its review and approval of the Entitlements, shall ultimately dictate the scope, design, and appearance of the Development Work. Nevertheless, Lessee agrees, during its conceptual design phase and prior to submitting its initial application for approval of the Development Work to the City, to provide Lessor with copies of its proposed conceptual design drawings showing the size, scope, layout, and appearance of the Development Work. Within ten (10) days of receipt of Lessee's conceptual plans described in the immediately preceding sentence, Lessor shall have the right to provide its comments to such conceptual plans to Lessee in writing. Lessor shall take Lessor's comments under consideration, provided in no event shall Lessee be obligated to modify its conceptual plans or any subsequent evolution of such conceptual plans (including, without limitation, final plans and/or working drawings), it being acknowledged and agreed by the parties hereto that Lessor's comments, if any, shall be for informational purposes. Lessee shall rely on its own review, consultants and experts on all matters.

7. Right of Entry.

7.1 Lessee is aware and understands that the Premises is currently occupied pursuant to that certain ground lease ("Current Lease") dated September 14, 1994 between Lessor and Peralta Golf Partnership ("Current Tenant"). Accordingly, Lessor agrees that, Lessor shall

cooperate with Lessee in obtaining the right, on behalf of Lessee and its consultants, contractors, agents, employees, partners and lenders (actual or prospective), and other designees (collectively, with Lessee, "Lessee Parties"), to enter upon the Premises to conduct Lessee's due diligence investigations of the Premises. Lessor agrees to use commercially reasonable efforts to assist Lessee in gaining access to the Premises during the Due Diligence Period, including asserting Lessor's rights of entry, if any, in the Current Lease. Prior to access by Lessee onto the Premises, Lessee shall: (a) deliver to Lessor written evidence that Lessee has procured the insurance required under Section 7.2 below; and (b) to the extent practicable, provide Lessor with prior written or telephonic notice of any intended entry and in any event, give Lessor seventy-two (72) hours prior telephonic or written notice of any intended access which involves invasive testing or boring on the Premises or which may result in any impairment of the use of any portion of the Premises. In connection with Lessee Parties' entry upon the Premises pursuant to this Agreement, Lessee Parties shall: (i) access the Premises in a safe manner; (ii) conduct no invasive testing or boring without the written consent of Lessor, not to be unreasonably withheld, conditioned, or delayed (and which approval shall be deemed given if not objected to by Lessor within ten (10) business days of Lessee's written request), which objection, to be valid, shall set forth the specific reasonable grounds for such objection and modifications to the proposed plans for testing that would render them acceptable to Lessor; (iii) allow no dangerous or hazardous condition created by Lessee or Lessee's agents to remain following such access; (iv) comply with all laws and obtain all permits required in connection with such access; (v) conduct inspections and testing, in such a manner as to minimize interference with the Current Tenant's use and enjoyment of the Premises pursuant to the Current Lease, to the extent reasonably practical; and (vi) restore the Premises to its condition prior to any entry by Lessee, to the extent that the need for such restoration is caused by the acts of any Lessee Parties.

## 7.2 Insurance.

7.2.1 Prior to entering the Premises, and without limiting Lessee's indemnification of Lessor during the term of this Agreement, Lessee shall provide and maintain insurance in accordance with Section 9.1.1 of the Lease (provided that, for purposes of this Agreement, the minimum insurance thresholds for general liability insurance under said Section 9.1.1 shall each be \$2,000,000),

7.2.2 Prior to conducting any tests, examinations, inspections, studies or the like on the Premises which will be of an invasive nature, Lessee shall first obtain the prior written consent of Lessor, not to be unreasonably withheld, conditioned, or delayed, and shall deliver to Lessor: (i) a proposal from the engineer who will perform the invasive testing (the "Engineer"), outlining the scope of such tests and studies; and (ii) a certificate of insurance evidencing a policy of pollution liability coverage on an occurrence basis naming the Engineer as insured, together with a copy of the endorsement to the corresponding policy naming Lessor as an additional insured, issued by an insurance company licensed to do business in California and having a rating of at least "A: VII" by A.M. Best Company, with a limit of at least \$1,000,000 per occurrence, a deductible of not more than \$5,000 and a copy of an endorsement to such policy providing that such insurance coverage is primary and that any insurance maintained by Lessor shall be excess and noncontributory.

