

NO FEE DOCUMENT

**Recording requested by and
When recorded, mail to:**

County of Santa Barbara
Housing and Community Development
123 East Anapamu Street, 2nd Floor
Santa Barbara, CA 93101
Attn: Deputy Director

NO FEE DOCUMENT PURSUANT TO
CALIFORNIA GOVERNMENT CODE SECTION 27383

**COUNTY PERMANENT LOCAL HOUSING ALLOCATION (PLHA) LOAN
REGULATORY AGREEMENT AND DECLARATION
OF RESTRICTIVE COVENANTS**

This County PLHA Loan Regulatory Agreement and Declaration of Restrictive Covenants (this "Agreement") is made as of this 22nd day of July 2023 by and between the County of Santa Barbara, a political subdivision of the State of California (the "Lender" or "County"), and Sanctuary Centers of Santa Barbara, Inc., a California non-profit public benefit corporation (the "Owner" and, together with Lender, collectively, the "Parties" and each individually a "Party"), whose address is P.O. Box 551, Santa Barbara, California 93102.

RECITALS

A. The Owner owns a parcel of real property located at 115 West Anapamu Street, Santa Barbara, California, as more particularly described in Exhibit A, attached hereto and incorporated herein by reference (the "Property"), upon which the Owner intends to construct thirty-four (34) studio apartment rental units, including 19 units restricted to providing permanent supportive housing for individuals and households experiencing or at risk of homelessness (the "Project").

B. Owner has received a loan from Lender of PLHA Funds in the amount of One Million Four Hundred Thousand Dollars (\$1,400,000) to provide financing for the Project (the "County PLHA Loan").

C. As further consideration for such funding, and to further the interests of the Lender, the Owner has agreed to enter into and record this Agreement. The purpose of this Agreement is to regulate and restrict the occupancy, rents, operation, the ownership, and management of the Project. The covenants in this Agreement are intended to run with the land and be binding on the Owner and its successors and assigns with respect to the Property.

NOW THEREFORE, IN CONSIDERATION of the foregoing Recitals (which are incorporated herein by this reference), and the agreements, obligations, and representations set forth herein, and in further consideration for the aforementioned funding, the Owner and the Lender hereby agree as follows:

1. DEFINITIONS

All initially capitalized terms in this Agreement shall have the definitions ascribed to such terms in the County PLHA Loan Agreement. Some of the following terms are defined in the County PLHA Loan Agreement and repeated here for convenience of reference. Where such terms are not defined in the County PLHA Loan Agreement, the following terms have the meanings and set forth in this section wherever used in this Agreement and the attached exhibits.

1.0 **“COUNTY PLHA LOAN”** means the loan of PLHA Funds in the amount of One Million, Four Hundred Thousand Dollars (\$1,400,000) made by the Lender to the Owner to finance certain development costs of the Project pursuant to the County PLHA Loan Agreement and the County PLHA Loan Note.

1.1 **“COUNTY PLHA LOAN AGREEMENT”** is that certain Permanent Local Housing Allocation (PLHA) Loan Agreement by and between the Owner and the Lender dated on or about the date hereof, setting forth the terms and conditions governing the County PLHA Loan.

1.2 **“COUNTY PLHA LOAN DEED OF TRUST”** means that certain Deed of Trust, Assignment of Rents, and Security Agreement recorded against the Property and the improvements to be constructed thereon as security for the County PLHA Loan, with the Owner as trustor and the Lender as beneficiary, as may be amended from time to time.

1.3 **“COUNTY PLHA LOAN DOCUMENTS”** means, collectively, the County PLHA Loan Agreement, the County PLHA Loan Note, the County PLHA Deed of Trust, and this Agreement, including all exhibits and attachments hereto and thereto, as such documents may be amended from time to time.

1.4 **“COUNTY PLHA LOAN NOTE”** means the promissory note executed by the Owner in favor of the Lender on or about the date hereof in the original principal amount of One Million, Four Hundred Thousand Dollars (\$1,400,000), evidencing the County PLHA Loan, as may be amended from time to time.

1.5 **“HOMELESS”** has the same meaning as defined in Section 578.3 of Title 24 of the Code of Federal Regulations.