7.3 Indemnification of Lessor. Lessee hereby agrees to protect, indemnify, defend and hold Lessor and its officials, trustees, employees, agents, representatives, consultants and contractors free and harmless from and against any and all claims, costs, expenses, losses, damages, liabilities, fees, fines and penalties (collectively, "Claims") resulting from Lessee's access of the Premises or its exercise of its right of entry onto the Premises pursuant to this Section 7, including any inspections, surveys, tests or studies performed by Lessee or its employees, consultants or contractors, except to the extent such claims result from the negligence or willful misconduct of Lessor or its agents, employees or representatives. Lessee shall keep the Premises free and clear of mechanics' liens and materialmen's liens arising from Lessee's inspection of the Premises. Notwithstanding the foregoing, Lessee's indemnification with respect to the discharge of Hazardous Materials below, onto, or in the Premises shall be governed by Section 7.4.2 below rather than this Section 7.3.

7.4 Environmental Matters.

7.4.1 As of the Option Effective Date: (1) Lessee hereby covenants that it shall not permit itself or any of its third party contractors or consultants to use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon or affecting the Premises in violation of any Environmental Law (as defined below); and (2) Lessor hereby represents and warrants that: (i) it has no knowledge of the presence of any Hazardous Material located in, on, under, upon or affecting the Premises in violation of any Environmental Law; (ii) no notice has been received by or on behalf of Lessor from, and Lessor has no knowledge that notice has been given to any predecessor, owner or operator of the Premises by, any governmental entity or any person or entity claiming any violation of, or requiring compliance with any Environmental Law for any environmental damage in, on, under, upon or affecting the Premises; and (iii) it will not permit itself or any third party to use, generate, handle, store or dispose of any Hazardous Material in, on under, upon, or affecting the Premises in violation of any Environmental Law.

7.4.2 Indemnification of Lessor. Lessee hereby agrees to indemnify, defend and hold harmless Lessor and its officials, trustees, employees, agents, representatives, consultants and contractors from and against all judgments, suits, proceedings, liabilities, losses, costs, judgments, orders, obligations, damages, expenses or claims (whether by third parties or governmental authorities) arising out of or in any way relating to the release or discharge of Hazardous Materials, as defined below, onto or in the Premises caused by the acts or omissions of Lessee, its agents, representatives or employees during its possession of the Premises; provided, however, that in no event shall Lessee be liable under this Section 7.4.2 or any other provision of this Agreement for the discovery of any Hazardous Materials or the dispersion of any Hazardous Materials located upon, about, or beneath the Premises that were not introduced onto or placed upon the Premises by Lessee unless such dispersion is caused by negligence or willful misconduct of Lessee, its agents, representatives or employees.

7.4.3 Scope of Indemnification. The indemnity obligation includes, but is not limited to, remedial, removal, response, abatement, cleanup, legal, investigative, and monitoring costs, penalties, fines and disbursements, (including, without limitations, reasonable attorneys', consultants', and experts' fees) of any kind whatsoever, which may

at any time be imposed upon or incurred by any indemnitee under this Section 7.4 arising, directly or indirectly: (i) from requirements of any federal, state or local environmental law; (ii) in connection with claims by governmental authorities or third parties related to the condition of the demised premises; and/or (iii) from the failure of any indemnitor under this Section 7.4, or any other party connected with such indemnitor, to obtain, maintain, or comply with any environmental permit.

7.4.4 Hazardous Materials. The term “Hazardous Materials” means any hazardous, toxic or dangerous substance, waste, containment, pollutant, gas or material, including, without limitation, gasoline, waste oil and other petroleum products and constituents thereof, which are now or may become regulated under any federal, state or local statute, regulation, ordinance or other law now or hereafter in effect, including, without limitation, any substance, waste or material which is now or hereafter: (i) designated as a “hazardous substance” under the Federal Water Pollution Control Act and/or the Comprehensive Environmental Response, Compensation and Liability Act; (ii) designated as a hazardous waste or regulated substance pursuant to the Resource Conservation and Recovery Act; (iii) designated or listed as a hazardous material under the Hazardous Material Transportation Act; or (iv) is in any way regulated under the laws of the State of California.

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

8. Compliance with Laws. In connection with its due diligence investigations of the Premises, and in connection with its efforts to obtain the Entitlements, Lessee shall comply with all applicable laws, ordinances, and codes, including, without limitation, all applicable ordinances of the City.

9. Default.

9.1 Lessor Default. Lessor shall be in default in the performance of any obligation required to be performed by Lessor under this Agreement if Lessor has failed to perform such obligation within thirty (30) days after receipt of Notice from Lessee specifying in detail Lessor’s failure to perform; provided, however, that (a) if the nature of Lessor’s obligation is such that more than thirty (30) days are required for its performance, Lessor shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursue the same to completion, and (b) if Lessor’s default is the failure to duly execute and deliver to Lessee the Lease as required under Section 4 above, then the period for Lessor’s cure shall be ten (10) business days. If Lessor defaults under this Agreement, as defined above, then Lessee may, at Lessee’s option, pursue any and all remedies available to Lessee under this Agreement, at law, or in equity including, without limitation, the following: (i) waive such default and proceed with the exercise of the Option and the mutual execution and delivery of the Lease; or (ii) terminate this Agreement, in which event Lessor shall immediately refund to Lessee the entire Option Fee previously paid by Lessee and thereafter neither party shall have any further liability or obligation to the other hereunder, except for provisions of this Agreement

which expressly states that they shall survive the termination of this Agreement; or (iii) file in any court of competent jurisdiction an action for specific performance or other form or equitable relief to cause Lessor to enter into the Lease with Lessee and to perform Lessor's obligations pursuant to the terms and conditions of the Lease.

9.2 Lessee Default. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, (1) IF LESSEE HAS NOT TERMINATED (OR IS NOT DEEMED TO HAVE TERMINATED) THIS AGREEMENT PRIOR TO THE OPTION EXPIRATION DATE, (2) IF LESSEE DEFAULTS UNDER THIS AGREEMENT, AND (3) SUCH DEFAULT IS NOT CURED WITHIN THIRTY (30) DAYS OF LESSEE'S RECEIPT OF WRITTEN NOTICE FROM LESSOR OF SUCH DEFAULT (OR, IF SUCH CURE WILL REASONABLY TAKE MORE THAN THIRTY (30) DAYS, SUCH LONGER PERIOD AS IS REASONABLY NECESSARY IN ORDER FOR LESSEE TO CURE SUCH DEFAULT), THEN LESSOR, AS ITS SOLE AND EXCLUSIVE REMEDY, SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT BY WRITTEN NOTICE TO LESSEE AND TO RETAIN, AS LIQUIDATED DAMAGES, ANY OPTION FEE WHICH, AS OF THE DATE OF SUCH TERMINATION, HAS BEEN PAID BY LESSEE TO LESSOR UNDER THIS AGREEMENT. THE PARTIES AGREE THAT IT WOULD BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO ASCERTAIN THE ACTUAL DAMAGES SUFFERED BY LESSOR AS A RESULT OF A TERMINATION OF THIS AGREEMENT DUE TO LESSEE'S DEFAULT, AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THIS AGREEMENT, THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION 9.2 REPRESENT A REASONABLE ESTIMATE OF THE DAMAGES WHICH LESSOR WILL INCUR AS A RESULT OF SUCH FAILURE. THIS PROVISION IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO LESSOR PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676, AND 1677. THE PARTIES HAVE SET FORTH THEIR INITIALS BELOW TO INDICATE THEIR AGREEMENT WITH THE LIQUIDATED DAMAGES PROVISION CONTAINED IN THIS SECTION 9.2. LESSOR AGREES ITS RIGHT TO PAYMENT OF THE OPTION FEE AS PROVIDED IN THIS SECTION 9.2 ABOVE HEREUNDER IN LIEU OF ANY AND ALL OTHER REMEDIES WHICH MAY OTHERWISE BE AVAILABLE AT LAW OR EQUITY ON ACCOUNT OF LESSEE'S DEFAULT HEREUNDER.

\_\_\_\_\_  
LESSOR'S INITIALS

\_\_\_\_\_  
LESSEE'S INITIALS

10. Recordation of Memorandum of Option. Concurrently with the mutual execution and delivery of this Agreement, Lessor and Lessee shall each execute (and have acknowledged) and deliver to Escrow Holder a memorandum of this Agreement in the form attached hereto as Exhibit C (“Memorandum of Option”). Upon written request of Lessee, Escrow Holder shall record the Memorandum of Option against the Premises in the Official Records of Orange County, California. In the event that this Agreement terminates for any reason (other than Lessor’s default) prior to the parties’ entering into the Lease, Lessee shall, upon written request from Lessor, execute a commercially reasonable quitclaim deed or similar instrument requested by Lessor as is necessary to cause the Memorandum of Option to be removed from title to the Premises.