1.6 **“PLHA-ASSISTED UNIT”** means one the three (3) studio rental Units on the Property designated by the Owner as Units with restricted occupancy and rents pursuant to and subject to the requirements of this Agreement. A Unit shall not be considered a PLHA-Assisted Unit until the Unit has been constructed and made available for occupancy.

1.7 **“LENDER”** is the County of Santa Barbara, a political subdivision of the State of California, and its authorized representatives, officers, officials, directors, employees, and agents.

1.8 **“OWNER”** means Sanctuary Centers of Santa Barbara, Inc., a California non-profit public benefit corporation.

1.9 **“PROJECT”** means the construction, operation and management of the Property and the improvements to be constructed thereon in accordance with the County PLHA Loan Documents.

1.10 **“PROPERTY”** means that certain real property and improvements thereon located at 115 West Anapamu Street in the City of Santa Barbara, California, as more particularly described in Exhibit A, attached hereto and incorporated herein, including the improvements to be constructed thereon pursuant to the County PLHA Loan Agreement.

1.11 **“QUALIFYING HOUSEHOLD”** means a household that qualifies as Homeless.

1.12 **“QUALIFYING RENT”** means the total monthly charges for rent for a PLHA-Assisted Unit, which shall not exceed thirty percent (30%) of the tenant Qualifying Household’s gross annual income, adjusted for family size as published annually by the U.S. Department of Housing and Community Development (“HUD”) for the Santa Maria/Santa Barbara Metropolitan Statistical Area, including Tenants’ share of the cost of utilities.

1.13 **“TENANT”** means a household that meets the definition of Qualifying Household occupying a PLHA-Assisted Unit.

1.14 **“TERM”** means the period of time during which the PLHA-Assisted Units must meet the affordability requirements imposed under the PLHA Program, as described in Section 2.2 of this Agreement.

1.15 **“UNIT”** means one of the 34 residential housing apartment units comprising the Project on the Property.

2. TERM AND COMPLIANCE

2.1 **COMPLIANCE WITH COUNTY PLHA LOAN DOCUMENTS.** The Owner’s actions with respect to the Property and the use of funds from the County PLHA Loan shall at all times be in full conformity with all of the requirements of the County PLHA Loan Documents, including, but not limited to, the insurance requirements contained therein.

2.2 **TERM OF AGREEMENT.** The term of this Agreement (“Term”) shall commence on the earlier of a) the date of recordation of this PLHA Loan Regulatory Agreement, or b) the date the Project is completed, as evidenced by a Notice of Completion provided to the Borrower by the County of Santa Barbara (“Notice of Completion”), and shall terminate on the date that is fifty-five (55) years from the date of the issuance by the City of Santa Barbara Building Official of a final Certificate of Occupancy for the Project. The requirements of this Agreement shall

apply throughout the Term without regard to the term of any loan or mortgage or any transfer of ownership of the Property.

2.3 COMPLIANCE WITH PLHA PROGRAM REQUIREMENTS. The Owner shall comply at all times during the Term with all requirements imposed on projects assisted under the PLHA Program in effect as of the first date that the County PLHA Loan Agreement is executed by all parties thereto, and as such PLHA Program requirements may be amended from time to time (“PLHA Program Requirements”).

3. PROJECT OCCUPANCY AND RENTS

3.1 OCCUPANCY OF PROJECT. Three (3) apartment Units in the Project shall be designated by Owner as PLHA-Assisted Units. Owner shall ensure that the PLHA-Assisted Units are occupied, or reserved for occupancy, by Qualifying Households at all times during the Term.

3.2 PLHA-ASSISTED UNITS. The Owner shall limit occupancy of the PLHA-Assisted Units, at all times during the Term, to Qualifying Households at Qualifying Rents that do not exceed the maximum rental charges for each PLHA-Assisted Unit as set forth in Section 1, above.

The Borrower shall maintain and operate the PLHA-Assisted Units so as to provide decent, safe, and sanitary housing, and shall provide the PLHA-Assisted Units with the same level of services (including security), amenities, and maintenance as are provided to the other Units in the Project. Optional services provided must be offered and available to all residents of all Units under the same terms and conditions.