11. Representations and Warranties.

11.1 Lessor’s Representations, Warranties, and Covenants. Lessor warrants and represents to Lessee as follows as of the date of this Agreement, the Conditions Satisfaction Date (or, if applicable, the Outside Option Exercise Date), and the Lease Effective Date, and where indicated covenants and agrees as follows:

11.1.1 Due Authorization; Valid Formation. Lessor is the fee owner of all of the Premises. Lessor is duly organized, validly existing, and in good standing under the laws of the state of its formation. This Agreement has been duly and validly executed and delivered by Lessor and is enforceable against Lessor in accordance with its terms and all agreements, instruments and documents contemplated hereby to be executed by Lessor will be as of the Closing duly authorized, executed and delivered and enforceable against Lessor in accordance with their terms. Neither the execution and delivery of this Agreement by Lessor nor the consummation by Lessor of the transaction contemplated hereby (a) requires any further consent or approval, (b) conflicts with or constitutes a default under any of Lessor’s organizational documents or any other agreement, contract, instrument or document to which Lessor is a party or which binds Lessor, the Premises or any of Lessor’s assets, or (c) violates any governmental requirement.

11.1.2 Sale Agreements; Leases; Service Contracts; Lessor Documents. The Premises is not subject to any outstanding agreement(s) of sale, option(s), or other right(s) of third parties to acquire any interest therein entered into by Lessor, except for this Agreement. Except as may be permitted under or through the Current Lease, there are no leases or other agreements permitting persons to occupy or use any portion of the Premises, either oral or written. True, correct and complete copies of the Current Lease, each Lessor Document have been delivered to Lessee, including, but not limited to, all amendments and modifications thereto. Lessor has no actual knowledge of any default under the Current Lease on the part the Current Tenant, and Lessor has received no notice from the Current Tenant that Lessor is in default under the Current Lease, nor does Lessor have any knowledge of the existence of any facts or circumstances which, with the giving of notice and the passage of time, will constitute in default by either the Current Lessee or Lessor under the Current Lease. Except to the extent that the Current Lease is still in effect as of the Lease Effective Date, Lessor is not a party to any service contracts or other contracts or agreements affecting the Premises, oral or written, which

will extend beyond the Lease Effective Date, and which would bind Lessee or encumber all or part of the Premises after the Lease Effective Date.

11.1.3 Litigation; Condemnation. Lessor has no actual knowledge of, and Lessor has received no written notice of the pendency of, any litigation or proceeding pending, or to the best of Lessor's knowledge, threatened against Lessor relating to the Premises. Lessor has received no written notice that either the whole or any part of the Premises, including any access thereto or any easement benefiting the Premises, is subject to temporary requisition of use by any governmental authority or has been condemned, nor that there is now any pending or planned condemnation, requisition or similar proceeding against the whole or any part of the Premises, including any access thereto or any easement benefiting the Premises.

11.1.4 Assessments; Zoning; Governmental Notices. To the best of Lessor's knowledge without any duty to investigate, all impact fees, taxes, assessments, and other charges affecting or relating to the Premises have been paid, and Lessor has received no written notice of any new assessments which affect the Premises. To the best of Lessor's knowledge without any duty to investigate, all taxes and assessments that are liens against the Premises are shown in the Official Records of the County; no improvements (site or area) have been constructed or installed by any public authority, the cost of which may be assessed in whole or in part against any part of the Premises in the future; and Lessor has not been notified of any possible future improvements that might create an assessment against any part of the Premises. Lessor has not entered into any commitments or agreements with any governmental authorities or agencies affecting the Premises that have not been disclosed in writing to Lessee nor received any notice from any governmental authorities or agencies of uncured violations at the Premises of building, fire, air pollution or zoning codes, rules, ordinances or regulations, environmental and hazardous substances laws, or other rules, ordinances or regulations relating to the Premises.