3.3 MAXIMUM RENTAL CHARGES.

A. Maximum rental charges for the PLHA-Assisted Units shall not exceed the Qualifying Rent.

B. The Qualifying Rent for each PLHA-Assisted Unit shall be set by the Borrower at the time of initial occupancy of the Project. Annual increases in Qualifying Rents shall be calculated based on the change in Area Median Income published annually by HUD. Tenants of PLHA-Assisted Units shall be given at least thirty (30) days’ written notice prior to any increase in Qualifying Rents, consistent with State law.

3.4 OCCUPANCY DEADLINES. Owner shall ensure that the PLHA-Assisted Units are occupied by Qualifying Households within 90 days of receiving the Project Certificate of Occupancy issued by the City of Santa Barbara Building Official.

3.5 INCOME CERTIFICATION. Borrower shall certify the annual income and other qualifications of each Qualifying Household applicant for PLHA-Assisted Units no earlier than sixty (60) calendar days prior to such Qualifying Household applicant's expected occupancy of a PLHA-Assisted Unit, and Borrower shall recertify annually thereafter such Qualifying Household Tenant’s annual income levels and other qualifications. If the household size of a Qualifying Household occupying a PLHA-Assisted Unit changes, the Borrower shall request additional

information and documentation to determine such Qualifying Household Tenant's continued eligibility.

4. LEASING THE PROJECT.

4.1 TENANT LEASES. The Owner shall execute a written lease with Tenants of each PLHA-Assisted Unit for a term of at least 12 months, unless the Owner and the Tenant mutually agree to a shorter period; provided, however, that each such lease shall not be for a period less than ninety (90) days. Each such Tenant lease, and any changes thereto, must be approved in advance by Lender.

Owner shall not terminate a tenancy, or refuse to renew the lease, of a Tenant of a PLHA-Assisted Unit except for serious or repeated violations of the terms and conditions of such Tenant's lease, violation of applicable Federal, State, or local law, or other failure to meet lease agreement requirements. All efforts should be made to prevent termination of such tenancies through connection to services and reasonable accommodations. To terminate or refuse to renew the tenancy of a Tenant of a PLHA-Assisted Unit, the Owner shall serve written notice upon such Tenant specifying the grounds for such action at least thirty (30) days prior to termination of tenancy.

4.2 TENANT SELECTION. Tenant selection for each vacant PLHA-Assisted Unit shall be on a first Qualifying Household applicant basis.

4.3 SECTION 8 CERTIFICATE HOLDERS. The Owner shall accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Owner shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective Tenants, nor shall the Owner apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of Units by such prospective Tenants.

4.4 NONDISCRIMINATION. During the performance of this Agreement, the Owner and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, gender identity, gender expression, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), genetic information, marital status, military and veteran status, and denial of medical and family care leave or pregnancy disability leave. The Owner and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Owner or subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a

part hereof as if set forth in full. The Owner and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

5. PROPERTY MANAGEMENT

5.1 MANAGEMENT RESPONSIBILITIES. The Owner is responsible for all management functions with respect to the Project, including without limitation the selection of Qualifying Households, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The Lender shall have no responsibility over management of the Project. The Owner shall submit to the Lender for Lender's approval its proposed Property manager. The Owner may only remove and/or replace the Property manager with the prior written consent of the Lender, which consent shall not be unreasonably withheld.

5.2 APPROVAL OF MANAGEMENT POLICIES. The Owner shall submit its written management policies with respect to the Project to the Lender for Lender review and approval, and shall amend such policies in any way requested by Lender as necessary to ensure that such policies comply with the provisions of this Agreement, the PLHA Program Requirements.

5.3 INSPECTION AND RECORDS. The Owner shall maintain records which clearly document the Owner's performance of its obligations under this Agreement. The Owner shall submit all requested records to the Lender within ten (10) business days of Lender's request. The Owner shall permit the Lender to enter and inspect the Property for compliance with Owner's obligations under this Agreement upon twenty-four (24) hours' advance notice of such visit by the Lender to the Owner or the Owner's Property manager.