11.1.5 Environmental Matters. To the best of Lessor's knowledge without any duty to investigate, there has been no release or disposal of any Hazardous Material at the Premises and Lessor has not used any Hazardous Material at the Premises and has no knowledge of any other person doing so. To the best of Lessor's knowledge without any duty to investigate, the Premises does not contain any: (a) underground storage tank; (b) material amounts of asbestos-containing material; (c) landfills or dumps; (d) hazardous waste management facility as defined under RCRA or any comparable state law; or (e) site on or nominated for the National Priority List promulgated pursuant to CERCLA or any state remedial priority list relating to any comparable state law; and to the best of Lessor's knowledge the Premises has not at any time contained any of the items referenced in clauses (b), (c), (d), or (e) of this Section 11.1.5.

11.1.6 Full Disclosure. No Untrue Statement; Certification. Without creating any independent duty or obligation on the part of Lessor to investigate, all matters materially and adversely impacting all or any part of the Premises, the ownership, operation, use or development of all or any part of the Premises, or with the potential of having such impact, which are known to Lessor have been disclosed to Lessee in writing. To the best

of Lessor's knowledge without any duty to investigate, neither this Agreement, any Exhibit, any written statement nor any documents or instruments furnished or to be furnished by Lessor to Lessee in connection with this transaction contain any untrue statement of material fact or omit any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading. Lessor is not a "foreign person" within the meaning of Sections 1445 or 897 of the Internal Revenue Code or a "non-resident Lessor" under Sections 18805 and 26131 of the California Revenue and Taxation Code, and upon written request of Lessee or Escrow Holder, will execute and deliver to Lessee such certificates as are customary to evidence the foregoing.

11.1.7 Commissions. Lessor has neither dealt with nor has any knowledge of any broker or other party who has or may have any claim against Lessor for a brokerage commission or finder's fee or like payment arising out of or in connection with the transaction contemplated hereby.

11.1.8 Indemnity. Lessor shall indemnify, defend, protect and hold Lessee harmless from and against all claims, losses, liabilities, damages, costs and expenses (including, but not limited to, attorneys' fees and court costs) to the extent arising from the inaccuracy or breach of any representation or warranty by Lessor in this Agreement. This indemnification shall be binding upon the successors and assigns of Lessor and inure to the benefit of Lessee, its members, and each of their successors and assigns.

11.2 Lessee's Representations, Warranties, and Covenants. Lessee warrants and represents to Lessor as follows as of the date of this Agreement, the Conditions Satisfaction Date (or, if applicable, the Outside Option Exercise Date), and the Lease Effective Date, and where indicated covenants and agrees as follows:

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

11.2.2 Authorization; Validity. This Agreement and all agreements, instruments and documents herein provided to be executed by Lessee are and as of the Closing will be duly authorized, executed and delivered by and are and will be binding upon Lessee.

11.2.3 Commissions. Except for Jones Lang LaSalle, to which Lessee shall pay a brokerage commission pursuant to separate agreement between such entity and Lessee, if and when due, Lessee has neither dealt with nor does it have any knowledge of any broker or other party who has or may have any claim against Lessee for a brokerage commission or finder's fee or like payment arising out of or in connection with the transaction contemplated hereby.

11.2.4 Indemnity. Lessee shall indemnify, defend, protect and hold Lessor harmless from and against all claims, losses, liabilities, damages, costs and expenses (including, but not limited to, attorneys' fees and court costs) to the extent arising from the inaccuracy or breach of any representation or warranty by Lessee in this Agreement.



Such indemnification shall be binding upon the successors and assigns of Lessee and inure to the benefit of Lessor, its members, and each of their successors and assigns.

11.3 Survival. The representations, warranties, and covenants of Lessor and Lessee under this Section 11 shall survive the expiration of this Agreement and, if Lessee exercises the Option, shall continue following the Lease Effective Date.

12. Risk of Loss. All risk of loss relating to the Premises shall remain upon Lessor until the Lease Effective Date. If, before the Lease Effective Date, any material portion of the Premises is taken by eminent domain (or under threat or pendency of eminent domain), or any material damage to the Premises occurs as a result of any release of Hazardous Materials or any other cause, Lessor shall, within ten (10) business days of receipt of notice sufficient in detail to evaluate the scope and extent of such damage, taking or Hazardous Materials release, as applicable, notify Lessee thereof and Lessee shall have the option to:

(a) terminate this Agreement upon notice to Lessor given within ten (10) business days after receipt of such notice from Lessor, in which event Lessee shall receive a return of the Option Fee, together with all interest accrued thereon; or

(b) proceed with the exercise of the Option and the mutual execution and delivery of the Lease, in which event Lessor shall assign to Lessee all of Lessor's right, title and interest in and to all amounts due or collected by Lessor under the insurance policies or condemnation awards.