5.4 COMPLIANCE MONITORING. The Owner shall operate the Property in full compliance with this Agreement and all applicable laws, including, but not limited to, State and local building, safety, and occupancy laws and regulations, and PLHA Program Requirements in effect during the Term, and shall remain in compliance therewith at all times during the Term. The Owner shall permit the Lender to conduct compliance monitoring, including performing on-site records review and inspections of the Property, as required by PLHA Program Requirements or reasonably requested by Lender.

5.5 ANNUAL REPORT. The Owner shall submit to the Lender annually, no later than March 1st of each year during the Term, a report in a form approved by Lender for the preceding period of January 1st through December 31st, containing the information requested by Lender so as to allow the Lender to determine the Owner's compliance with this Agreement. The report shall include, at a minimum: (i) an Annual Financial Statement, as defined in the County PLHA Loan Agreement, (ii) a report on the occupancy of the Project, (iii) a report on the physical condition of the Project, (iv) a report on the general management of the Project, and (v) for each PLHA-Assisted Unit, the rent, documented eligibility of the Tenant(s) as a Qualifying Household. The report shall also state the date each tenancy commenced for each PLHA-Assisted Unit, and such other information as the Lender may be request.

Within thirty (30) days after receipt of a written request, Owner shall submit any other information or completed forms requested by the Lender in order to comply with reporting requirements of the State of California, or the Lender. The Lender shall have the right to examine and make copies of all books, records or other documents of Owner which pertain to the Project and/or any Unit to determine compliance with this Agreement.

5.6 FEES, TAXES, AND OTHER LEVIES. The Owner shall be responsible for payment of all fees, assessments, taxes, charges and levies imposed by any public authority or utility company with respect to the Property, and shall pay such charges prior to delinquency.

5.7 PROPERTY TAX EXEMPTION. The Owner shall not apply for a property tax exemption for the Property under any provision of law other than California Revenue and Taxation Code Section 214(g) without the Lender's prior written consent. Lender acknowledges Owner may be applying for a property tax exemption for the property and hereby provides its consent.

5.8 MAINTENANCE OF EXISTING STRUCTURES. Owner shall maintain all buildings on the Property in good condition, in good repair and in a decent, safe, sanitary, habitable and tenantable condition. All Units in the Project must meet the standards set out in 24 CFR 92.251(f)(2) at all times during the Term of this Agreement. Owner shall not cause or permit any violations of any laws, ordinances, regulations, covenants, conditions, restrictions, or equitable servitudes as they pertain to improvements, alterations, maintenance or demolition on the Property. Lender shall (unless and until Lender may take possession of the Property in a judicial foreclosure or trustee's sale) have no responsibility for maintenance of the Property.

6. GENERAL PROVISIONS

6.1 SUBORDINATION. Lender may, in its sole discretion, agree to subordinate this Agreement to one or more of the Senior Loans as specified in the County PLHA Loan Agreement, and the lien of any deed of trust or mortgage securing the Senior Loans. In the event of refinancing of any loan referenced in the PLHA Loan Agreement, the County may subordinate the County PLHA loan; however, the County may require that this Agreement not be subordinated. In any event, this Agreement shall remain in full force and effect.

6.2 DEFAULT AND REMEDIES. In the event that a Party has knowledge or constructive knowledge of any breach of any provision of this Agreement by the Owner, such Party shall immediately provide written notice to the other Party of such breach. If Lender determines, in Lender's reasonable discretion, that such breach is subject to cure, Lender shall notify Owner in writing ("Notice to Cure") specifying the action required to cure such breach, and a reasonable date by which such cure must be completed, provided that Owner promptly begins such cure and diligently performs such cure to completion. If the Owner fails to perform a timely cure of the specified breach in accordance with such Notice to Cure, the Lender may proceed with any or all of the following remedies:

A. Bring an action in equitable relief seeking the specific performance by the Owner of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of said terms and conditions, and/or seeking declaratory relief;

B. Enter upon, take possession of, and manage the Property and the Project, either in person, by agent, or by a receiver appointed by a court, and collect any rents, income, deposits, or reserves and apply them to operate the Property;

C. After notice provided for herein, make such repairs or replacements to the Property and Project as are necessary and provide for payment thereof; or

D. Pursue any other remedy provided under the County PLHA Loan Documents or allowed at law or in equity.

6.3 EVENT OF DEFAULT. In the event that the Project fails to meet the affordability requirements included in this Agreement at any point during the Term, such failure shall constitute a breach hereunder and an Event of Default under the County PLHA Loan Agreement.