As used in this Section 12, the term "material portion" shall be deemed to be (i) more than two percent (2%) of the number of gross useable square feet of land area contained within the Premises, (ii) any portion of the Premises which, following such taking by eminent domain, results in an obstruction of or any adverse effect upon access to the Premises, or (iii) such portion of the Premises that, in Lessee's sole judgment, is likely to cause a material impairment of Lessee's ability to develop and use the Premises for its desired purpose. As used in this Section 12, the term "material damage" or "material impairment" shall be deemed to be (1) any Hazardous Material contamination where the cost of clean-up and/or restoration is estimated to be more than One Hundred Fifty Thousand Dollars (\$150,000) and/or will take more than sixty (60) days to complete, or will adversely impact upon the design and/or construction of the Development Work and/or the marketability of the project to be constructed upon the Premises, or (2) any damage to the land within the Premises (but not the improvements located thereon) which adversely impairs upon Lessee's ability to construct the Development Work upon the Premises, will delay Lessee's construction of the Development Work by more than sixty (60) days, or is estimated to cost more than One Hundred Fifty Thousand Dollars (\$150,000) to repair, remedy, or rectify before or during the construction of the Development Work.

13. Miscellaneous.

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

13.2 Waivers. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms or provisions of this

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

13.3 Notices. All notices required or permitted to be given under this Agreement shall be given in accordance with the terms and provisions of Section 15.10 of the Lease.

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

13.5 Attorneys' Fees. If either party hereto brings an action against the other by reason of the breach of any covenant, provision or condition hereof, or otherwise arising out of or in connection with this Agreement, the parties shall each be responsible for its own attorney's fees and costs.

13.6 No Assignment. Lessee shall have no right to assign or transfer its rights or obligations under this Agreement to any other person or entity, without the express written consent of Lessor, which consent may be withheld by Lessor in its sole and absolute discretion. Notwithstanding the foregoing, Lessee shall have the right, upon written notice to Lessor, but without Lessor's consent, to assign Lessee's rights and obligations under this Agreement to, or designate to take title to the Lessee's interest under the Lease upon the Lease Effective Date, a parent, subsidiary or affiliate of Lessee (including, without limitation, an entity controlled by or under common control with Lessee or Brookfield Asset Management), or an entity in which Lessee or a parent entity of Lessee (including, without limitation, Brookfield Asset Management, FIC, or FRC) owns at least a ten percent (10%) beneficial economic interest with respect to the Project, provided that such assignee or designee assumes all obligations of Lessee under this Agreement, and FF REALTY LLC retains control of the day-to-day efforts under this Agreement to procure the Entitlements and satisfy the Option Conditions. Additionally, any assignment or transfer of Lessee's rights or obligations under this Agreement which constitutes (a) a transfer of a beneficial interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation or other entity whose stock or securities is/are traded publicly on a national stock exchange or is traded in the over-the-counter market and whose price is regularly quoted in recognized national quotation services, or (b) a mere change in the form, method or status of ownership (including, without limitation, the creation of single purpose entities) so long as the ultimate beneficial ownership remains the same as immediately prior to the subject transfer, shall not require Lessor's consent hereunder, provided that Lessee shall provide Lessor with written notice of any such transfer. Notwithstanding the foregoing, in the event of a securities or corporate transaction conducted by the parent entity of Lessee that includes the Project as an asset, such transaction shall not require Lessor's consent provided that the value of the Project does not constitute more than fifteen percent (15%) of the aggregate value of all of the projects or properties transferred pursuant to such transaction (with such values being determined on a "completed" basis) and Lessee has provided Lessor with the following: (1) a detailed written derivation of all of the aforementioned values; (2) adequate time for review which shall be no less than ten (10) business days after Lessor's receipt of the data; and (3) Lessee shall reimburse

Lessor in full, within thirty (30) days of receipt of invoice, for all third party costs reasonably incurred for such review so that the Lessor may confirm the Lessee's representation.