6.4 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. No official elected or appointed, officer, director, employee or agent of the Lender shall be personally liable to the Owner for any obligation created under the terms of this Agreement.

6.5 INSURANCE AND INDEMNITY. Owner shall comply with the insurance and indemnification provisions set forth in Exhibit B, attached hereto and incorporated herein by this reference.

6.6 GOVERNING LAW. This Agreement shall be interpreted under and governed by the laws of the State of California, except for those provisions preempted by federal law.

6.7 AGREEMENT CONTROLS. In the event that any provision of this Agreement and that contained in any of the other PLHA Loan Documents conflict, the terms of this Agreement shall control and prevail.

6.8 TIME. Time is of the essence in this Agreement.

6.9 CONSENTS AND APPROVALS. Any consent or approval of the Lender with respect to this Agreement must be in writing and executed by a duly authorized representative of the Lender in order to be effective.

6.10 NOTICES, DEMANDS AND COMMUNICATIONS. Formal notices, demands and communications between the Owner and the Lender shall not be deemed received unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the address for the receiving Party as follows:

Lender: County of Santa Barbara
Housing and Community Development
123 E Anapamu Street, Room 202
Santa Barbara, CA 93101
Attn: Deputy Director

With copy to: Office of County Counsel
County of Santa Barbara
105 E Anapamu Street, 2nd Floor
Santa Barbara, CA 93101
Attn: County Counsel

Owner: Sanctuary Centers of Santa Barbara, Inc.
P.O. Box 551
Santa Barbara, CA 93102
Attn: CEO

With copy to: Brownstein Hyatt Farber Schreck, LLP
1021 Anacapa Street, 2nd Floor
Santa Barbara, CA 93101
Attn: Joshua P. Rabinowitz

6.11 BINDING UPON SUCCESSORS. This Agreement shall be recorded and all provisions of this Agreement shall be binding upon and inure to the benefit of the permitted successors-in-interest, transferees, and assigns of the Owner and the Lender, and shall run with the land for the full Term, regardless of any assignment or other Transfer, payment, prepayment, expiration, extinguishment of the County PLHA Loan or County PLHA Loan Note, any reconveyance of the County PLHA Loan Deed of Trust, or any conveyance or transfer of the Property or any portion thereof; provided, however, that no purported Transfer (defined below) of this Agreement or any of Owner's rights, interests, or obligations hereunder shall be effective unless in compliance with Section 6.16, below.

6.12 RELATIONSHIP OF PARTIES. The relationship of the Owner and the Lender during the term of this Agreement is solely that of lender and borrower and shall not be construed as a joint venture, equity venture, or partnership.

6.13 WAIVER. Any waiver by the Lender of any obligation in this Agreement must be in writing. No waiver will be implied from any delay or failure by the Lender to take action on any breach or default of the Owner or to pursue any remedy allowed under this Agreement, the County PLHA Loan Documents, or applicable law. Any extension of time granted to the Owner to perform any obligation under this Agreement shall not operate as a waiver or release from any of Owner's obligations under this Agreement. Consent by the Lender to any act or omission by the Owner shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the Lender's written consent to future waivers.

6.14 AMENDMENTS AND MODIFICATIONS. No change, amendment to, or modification of this Agreement shall be effective unless set forth in a written amendment of the Agreement duly executed by both the Owner and the Lender.

6.15 **SEVERABILITY.** In the event that any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement.

6.16 **ASSIGNMENT AND ASSUMPTION.** Owner shall not assign or otherwise transfer, directly or indirectly, whether by operation of law or otherwise (“Transfer”), this Agreement, or any of the other County PLHA Loan Documents, or any of its rights, interests, or obligations hereunder or thereunder, without the prior written consent of Lender in each instance. Any purported Transfer in violation of the foregoing provisions of this Section 6.16 shall be void *ab initio*.

Signatures appear on following page. No further text appears here.

IN WITNESS WHEREOF, Lender and Owner have caused this Agreement to be executed by their respective duly authorized officers.