13.7 Construction; Severability. In the case of any uncertainty or ambiguity regarding any part of this Agreement, the language shall be construed in accordance with its fair meaning rather than being interpreted against the party who caused the uncertainty to exist. No third parties, including any brokers or creditors, shall be beneficiaries hereof. Wherever the terms "herein," "hereof," "hereunder," and other like words are used, the same shall be deemed to mean this Agreement as a whole, and not merely the particular section or provision in which the respective word appears, unless stated otherwise. The unenforceability, invalidity or illegality of any provision hereof shall not render any of the other provisions herein unenforceable, invalid or illegal.

13.8 Entire Agreement; Amendment. This Agreement and the Lease set forth the full and complete understanding of the parties relating to the subject matter hereof, and supersede any and all agreements, understandings and representations made prior hereto with respect to such matters. This Agreement may be amended only by written agreement signed by both of the parties hereto.

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

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

13.11 Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Any lawsuit or other legal action or proceeding arising under this Agreement shall be filed and prosecuted only in the appropriate court in Orange County, California.

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

13.13 Successors and Assigns. Subject to Section 13.6 above, the rights and obligations of the parties under this Agreement shall be binding upon the parties' respective successors and assigns.

13.14 Exhibits. Exhibits A and B attached to this Agreement are hereby expressly incorporated herein by reference.

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

ORANGE UNIFIED SCHOOL DISTRICT,  
a public body, corporate and politic

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

FF REALTY LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED ON \_\_\_\_\_, 2013 (Board Minutes dated \_\_\_\_\_ 2013)

DRAFT

**EXHIBIT A**

**PREMISES**

DRAFT

**All that certain real property situated in the County of Orange, State of California, described as follows:**

**That portion of Lots 20 and 21 of the Fletcher Tract, in the City of Orange, County of Orange, State of California, as per Map recorded in Book 3, Page(s) 320 of Miscellaneous Records of Los Angeles County, California, described as follows:**

**Parcel 1:**

**Beginning at a point on the South line of said Lot distant East 7.52 chains from the Southwest corner of said Lot, said point being the Southeast corner of land described in the Deed to Lloyd L. Smith, recorded in Book 441, Page(s) 370, Official Records;  
Thence Northerly at the Easterly line of said Lloyd L. Smith's Land, 10 chains to the Northeast corner thereof;  
Thence Easterly along a line parallel to the South line of said Lot 21 to the Northwest corner of land described in the Deed to W. H. Smith recorded in Book 168, Page(s) 298 of Deeds, said Northwest corner being 10 chains North of the South line of said Lot 21;  
Thence South along the West line of said W. H. Smith's Land to the Southwest corner thereof, said Southwest corner being East 15.04 chains from the Southwest corner of said Lot 21;  
Thence West along the South line of said Lot 21 to the point of beginning.**

**Parcel 2:**

**Beginning at a point on the South line of Lot 21 of the Fletcher Tract, as per Map recorded in Book 3, Page(s) 320 of Miscellaneous Records of Los Angeles County, California, 15.04 chains East from the Southwest corner of said Lot; running thence North parallel to the West line of said Lot, 10 chains;  
Thence East parallel to the South line of Lot 21 and of Lot 20 of the said Fletcher Tract to the centerline of the Santa Ana Valley Irrigation Company's pipe line, as described in a certain deed dated May 22, 1941 and shown on a map attached thereto, executed by Thomas J. Hight and others in favor of the County of Orange;  
Thence Southerly along the centerline of said Santa Ana Valley Irrigation Company's pipe line to an intersection with the South line of Lot 20 of the said Fletcher Tract; and  
Thence West along the South line of Lots 20 and 21 of the said Fletcher Tract to the point of beginning.**

**Parcel 3:**

**That portion of Lot 21 of the Fletcher Tract, in the City of Orange, County of Orange, State of California, as per Map recorded in Book 3, Page(s) 320 of Miscellaneous Records of Los Angeles County, California, described as follows:**

**Beginning at the Southwest corner of said Lot 21;  
Thence North 660.00 feet along the West line of said Lot;  
Thence East 496.32 feet parallel with the South line of said Lot;  
Thence South 515.00 feet parallel with said West line;  
Thence West 256.32 feet parallel with said South line;  
Thence South 145.00 feet parallel with said West line;  
Thence West 240.00 feet to the point of beginning.**

Assessor's Parcel Number: **374-161-01**

**EXHIBIT B**

**LEASE**

DRAFT