ATTEST:

MONA MIYASATO
Clerk of the Board

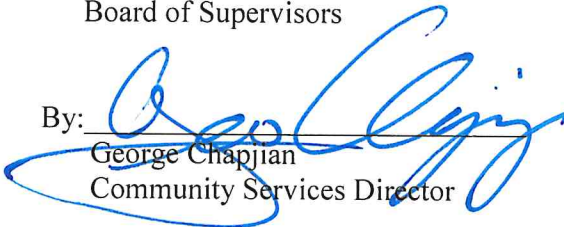
LENDER: County of Santa Barbara, a
political subdivision of the State of California

By: _____
Deputy Clerk of the Board

By: _____
Das Williams, Chair
Board of Supervisors

**APPROVED AS TO ACCOUNTING
FORM:**

BETSY M. SCHAFFER, CPA
AUDITOR-CONTROLLER

By: 
George Chapian
Community Services Director

By: 
Deputy Auditor Controller

APPROVED AS TO FORM

RACHEL VAN MULLEM
COUNTY COUNSEL

OWNER: Sanctuary Centers of Santa
Barbara, Inc. a California non-profit public
benefit corporation

By: 
Deputy County Counsel

By: 
Barry R. Schoer,
Chief Executive Officer

**APPROVED AS TO FORM:
RISK MANAGEMENT**

By: 
Gregory Milligan, ARM, AIC
Risk Manager

Exhibit A

Legal Description of the Property

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 039-222-002

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SANTA BARBARA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

That portion of Block 126 in the City of Santa Barbara, County of Santa Barbara, State of California, described as follows:

Lot 7 as designated and shown on the plat or map and report filed in the Superior Court of said County of Santa Barbara, in the Partition Suit of Eugene S. Upson vs Julia E. VanSlyke, et ux., August 18, 1898, the Final Decree of Partition in said suit being rendered August 31, 1898, and a copy thereof filed in the Office of the County Recorder of said Santa Barbara County on the 31st day of August 1898, and recorded in Book 65 of Deeds, Page 132, said Lot 7 being particularly described as follows:

Commencing at a point marked by an iron pin driven into the ground on the Southeasterly line of Anapamu Street 170 feet Southwesterly from the North corner of Block 126 as per Official Map of the City of Santa Barbara, California, at the West corner of a 15 foot alley, and running thence Southwesterly along the said line of Anapamu Street 55 feet to an iron pin driven into the ground, thence at a right angle Southeasterly along the line of another 15 foot alley into said Block 200 feet to an iron pipe driven into the ground, thence at right angles Northeasterly 55 feet to an iron pipe driven into the ground and the Southwesterly line of said first mentioned 15 foot alley, thence at a right angle Northwesterly along the Southwesterly line of said alley 200 feet to the place of beginning.

Exhibit B
Insurance Provisions

Exhibit B

INSURANCE REQUIREMENTS

Indemnification and Insurance Requirements (For Construction Contracts)

INDEMNIFICATION

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is caused by the active negligence, sole negligence, or willful misconduct of the COUNTY.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CONTRACTOR shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

INSURANCE

CONTRACTOR shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors.

A. Minimum Scope and Limit of Insurance
Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate.
2. **Automobile Liability:** Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than \$2,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Contractor's Pollution Legal Liability and/or Asbestos Legal Liability:** (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

If the CONTRACTOR maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained

by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR'S insurance at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).
2. **Primary Coverage** – For any claims related to this Agreement, the CONTRACTOR'S insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
4. **Waiver of Subrogation Rights** – **CONTRACTOR hereby agrees to waive rights of subrogation which any insurer of CONTRACTOR may acquire** from CONTRACTOR by virtue of the payment of any loss. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors. This provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. At the option of the COUNTY, either: the CONTRACTOR shall cause the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the COUNTY, its officers, officials, employees, agents and volunteers; or the CONTRACTOR shall provide a financial guarantee satisfactory to the COUNTY guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – CONTRACTOR shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR'S obligation to provide them. The CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all

required insurance policies, including endorsements required by these specifications, at any time.

8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
9. **Subcontractors** – CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that COUNTY is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
 - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONTRACTOR must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
11. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.